

THE STATE OF NEW HAMPSHIRE  
SUPREME COURT

No. 2021-0197

State of New Hampshire

v.

Juan Alberto Monegro-Diaz

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APPEAL PURSUANT TO RULE 7 FROM A JUDGMENT OF THE  
10TH CIRCUIT-DISTRICT DIVISION-SALEM

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**REPLY BRIEF FOR THE STATE OF NEW HAMPSHIRE**

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THE STATE OF NEW HAMPSHIRE

By its attorneys,

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(Ten-Minute Oral Argument Requested)

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### **STATEMENT OF THE CASE AND FACTS**

In its opening brief, the State argued that the trial court erred as a matter of law when it found that Officer Carpentier lacked reasonable suspicion to stop the defendant. Both the defendant and amicus have argued, in part, that the State cannot rely on this Court's decision in *State v. Richter*, 145 N.H. 640 (2000), because the defendant was not the registered owner of the vehicle. DB<sup>1</sup> 11; AB 20-21. The State files this reply brief to respond to that argument.

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<sup>1</sup> Citations to the record are as follows:

“AB \_\_\_” refers to the brief of the Amicus Curiae, New Hampshire Association of Criminal Defense Lawyers;

“DB \_\_\_” refers to the defendant's brief and page number;

“SH \_\_\_” refers to the transcript of the March 10, 2021 suppression hearing and page number.

**I. THE TRIAL COURT ERRED AS A MATTER OF LAW WHEN IT RULED THAT THE OFFICER LACKED REASONABLE SUSPICION FOR THE STOP.**

In its opening brief, the State relied on this Court's decision in *Richter* for two points of law. The first is the principle that the police have the authority to run random computer checks on the license plates of passing vehicles, without suspicion of criminal conduct. *Id* at 640-41. Such checks are not subject to protection under the Fourth Amendment or Part I, Article 19. *Id*. The second point was that if an officer has reasonable suspicion that a driver is operating a vehicle with a suspended license, the officer may stop that driver to investigate without observing any other motor vehicle infractions. *Id*. at 641.

Both the defendant and the amicus have argued that the State impermissibly relied on *Richter's* "owner/driver presumption." AB 21-22; DB 11. Specifically, they allege that an officer cannot rely on the presumption that an unlicensed owner is the operator of a vehicle where there is evidence that the driver is not the registered owner. AB 22; DB 10-11. In support of this, they note that the registered owner in this case was a middle-aged woman and the defendant is a young man. AB 22; DB 10-11.

While they are correct that this presumption does not apply to the facts of this case, neither the State, nor Officer Carpentier, relied on this "owner/driver presumption" for reasonable suspicion. Reasonable suspicion for the defendant's identity came from the license plate check, which was

permitted under *Richter*, and the records that resulted from that check. Specifically, the record system returned information of a male individual connected to the vehicle's registered owner. Those records specified: (1) that the man's license was suspended, (2) that he had a history of driving vehicles associated with this vehicle's owner, and (3) the system provided a booking photo. SH 11-12, 15-17. By comparing that photo to "different side profiles of [the defendant's] face when [they] were making turns," as well as seeing the defendant's face in the rearview mirror, Officer Carpentier testified that he was "confident it was Mr. Monegro-Diaz" driving the vehicle in front of him. SH 16-17, 31.

"Reasonable suspicion is a less demanding standard than probable cause not only in the sense that reasonable suspicion can be established with information that is different in quantity or content than that required to establish probable cause, but also in the sense that reasonable suspicion can arise from information that is less reliable than that required to show probable cause." *Alabama v. White*, 496 U.S. 325, 330 (1990). "Although a mere 'hunch' does not create reasonable suspicion, 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." *Kansas v. Glover*, 140 S. Ct. 1183, 1188 (2020).

Ultimately, what constitutes reasonable suspicion "depends on the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." *Prado Navarette v. California*, 572 U.S. 393, 402 (2014). In *Richter*, the officer "observed nothing that would indicate that the driver was not the owner." This Court concluded

that this was sufficient for him to make the inferential leap that the owner was the driver.

By comparison, the facts of this case present a narrower inferential leap than the “owner/driver presumption” *Richter* authorized. Unlike *Richter*, in which the officer relied on the presumption that the vehicle’s owner and driver were the same, Officer Carpentier had strong evidence to the contrary. Instead of relying upon a presumption like the officer in *Richter*, therefore, Officer Carpentier relied on articulable facts, derived from the MDT records, to infer the driver’s identity.

Because of the information in the MDT records, Officer Carpentier faced a reasonable probability that the driver was the defendant and that the defendant was operating on a suspended license. “[O]fficers, like jurors, may rely on probabilities in the reasonable suspicion context.” *Glover*, 140 S. Ct. at 1190. Because he had “a particularized and objective basis for suspecting the particular person stopped of criminal activity,” the law permitted Officer Carpentier to “initiate a brief investigative traffic stop” for the limited purpose of confirming the defendant’s identity. *Id.* at 1188.

**CONCLUSION**

For the foregoing reasons, the State respectfully requests that this Honorable Court affirm the judgment below.

The State request a ten-minute 3JX argument.

Respectfully Submitted,

THE STATE OF NEW HAMPSHIRE

By its attorneys,

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August 30, 2021

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**CERTIFICATE OF COMPLIANCE**

I, Zachary L. Higham, hereby certify that pursuant to Rule 16(11) of the New Hampshire Supreme Court Rules, this brief contains approximately 1,127 words, which is fewer than the words permitted by this Court's rules. Counsel relied upon the word count of the computer program used to prepare this brief.

November 3, 2021

/s/Zachary L. Higham  
Zachary L. Higham

**CERTIFICATE OF SERVICE**

I, Zachary L. Higham, hereby certify that a copy of the State's brief shall be served on Simon Dixon, Esquire, counsel for the defendant, through the New Hampshire Supreme Court's electronic filing system.

November 3, 2021

/s/Zachary L. Higham  
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