

**STATE OF NEW HAMPSHIRE**

**HILLSBOROUGH, SS.  
SOUTHERN DISTRICT**

**SUPERIOR COURT**

DOCKET NOS. 07-S-1843-1845

STATE OF NEW HAMPSHIRE

V.

KENDRICK HOSKINS

OPINION AND ORDER

LYNN, C.J.

The defendant, Kendrick Hoskins, is charged with one count of possession of cocaine with intent to distribute, one count of possession of crack cocaine,<sup>1</sup> and one count of resisting detention. Presently before the court is the defendant's motion to suppress evidence seized as the result of an investigative stop of a vehicle in which he was a passenger. I conclude that the motion must be denied.

I.

Based on the evidence presented at the February 4, 2008 hearing, I find the pertinent facts to be as follows. On August 1, 2007, at approximately 12:41 a.m., Officer Christopher Dowling of the Merrimack Police Department was traveling south on Route 3 in Merrimack, New Hampshire when he came upon a silver Toyota Camry ("the vehicle"), also traveling south on Route 3, which was being driven erratically. Officer Dowling witnessed the vehicle cross over the white fog lane on the right side of the road by at least the width of a tire and then veer to the left, crossing the double yellow lines.

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<sup>1</sup> Both drug indictments are charged as subsequent offenses based on the allegation that the defendant had previously been convicted of sale of cocaine before this court on March 25, 2005; the indictments also allege that the offenses were committed while the defendant was released on bail.

As the vehicle approached the four-way intersection near Newick's Restaurant and the Merrimack 10-Pin Bowling Alley, it drifted into the right turn lane but then veered left and continued straight through the intersection. Due to this erratic driving, Officer Dowling activated his emergency lights and initiated a traffic stop.

The driver of the vehicle pulled over almost immediately. Dowling exited his cruiser and walked to the driver's side of the vehicle. The driver identified herself as Christie Carmichael. A male, subsequently identified as the defendant, sat in the passenger seat. Carmichael explained to Dowling that she had crossed over the fog line and the yellow lines because she took her eyes off the road to light her cigarette and drink her coffee. She and the defendant explained that they were returning from the 7-11 store, located a few miles north on Route 3, near the Bedford town line. Carmichael told Dowling that she was an employee at the nearby Comfort Inn, that the passenger lived at the Comfort Inn, and that the two of them went to the 7-11 to purchase coffee and soda. Dowling testified that Carmichael did not smell of alcohol, did not slur her words, and did not appear under the influence of alcohol or other substances. However, according to Dowling, both Carmichael and the defendant appeared nervous, and the officer was somewhat skeptical about why they would travel several miles to buy coffee and soda when there were other establishments closer by and which were open all night that sold these items. Dowling testified that the defendant appeared to duck behind Carmichael's back (so as to avoid eye contact with the officer) and that he kept looking around and out towards a wooded area adjacent to a nearby condominium development. In response to Dowling's request for identification, Carmichael provided her drivers license and the vehicle's registration.

Approximately one minute after Dowling stopped the vehicle, Officer Carl Scott arrived at the scene. He approached the vehicle on the passenger side. After listening to the occupants' explanations for the erratic driving and obtaining Carmichael's license and registration, Dowling then asked the defendant for identification. The defendant explained that he did not have any identification with him. Dowling, who wanted to return to his cruiser to check Carmichael's information, asked the defendant to provide Scott with his name and date of birth. Dowling then returned to his cruiser while Scott continued to speak with the defendant.

The defendant told Scott that his name was Lewis Kendrick and that his date of birth was April 4, 1969. Scott relayed this information to Dowling, who by this time had verified that Carmichael's license and registration were in order. At this point, Scott left the scene. Dowling next entered the identifying information provided by the defendant into the cruiser's mobile data terminal. The records check for Lewis Kendrick came back as "not on file."

Dowling returned to the vehicle, this time approaching the passenger side, to confirm that he had the defendant's correct name and date of birth. The defendant told Dowling that his name was Kendrick Lewis (not Lewis Kendrick) and that his date of birth was September 7, 1972 (not April 4, 1969). The defendant also told Dowling that he was from Mississippi and that he had never been arrested. Dowling returned to his cruiser and ran a check on the name Kendrick Lewis, with a date of birth of September 7, 1972. The check returned a "sound index hit" for a Kendrick Hoskins with a date of birth of September 7, 1972. Dowling then contacted dispatch to find out identifying information on Kendrick Hoskins. Dispatch provided Dowling with a social security

number as well as information regarding identifying tattoos and scars for Kendrick Hoskins. Dispatch also informed Dowling that there was an outstanding arrest warrant for Kendrick Hoskins for failure to appear in court.

