No. COA 21-669 EIGHT (B) DISTRICT

NORTH CAROLINA COURT OF APPEALS

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STATE OF NORTH CAROLINA )

 )

 v. ) From Wayne

 )

)

HARNELL M. OUTLAW )

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DEFENDANT-APPELLANT’S BRIEF

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# ISSUES Presented

**I. Whether the trial court erred in denying Mr. Outlaw’s motion to suppress because he was unlawfully detained after the mission of the traffic stop had been completed?**

**II. Whether, even if Mr. Outlaw gave valid consent, Deputy Kelly’s search of Mr. Outlaw’s car was nonetheless unconstitutional because it exceeded the scope of his consent and constituted a warrantless search without probable cause?**

# Statement of the Case

On 21 February 2019 Harnell M. Outlaw was arrested for, *inter alia,* trafficking in cocaine by possession. (R pp 3-4). On 26 April 2019 he filed a motion to suppress. (R pp 26-27). On 3 February 2020 he was indicted in Wayne County Superior Court in 19 CRS 50705. (R p 8).

The case was called for trial on 16 March 2021, the Honorable William W. Bland, judge presiding. Evidence and arguments on Mr. Outlaw’s motion to suppress were heard on 17 and 19 March. On 22 March the motion was denied. (R pp 29-43). On the same date Mr. Outlaw pleaded guilty pursuant to a plea agreement (R pp 50-53), reserving his right to appeal the denial of his motion to suppress. (T pp 196, 215). He was sentenced to 35 to 51 months in custody and ordered to pay a fine of $50,000. (R pp 54-55).

On 25 March 2021 Mr. Outlaw filed written notice of appeal. (R p 59). Transcripts were ordered on the same date. (R pp 62-63). Motions to extend the time for serving the transcript were allowed by the Wayne County Superior Court on 6 July and by the Court of Appeals on 27 July 2021. (R pp 63, 65). The transcripts were delivered on 23 August. (R p 66). The record on appeal was filed and was docketed in the North Carolina Court of Appeals on 16 November 2021. (R p 72). An extension of thirty days to file Mr. Outlaw’s brief was allowed by this court on 16 December 2021.

**GROUNDS FOR APPELLATE REVIEW**

Mr. Outlaw appeals from the final judgment of the Superior Court pursuant to N.C.G.S. §§ 7A-27(b)(4) and 15A-979(b).

**STATEMENT OF THE FACTS**

Trial began with a hearing on Mr. Outlaw’s motion to suppress. The trial court heard testimony of Deputies Tyler Kelly and Maryssa Ebersole, and Harnell Outlaw. Video recordings taken from Kelly’s dashcam and bodycam, and Deputy Maryssa Ebersole’s bodycam, were admitted and shown during the hearing.[[1]](#footnote-1) In substance the testimony and video evidence showed the following:

On 21 February 2019 at about 4:00 p.m., Deputy Tyler Kelly of the Wayne County Sheriff’s Office was on duty and patrolling Emmaus Church Road in Wayne County. He was a member of the sheriff’s Aggressive Criminal Enforcement team (ACE) (T p 24). The ACE team consisted of eight deputies in two, four-person teams, and was tasked with conducting “saturation patrols” of areas where there had been complaints of drug and other criminal activity. (T pp 28, 73). Kelly explained that a saturation patrol goes into an area and conducts numerous traffic stops to deter crime and apprehend criminals. (T p 59). Kelly was driving a marked Dodge Charger without a light bar (T p 46), was dressed in a green “basic duty uniform,” and was wearing an outer ballistic vest and a duty belt holding a handgun, baton, and other equipment items. (T p 63). He testified the ACE team regularly conducted traffic stops for motor vehicle infractions, “primarily to conduct further investigation.” (T p 30).

Earlier during the day, while patrolling in the Durham Lake area of Wayne County, Kelly had seen Outlaw several times driving a black Cadillac Escalade with dark-tinted windows up and down the road. (T p 48). When Kelly spotted him again, he began a traffic stop and pulled him over. (T p 30). Outlaw remained in his car with the engine running. (T p 40). Kelly explained to Outlaw that he had stopped him because of the dark window tint. (T p 37). He told Outlaw he was just going to run his license and give him a warning ticket. (T pp 71, 87). Outlaw gave him his license and registration and remained in his car with the engine running. (T pp 32, 34). Kelly returned to his Charger and entered Outlaw’s information into CJLEADS. Outlaw had no outstanding warrants. (T p 33).

While Kelly was still in his car, the Mt. Olive police chief pulled up alongside him. Kelly assured him everything was fine. He told him he was going to try to search Outlaw’s car. (T p 69). He told the police chief that another member of the ACE team, his supervisor Corporal Travis Cox, was behind him. (T pp 34, 60). The police chief left without approaching Outlaw. (T p 35). Deputy Maryssa Ebersole, another member of the ACE team, pulled in behind Kelly’s Charger, then stood at the passenger window of Outlaw’s car and talked casually with him. (T p 35). Corporal Cox arrived, pulled in behind Kelly’s and Ebersole’s cars, and stood behind Kelly’s Escalade. (T pp 36, 69). The three officers were all dressed in “basic duty uniforms,” wore outer ballistic vests, and were armed. (T pp 67, 88).

