

STATE OF NEW HAMPSHIRE  
SUPREME COURT

NO. 2021-0197

State of New Hampshire,

V.

Juan Monegro Diaz

---

**APPEAL BY THE STATE OF DEFENDANT'S MOTION TO SUPPRESS  
STOP ALLOWED BY THE 10TH CIRCUIT DISTRICT  
DIVISION – SALEM  
BRIEF OF DEFENDANT, JUAN MONEGRO DIAZ**

---

JUAN MONEGRO DIAZ

By his Attorney,

  
Simon Dixon, Esq. - BBO#: 7882  
DIXON & ASSOCIATES  
439 South Union Street, Suite 202  
Lawrence, MA 01843  
(978) 794-1623  
[simondixonlaw@gmail.com](mailto:simondixonlaw@gmail.com)

September 16, 2021

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES.....	3
CONSTITUTIONAL PROVISIONS.....	4
ISSUES PRESENTED.....	5
STATEMENT OF THE CASE AND THE FACTS.....	6
A. Facts on the Stop.....	6
B. The Trial Court’s Ruling.....	8
SUMMARY OF THE ARGUMENT .....	10
ARGUMENT.....	9
CONCLUSION.....	14
CERTIFICATE OF COMPLIANCE.....	15
CERTIFICATE OF SERVICE.....	16
ADDENDUM TABLE OF CONTENTS.....	17
TRIAL COURT’S ORDER OF STATE’S MOTION TO RECONSIDER.....	18

---

## TABLE OF AUTHORITIES

### **CASES**

Commonwealth v Long 485 Mass. 711 (2020).....	11
State v Dalton, 165 NH 263, 265 (2013).....	10
State v Dodier, 135 NH 134 (1991).....	10
State v McKinnon-Andrews, 151 NH 19, 22 (2004).....	13
State v Pellicci, 133 NH 523 (1990).....	13
State v Pike, 551 N.W. 2d 919, 922 (Minn. 1996).....	11
State v Richter, 145 NH 640 (2000).....	9, 10
State v Reno, 150 NH 466 (2004).....	9, 10, 13
State v Wallace, 146 NH 146 (2001).....	10
United States v Sokolow, 490 US 1, 6-7 (1989).....	10
Village of Lake in Hills v Lloyd, 227 Ill. App. 3d 351 (Ill. App Ct.).....	10
Whren v United States, 579 US 896, 116 S.C. 1769, 135, LED 2d 89 (1996).....	12

---

### Statutes

RSA 263:64.....	10
-----------------	----

**Constitutional Provisions**

New Hampshire Constitution Pt. 1, Art. 19.....5, 8, 10, 13

US Constitution Amend. IV.....5, 8, 10, 13

---

**ISSUES PRESENTED**

Whether the trial court correctly ruled that Officer Carpentier lacked reasonable suspicion to stop the vehicle which Defendant drove, owned by a middle-aged female, which stop violated Part 1, Article 19 of the State Constitution and the IVth Amendment to the United States Constitution?

---

## STATEMENT OF THE CASE AND THE FACTS

### **A. Facts on the Stop**

On August 18, 2020, Salem Police Officer Carpentier, stopped the vehicle which Defendant drove registered to a middle-aged female, incorrectly assuming that the vehicle was the same vehicle involved in his arrest for DUI in 2019.

The vehicle which Defendant drove was registered to a middle-aged female and not to the Defendant, a young male individual. Officer Carpentier incorrectly assumed that the vehicle with a plate number stopped on August 18, 2020 was the same vehicle which was stopped in 2019 (pg. 11). Officer Carpentier testified that one of the reasons for the stop was that Defendant was driving the same vehicle in 2019 when he was arrested for DUI (pgs. 20-21). The vehicles in the 2019 and 2020 were registered to the same female (pg. 21). Officer was under “the impression” that it was the same vehicle that the Defendant drove in 2019 (pgs. 20-21). However, on August 18, 2020, Officer Carpentier stopped Defendant driving a 2000 Honda with a registration number and plate, 4758335 (pg. 21). Officer Carpentier was unaware that the 2019 incident involving the Defendant was a different vehicle with a different plate, a 2007 Honda with a registration number 4662429 (pgs. 21-22). Officer Carpentier testified that he had no idea that the vehicles in 2019 and 2020 were different vehicles (pg. 23). Officer Carpentier checked with the Registry to determine whether that the 2019 arrest involved a vehicle registered to the same owner (pg. 23). In fact, Officer Carpentier testified that he was not sure whether the registry check came back with a different

plate number. He stated, “I’m sure it does if I looked more into it, but I – I didn’t” (pg. 24). Officer Carpentier was the sole witness at the Motion to Suppress. He testified that he did not believe it was relevant to look into whether the vehicle Defendant drove in 2020 was the same vehicle as the one he drove when he was arrested in 2019; his only concern was to determine who the registered owner was, (pg. 24). Officer Carpentier did not notice any motor vehicle infractions (pgs. 25, 27).