Dowling returned to the passenger side of the vehicle. He asked the defendant for his social security number. The defendant provided a social security number that matched the number which dispatch had provided for Kendrick Hoskins. Dowling also observed that the defendant had a scar and tattoos consistent with the information provided by dispatch. Although at this point Dowling intended to arrest the defendant on the outstanding warrant, he did not inform the defendant of this fact because the officer wanted to radio for assistance before effecting the arrest. While Dowling was walking back to his cruiser to call for assistance, the defendant exited the vehicle and ran off towards the adjacent apartment complex. Dowling gave chase and the defendant was eventually caught, arrested and found to be in possession of the cocaine and crack which form the basis for the drug indictments. The entire interaction between the defendant and Dowling, from the officer's initial stop of the vehicle to the defendant's arrest, took nineteen minutes. See Ex. 1, Suppr. Hrg.

## II.

The defendant argues that evidence resulting from the stop must be suppressed because Officer Dowling did not have reasonable suspicion to conduct an investigatory stop. Alternatively, he asserts that, if I find the initial stop valid, Dowling impermissibly expanded the scope of the stop because he did not have an independent, reasonable basis to request the defendant's identification. According to the defendant, because

Dowling impermissibly changed, expanded and prolonged the scope of the stop, all evidence found thereafter must be suppressed as fruit of the poisonous tree.

The State responds that Officer Dowling had reasonable suspicion to stop the vehicle. The State further maintains that, once Dowling stopped the vehicle, he acted reasonably when he asked for the defendant's identification, given the lateness of the hour, the possibility that Carmichael was driving under the influence, and the defendant's nervous behavior. According to the State, once Dowling suspected that the defendant provided false identifying information, he was justified in prolonging the stop to ascertain the defendant's true identity; and when Dowling thereafter verified that defendant was someone for whom a warrant was outstanding, the officer had probable cause to arrest the defendant even before he attempted to flee.

In making his arguments, the defendant relies on Part I, Article 19 of the New Hampshire Constitution and the Fourth and Fourteenth Amendments of the United States Constitution. As the New Hampshire Constitution provides at least as much protection in these areas as does the United States Constitution, I address the arguments under the state constitution, referring to federal law only for guidance in deciding the state issues. See State v. McBreairty, 142 N.H. 12, 13 (1997) (investigative stop); State v. Roach, 141 N.H. 64, 65 (1996) (expansion of stop); see also State v. Ball, 124 N.H. 226, 231-32 (1983).

Investigative stops are limited seizures permitted under the New Hampshire Constitution. State v. Brodeur, 126 N.H. 411, 415 (1985); see State v. McKinnon-Andrews, 151 N.H. 19, 22 (2004). During a traffic stop, both the driver and passengers in the vehicle are "seized" for constitutional purposes. See Brendlin v. California, 127 S.

Ct. 2400, 2403 (2007). The New Hampshire Supreme Court has stated that in order for a police officer to undertake an investigative stop, the “officer must have reasonable suspicion, based upon specific, articulable facts taken together with rational inferences from those facts, that the particular person stopped has been, is, or is about to be engaged in criminal activity.” State v. Wiggin, 151 N.H. 305, 308 (2004) (citations omitted). “The officer’s suspicion must have a particularized and objective basis in order to warrant that intrusion into protected privacy rights.” State v. Turmel, 150 N.H. 377, 380 (2003) (citation omitted).

Once an officer undertakes a lawful investigatory stop, “the scope of [the stop] [ ] must be carefully tailored to its underlying justification[,] must be temporary and last no longer than is necessary to effectuate the purpose of the stop.” State v. Hight, 146 N.H. 746, 748 (2001) (quotation and citation omitted). Any expansion of a motor vehicle stop to investigate other suspected illegal activity is permitted only if the officer establishes that he had an independent, reasonable suspicion that “other criminal activity is afoot.” Id. at 748-49 (quotation and citation omitted). The purpose of the “scope requirement is to prevent[ ] law enforcement officials from fundamentally altering the nature of the stop by converting it into a general inquisition about past, present and future wrongdoing, absent an independent basis for reasonable suspicion or probable cause.” McKinnon-Andrews, 151 N.H. at 25 (quotation and citation omitted).

In this instance, Officer Dowling initiated a traffic stop of the vehicle because he observed the vehicle’s operator commit multiple violations of the rules of the road. See, e.g., RSA 265:22 (Supp. 2007) (“no driver of a vehicle shall, while proceeding along a way, drive any part of such vehicle to the left of or across an unbroken painted line ...

.”); RSA 265:24, III (2004) (“drivers of vehicles shall obey the directions of every such [traffic control] sign”); RSA 265:42, IV (2004) (“no driver of a vehicle shall turn a vehicle at an intersection other than as directed and required by . . . markers, buttons or signs”); RSA 265:44 (2004) (“No person shall turn a vehicle or move right or left upon a roadway without giving an appropriate signal . . . .”). Dowling’s observations of the erratic operation of the vehicle provided him with reasonable suspicion to stop the vehicle. See McKinnon-Andrews, 151 N.H. at 20, 23 (vehicle validly stopped for failing to heed stop sign); Hight, 146 N.H. at 749 (finding stop of vehicle for speeding and broken taillight was valid investigatory stop). Therefore, the real issue in this case is whether Dowling impermissibly expanded the scope of the stop by requesting the defendant’s identification and running a records check on him.

While the New Hampshire Supreme Court has not yet determined whether an officer may ask an automobile passenger for identification during a routine traffic stop without an articulable, reasonable basis for the request, New Hampshire does limit the scope of questions that an officer may ask automobile detainees during an investigatory stop. See Turmel, 150 N.H. at 383 (holding that police may ask detainee “moderate number of questions to determine [her] identity and to try to obtain information confirming or dispelling the officer’s suspicions”). When determining whether an officer exceeds the scope of the initial stop, the court must undertake a three-part analysis. The court “examines whether: (1) the question is reasonably related to the initial justification for the stop; (2) the law enforcement officer had a reasonable articulable suspicion that would justify the question; and (3) in light of all the circumstances, the

question impermissibly prolonged the detention or changed its fundamental nature.” McKinnon-Andrews, 151 N.H. at 25 (citation and quotations omitted).

Jurisdictions differ as to whether an officer conducting a traffic stop may ask other occupants of the vehicle for identification as part of the routine investigation. Compare United States v. Soriano-Jarquin, 492 F.3d 495, 500 (4th Cir. 2007) (holding that during routine traffic stop police officer may ask passenger for identification) with Commonwealth v. Alvarez, 692 N.E.2d 106, 108 (Mass. App. 1998) (determining that officer cannot question passengers without specific, articulable facts independent from initial purpose of traffic stop). Jurisdictions finding such an inquiry lawful reason that an officer may ask a passenger for identification but may not demand such information; the passenger is entitled to refuse to answer. See, e.g., St. George v. State, 237 S.W.3d 720, 726 (Tex.Crim.App. 2007) (reasoning that officer may ask for identification from passengers but passengers need not answer). Some courts indicate that a request for passenger identification is valid when necessary to determine if the passenger can lawfully drive the vehicle, see United States v. Diaz-Castaneda, 494 F.3d 1146, 1152-53 (9th Cir. 2007); other courts stress that officer safety concerns warrant allowing the police to ascertain the identities of the individuals with whom they are dealing, see Soriano-Jarquin, 492 F.3d at 500.

Conversely, other courts have concluded that, absent an independent, articulable suspicion of criminal activity, a request for identification from a passenger unlawfully exceeds the scope of the stop. See State v. Affsprung, 87 P.3d 1088, 1094 (N.M. App. 2004) (finding officer’s request for passenger’s identification unlawful absent specific



suspicion of criminality or concern for officer safety); accord. State v. Thompkin, 143 P.3d 530, 535 (Ore. 2006); State v. Rankin, 92 P.3d 202, 203 (Wash. 2004).

I am persuaded by the reasoning of those courts which hold that an officer may request a passenger's identification as a matter of course during a routine traffic stop. In Soriano-Jarquin, the court stated that, "[i]f an officer may as a matter of course and in the interest of personal safety order a passenger physically to exit the vehicle, he may surely take the minimally intrusive step of requesting passenger identification." 492 F.3d at 500 (internal citation omitted). As long as the officer does not demand the passenger's identification or use a threat of force or coercion to obtain the information, requesting identification from a passenger during the stop is "reasonably related to the initial justification for the stop." McKinnon-Andrews, 151 N.H. at 25. In addition to the safety concerns identified in Soriano-Jarquin, I note that it is common practice in many everyday business and social settings for parties to ascertain the identities of those with whom they are interacting. There is no reason for treating an encounter between a police officer and citizens any differently. Indeed, if anything, the realities of the vehicle stop situation provide more -- not less -- justification for the officer to learn the identities of the individuals with whom he is dealing. Because of the compelled nature of the encounter with the driver (who does not have the option to decline to stop) and the fact that the officer may be the bearer of bad news (i.e., that the driver has committed some traffic violation), there is always the potential for a dispute -- either at that time or later in court -- concerning the conduct of the driver and/or the conduct of the officer. Since passengers in the vehicle are witnesses to the behavior of both the officer and the driver, it is only prudent for the officer to ask for their identities so that their presence