Officer Carpentier testified that, “The vehicle caught his attention based upon his training and experience in criminal narcotics interdictions, specifically involving small sedans used for concealment in trafficking of narcotics (pg. 25)”. He continued by testifying that it was part of his job to stop or follow Honda vehicles of that year regardless of whether the driver commits any motor vehicle infractions, even though the officer had the wrong year of the Honda that he stopped in 2020, believing it was the same 2019 vehicle involved in the DUI (pgs. 27/10-14).

Lastly, Officer Carpentier testified that he determined that a middle aged female was the registered owner and had no idea who else lived in the same household (pg. 29). He also testified that he was able to obtain Defendant’s weight and eye color when he followed defendant in his vehicle (pg. 29); he contradicted himself by stating that he did not determine the height of the Defendant while he followed the defendant (pg. 30). Nevertheless, he was able to approximate Defendant’s weight while he followed him even though he was not able to see below Defendant’s chest because Defendant was driving (pg. 30). He also was not able to recall whether the Defendant was wearing a mask (pg. 33). Lastly, he never made contact with the owner’s vehicle before the stop to determine the identity of the driver of the vehicle (pg. 34). He eventually stopped the vehicle in a parking lot on Stiles Road in Salem, NH (pg. 17).

Prior to stopping the car, Officer Carpentier testified that he did not see Defendant's face before, in contradiction with other testimony (pg. 18).

### **B. The Trial Court's Ruling**

On the Motion for Reconsideration, the Court opines: "The court does not find under the totality of the circumstances (the car that was pulled over was not unregistered or under suspension, there were no observations of the motor vehicle violations, there was not enough evidence presented to establish an identity of the Defendant behind the wheel) that the stop rose to the level of an articulable suspicion to make the stop consistent with Part 1, Article 19 of the State Constitution and the IVth Amendment of the United States Constitution" (Addendum to Table of Contents, Pg. 18).

The Court further opines that, "the Defendant was not even in the vehicle on the prior occasion but somehow, in the Salem's internal system, it connected the Defendant to a vehicle for which a prior incident when he was not in that vehicle (pg. 46-47)"; "Basically the Defendant should not have been tied to this car (pg. 49)"; "I still don't like it (pg. 49, 52)". The Court determined that the search violated Part 1 of Article 19 because the registered owner was not under suspension and the vehicle stop in the August 2020 incident was not the same as the one he was stopped in 2019 for a DUI (pg. 46-47).



### SUMMARY OF THE ARGUMENT

The Trial Court did not err in suppressing the stop since the court found that the car in which the Defendant was pulled over on August 18, 2020 was not unregistered, under suspension, and the driver did not commit any motor vehicle infractions; that Officer Carpentier jumped hoops to connect the instant Defendant to a different car which was stopped in 2019 with a different registration number. In 2019, Defendant was stopped when he drove a 2007 Honda Registration Number, 4662429 (pgs. 21-22); contrasting with the 2020 stop when he drove a 2000 Honda, Registration Number, 4758335 (pg. 21). According to the State, any male driving the vehicle registered to the middle-aged woman could be stopped since Officer Carpentier connects the registered owner of the vehicle to any drivers. Unlike the facts in State v Richter, 145 NH 640 (2000) and State v Reno, 150 NH 466 (2004) where the registered owners of the vehicles had a suspended license, the instant case demonstrates that the registered owner, the middle-aged female, did not have a suspended license and was of a different sex than the young male driver, Juan Monegro-Diaz.

---

## ARGUMENT

### Trial Court correctly concluded that Officer Carpentier's stop of the vehicle in which the Defendant was driving violated Part 1, Article 19 of the State Constitution and the IVth Amendment to the United States Constitution.

To justify a stop for an investigative check, the officer must possess articulable facts, together with rational inferences from those facts, which judged by an objective standard warrant the conclusion that a man of reasonable caution would believe that the action taken was appropriate State v Dalton, 165 NH 263, 265 (2013). The inquiry is an objective one; the officer's subjective intent is irrelevant as long as the circumstances viewed objectively justify his action. State v Wallace, 146 NH 146 (2001). The officer must be able to articulate something more than an "inchoate and unparticularized suspicion or hunch." United States v Sokolow, 490 US 1, 6-7 (1989); State v Dodier, 135 NH 134 (1991).