can be documented and they can be contacted later should the need arise. See State v. Brunelle, 145 N.H. 656, 659 (2000) (recognizing legitimacy of police requests for information “to maintain a record of [the] contact . . . in the event that any questions about . . . [the] contact . . . subsequently arose”).

Here, Officer Dowling credibly testified that he asked the defendant for identification at the same time that he asked Carmichael for her information. When the defendant stated he did not have identification, Dowling asked the defendant to provide Officer Scott with his name and date of birth. The defendant complied with this request. There is no indication that either Dowling or Scott coerced the defendant into furnishing his identity. Nor is there any evidence that Dowling’s initial computer check on the name and date of birth first given by the defendant prolonged the stop of the vehicle to any appreciable degree. For these reasons, I conclude that the actions of the police officers up to this point did not violate the defendant’s constitutional rights in any way.

I must next consider whether Officer Dowling’s further questioning of the defendant after he (Dowling) received the “not on file” response to the records check on Lewis Kendrick passes muster under McKinnon-Andrews. Although it is a close question, I conclude that it does. In contrast to cases such as St. George, where the tenor of the officers’ follow up questions made it clear that they were demands rather than requests for information and that the occupants of the vehicle would not be permitted to leave until they had provided responses which the officers considered satisfactory, nothing of the kind occurred here. Instead, upon receiving the “not on file” response, Dowling merely returned to the vehicle to verify that Officer Scott had correctly relayed the defendant’s name. There is no indication that in making this brief

follow up inquiry Dowling changed his tone of voice or said or did anything that would have conveyed to a reasonable person in defendant's position that he was required to respond or that the vehicle would not be permitted to leave if he declined to do so. The fact that, by this time, the second officer (Scott) had already left the scene would only serve to reinforce this perception. Cf. State v. Licks, 154 N.H. 491, 494 (2006) (lone officer's actions in approaching parked vehicle, shining flashlight into vehicle, and asking person behind wheel if he was "all set" "would not have led a reasonable person to believe that he must submit to the officer's requests"). Furthermore, if this follow up inquiry prolonged the stop at all,<sup>2</sup> it did so for no more than a de minimis period.

However, the defendant's response to the follow up inquiry undoubtedly did change the tenor of the encounter by providing Dowling with reason to question the accuracy of the information the defendant had provided. For while defendant's saying that his name was Kendrick Lewis rather than Lewis Kendrick could easily be viewed as an innocent mistake by Scott in transposing defendant's first and last names, the completely different date of birth provided by the defendant at this point is another matter. Dowling could reasonably have concluded that this discrepancy was not likely the result of a simple communication error, but instead may have been a deliberate effort by the defendant to mislead the officers as to his true identity. At the very least, these circumstances warranted Dowling in running a second records check based on the new information provided by the defendant. When Dowling thereafter received the "sound index hit" for a Kendrick Hoskins with the same date of birth, he was justified in approaching the vehicle a third time to attempt to confirm if the passenger was in fact

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<sup>2</sup> The evidence at the suppression did not make it clear whether, at the point discussed in the text, Dowling had made a decision as to what, if any, action he would take with respect to Carmichael's driving violations (e.g., issue a ticket, issue a warning, or take no action at all).

the person – Kendrick Hoskins – for whom a warrant was outstanding. And when Dowling then confirmed defendant’s identity as the wanted person through defendant’s acknowledgment of a matching social security number and through Dowling’s observations of scars and tattoos consistent with those listed in the records of Kendrick Hoskins, the officer clearly possessed probable cause to arrest the defendant on the outstanding warrant.

Since the defendant does not argue that the seizure of evidence was unlawful on some basis other than the grounds discussed above, I need not conduct any further analysis.

III.

For the reasons stated above, defendant’s motion to suppress is hereby denied.

BY THE COURT:

March 7, 2008

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ROBERT J. LYNN  
Chief Justice