Unlike the defendants in State v Richter, 145 NH 650 (2000) and State v Reno 150 NH 466 (2004), the instant Defendant was driving a car which was registered to a middle-aged female who did not have a suspended license. Furthermore, that Officer Carpentier did not see Defendant's face prior to stopping him (18). In State v Richter, supra, the Supreme Court holds, "The officer observed nothing that would indicate that the driver was not the owner in light of the fact that a male operator was driving a vehicle whose owner had a suspended license". In Richter, the Court opined by stating that it was reasonable for the officer to infer that the driver was the owner of the vehicle, citing Village of Lake in Hills v Lloyd, 227 Ill. App. 3d 351 (Ill. App Ct.)... such an inference

gave rise to a reasonable suspicion that the driver was committing a violation of RSA 263:64.

The Richter Court referenced State v Pike, 551 N.W. 2d 919, 922, (Minn. 1996), where the Court recognized that when an officer had a reason to believe the owner is not driving, the rule does not apply. In State v Pike, Supra, the court opines, “Thus, for example, if the officer knows that the owner of the vehicle has a revoked license and further, that the owner is a 22 year old male, and the officer observes that the person driving the vehicle is a 50 or 60 year old woman, any reasonable suspicion of criminal activity evaporates absent other articulable facts which would give rise to such suspicion; it would be unconstitutional for the officer to make a stop in such a situation”.

The State’s argument makes little sense in an effort to find reasonable suspicion. The officer acknowledged that the vehicle was registered to a middle-aged female (pg. 10). Officer Carpentier entered a plate number and incorrectly determined that the vehicle had prior contact with the Salem Police (pg. 11); when he looked up the vehicle he found that owner had prior contact with the Salem Police which lead to Juan Monegro-Diaz (pg. 12). Officer Carpentier jumping hoops to find reasonable suspicion to stop the Defendant in light of the fact that the vehicle Defendant drove in 2020 was a completely different vehicle with a different plate number, i.e., a 2007 vehicle with a Registration Number, 4662429 stopped in 2019 versus the 2000 Honda Accord with a Registration Number: 4758335 in 2020 (pg. 21-22). In fact, Officer Carpentier testified, “I had no idea, no” that the vehicles in 2019 and 2020 were different (pg. 23) Officer Carpentier incredulously testified that he did not believe it was relevant to look into whether it was the same vehicle in 2019 stopped as the one stopped in 2020 (pg. 24). His testimony comes after he was made aware that there were two different vehicles involved with different plate numbers in the 2019 and 2020 stops. Commonwealth vs. Long, 485 Mass. 711 (2020) holds “Thus, law enforcement officers have

powerful incentives to use traffic violations as pretext to conduct investigatory stops. It is no secret that this combination of factors has allowed racially motivated motor vehicle stops to flourish. See, e.g. Carbado, *Supra* at 129, 152 (describing “de facto legalization” of racial profiling via cases” in which Fourth Amendment Law turns a blind eye to racial profiling or makes it easy for the police to get away with the practice,” including Whren v. United States, 517 U.S. 806, 116 S. Ct. 1769, 135, L.E.d.2d 89 (1996); Capers, *Rethinking the Fourth Amendment: Race, Citizenship and Equality Principle*, 46 *Harv.C.R.-C.L.L.Rev.* 1, 34 (2011) (*Capers*) (“Given that drivers routinely violate traffic laws...Whren virtually gives officers cart blanche to engage in race-based pretextual stops. And if the driving while black statistics...show anything this is what officers do...”). *Id.* at 740. In the instant case, defendant is a hispanic who was driving a Honda. Officer Carpentier assumed that the Honda was used to transport narcotics based upon his training and experience involving small sedans used for concealment in trafficking of narcotics (pg. 25), especially since it was drive by a young hispanic male who committed no motor vehicle infractions.

Officer Carpentier contradicted himself throughout his testimony. He testified that he could not recall whether the Defendant was wearing a mask during the height of the COVID-19 pandemic situation (pg. 33); however, in contradiction, he also testified that he was able to see Defendant’s profile of his face while he was following him (pg. 16). The gist of Officer Carpentier’s purpose in stopping the Defendant was that he could stop any male who did not previously drive the middle-aged woman’s car, regardless on whether the vehicle was not previously stopped by the Salem Police Department. Officer Carpentier testified that he had no idea who else lives in the same household with the middle-aged female, the registered owner of the vehicle (pg. 29). He also testified that he was unable to determine the height of the Defendant while following him in his vehicle (pgs. 29-30); he knew his approximate weight even though he did not see

below defendant's chest level all the way down to his legs (pg. 30). The Court was able to discern Officer Carpentier's inconsistencies in testimony.

New Hampshire Constitution Part 1, Article 19 recites, "Every subject shall have a right to be secure from all unreasonable searches and seizures of his person, his houses, his papers, and all of his possessions". An officer who stops a motor vehicle seizes both the vehicle and occupants for purposes of Article 19 of the New Hampshire Declaration of Rights. State v Pellicci, 133 NH 523 (1990). The Supreme Court of New Hampshire defers to the factual findings of the trial court on the events leading up to the investigatory stop, unless those findings are clearly erroneous. The validity of such stops, however, is a matter of de novo review, State v Reno, Supra. A reasonable suspicion must be more than a mere hunch, "Reasonable suspicion must be...something more than an inchoate and unparticularized suspicion or hunch linking an individual to criminal activity". State v McKinnon-Andrews, 151 NH 19, 22 (2004). Credibility was an issue at the Motion to Suppress since Officer Capentier was the only witness who testified.

The Court did not find, the vehicle which defendant drove was ~~unregistered or under suspension; there were no observations of motor vehicle~~ infractions and there was not enough evidence presented to establish the identity of the Defendant behind the wheel. For such reasons, the Court found that the stop did not rise to a level of articulable suspicion to make the stop consistent with Part 1, Article 19 of the State Constitution and the IVth Amendment of the United States Constitution (Addendum, pg. 18).

**CONCLUSION**

For the forgoing reasons, the Defendant respectfully requests that this Honorable Court affirm the Court's allowance of Defendant's Motion to Suppress.

Respectfully Submitted,  
The Defendant Juan Alberto Monegro-Diaz  
through Counsel,



---

Simon Dixon, Esq., - NH ID: 7882  
DIXON & ASSOCIATES  
439 South Union Street, Suite 202  
Lawrence, MA 01843  
(978) 794-1623  
[simondixonlaw@gmail.com](mailto:simondixonlaw@gmail.com)

Date:

9/16/2021

**CERTIFICATE OF COMPLIANCE**

I, Simon Dixon, hereby certify that pursuant to Rule 16 (II) of the New Hampshire Supreme Court Rules, this brief contains approximately two thousand seven hundred and eighty four words which is fewer than the words permitted under the Court's rules.



Simon Dixon, Esq.

Dated: 9/16/2021

**CERTIFICATE OF SERVICE**

I, Simon Dixon, hereby certify that a copy of Defendant's brief was served on Zachary Higham, Counsel for the State through the New Hampshire Supreme Court's electronic filing system.

Dated: 9/16/2021



Simon Dixon, Esq.



**ADDENDUM TABLE OF CONTENTS**

Order on Motion to Reconsider Dated: April 7, 2021

---

**THE STATE OF NEW HAMPSHIRE  
JUDICIAL BRANCH  
NH CIRCUIT COURT**

ROCKINGHAM COUNTY

10<sup>TH</sup> CIRCUIT – DISTRICT DIVISION – SALEM

**State, Plaintiff v. Juan Monegro-Diaz, Defendant  
Docket No. 473-2020-CR-01612**

**ORDER ON MOTION FOR RECONSIDERATION**

On March 10, 2021, the Court granted a Motion to Suppress on the bench setting forth its reasons in a colloquy with the parties. The State has filed a Motion to Reconsider. In the Defendant's Objection to the State's Motion to Reconsider, the Defense submits that the Court found the Defendant not guilty of the charge of Operating after Revocation. This is not accurate as the Court merely granted the Motion to Suppress.

On the Motion to Reconsider, the State quotes the Court in expressing its concerns of the facts involving the matter at hand. In Paragraph 18, the State indicates that the Court stated there was enough Reasonable Suspicion for the stop. This may or may not be a typo on the part of the State. Notwithstanding, the Court specifically recalls indicating in Court that there was not an articulable suspicion for the stop in granting the Motion to Suppress.


To make a clear record, the Court sets forth the ultimate basis of the decision that it attempted to make clear in court during the colloquy with the parties:

The Court does not find under the totality of the circumstances (the car that was pulled over was not unregistered or under suspension, there was no observations of motor vehicle violations, there was not enough evidence presented to establish an identity of the Defendant behind the wheel) that the stop rose to the level of an articulable suspicion to make the stop consistent with Part 1, Article 19 of the State Constitution and the Fourth Amendment of the United States' Constitution.

For those reasons, the Motion to Reconsider is respectfully denied.

**So Ordered.**

April 7, 2021  
Date

  
\_\_\_\_\_  
Judge Robert S. Stephen