After Kelly completed his CJLEADS check of Outlaw, he returned to Kelly’s driver side window. He confirmed his address, stood close enough to Outlaw’s door to use it as a writing surface, then returned his driver’s license and registration, and gave him a warning citation for his dark windows. (Exhibit B, Timestamp 21:29:25; T pp 37, 66). Kelly testified that at that point he considered the traffic stop completed (T p 38). He did not tell Outlaw he was free to leave. (T p 91). Outlaw asked him if he needed to remove the tint from his windows. (Exhibit B, Timestamp 21:29:29; T p 38). Kelly told him he should, then talked briefly with Outlaw about the damaged wiring harness of the Escalade that would keep it from passing inspection. (Exhibit B, Timestamp 21:29:35; T p 38).

Kelly then told Outlaw the sheriff’s department had received a number of drug complaints and said the following:

I was just wondering would there be any chance I could take a look around your car and make sure everything’s, er, comes back OK with that? Ain’t got a problem with that? (Exhibit B, Timestamp 21:29:58; R pp 38–39).

Outlaw shook his head and said no. Kelly asked him to turn off the engine and step out of the car. (R p 39; T p 40). Kelly patted Outlaw down, asked him if what he had in his pants’ pocket was cigarettes, and did he mind if he checked. (Exhibit B, Timestamp 21:30:35; R p 39). Outlaw consented. Kelly then told Outlaw the following:

I gotcha man, just wanted to make sure it won’t no knife or anything. I know there’s a bunch of bulk in there. All right, I you could, just step back there with those two officers right there. (Exhibit B, Timestamp 21:30:50; R p 40).

 Kelly began his search with the empty Newport cigarette packages in the door pocket, then under the car seat, then into the top compartment of the console. Deputy Ebersole began a search from the passenger side. Kelly opened the main compartment of the console and recovered a bag of powdery material he believed was cocaine. (Exhibit B, Timestamp 21:31:50; R p 40). He handcuffed Outlaw, and asked him what the substance was. Outlaw admitted it was cocaine. (Exhibit B, Timestamp 21:32:05; T p 42). The overall duration of the stop was about ten minutes. (T pp 51-52, 57).

**STANDARD OF REVIEW**

An appellate court reviews a trial court’s ruling on a motion to suppress to determine whether competent evidence supports any challenged finding of fact and whether the valid findings support the trial court’s conclusions of law, which are reviewed *de novo*. *State v. Brooks*, 337 N.C. 132, 140-41 (1994). Under *de novo* review, this Court considers the matter anew and freely substitutes its judgment for that of the trial court. *State v. Campola*, 258 N.C. App. 292, 298 (2018).

**ARGUMENT**

**I. The trial court erred in denying Mr. Outlaw’s motion to suppress because he was unlawfully detained after the mission of the traffic stop had been completed.**

Mr. Outlaw was pulled over on a public thoroughfare in broad daylight for a suspected violation of the window tinting restrictions of N.C.G.S. § 20-127(b), a class 3 misdemeanor. The traffic stop concluded when Kelly issued Outlaw a warning ticket for the window tint and returned his driver’s license and documents. Thus the principal issue presented by this case is the constitutionality of Deputy Kelly’s search and seizure activities after the traffic stop had concluded.

## Preservation

In his written motion, Mr. Outlaw alleged that the search of his car violated the Fourth Amendment, the North Carolina Constitution, and the North Carolina General Statutes. (R p 6). At the suppression hearing, he argued that he was unlawfully detained after the conclusion of the traffic stop and his consent was invalid. (T p 119). The State argued the search was justified because Mr. Outlaw gave voluntary consent to search. (T p 137). Mr. Outlaw’s claim here, that consent was involuntary because it was given during an unlawful seizure, is properly before this court.

## Argument

 The Fourth Amendment guards against unreasonable searches and seizures. The temporary detention of individuals during a traffic stop, even if only for a brief period and for a limited purpose, is an investigative “seizure.” Thus, a traffic stop is subject to the reasonableness requirement of the Fourth Amendment. Where a traffic stop is justified at its inception, detention must last no longer than is necessary to effectuate the purpose of the stop. A stop may become unlawful if it is prolonged beyond the time reasonably required to complete its mission.  *State v. Reed*, 373 N.C. 498, 507–08 (2020). Consent obtained during an unlawful detention is involuntary. *State v. Parker*, 256 N.C. App. 319, 327 (2017). For an officer to prolong a detention beyond the scope of a routine traffic stop, he must either have valid consent or a reasonable suspicion that illegal activity is afoot.  *Reed* at 510. Here, Deputy Kelly had neither to justify his search of Outlaw’s car.

 Deputy Kelly testified at the suppression hearing that he considered the traffic stop completed when he gave Outlaw the warning ticket and returned his documents. “At that point my enforcement action was over, I had taken my—the enforcement action that I was going to take and advised him of what needed to be done.” (T p 38). Thus, as held by the U.S. Supreme Court in *Illinois v. Caballes,* 543 U.S. 405, 407 (2005) and reinforced by *Rodriguez v. United States,* 575 U.S. 348, 356 (2015), further detention of Mr. Outlaw became unlawful after this point.

Whether a person is seized is an objective facts and circumstances test: “[T]he police can be said to have seized an individual only if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave.” *Michigan v. Chesternut*, 486 U.S. 567, 573 (1988).

A facts and circumstances test results in different outcomes as the facts of cases differ. This court in *State v. Heien* 226 N.C. App 280 (2013), examined whether an encounter between a defendant and officers became consensual after the return of the defendant’s license and other documents. In *Heien* officers initiated a traffic stop because of a faulty brake light. Following a brief investigation that revealed no outstanding warrants, officers wrote a warning ticket and returned the defendant’s license and documents to him. During the stop, the officers’ tone was nonconfrontational. The defendant and the driver were not restrained, no guns were drawn, and neither individual was searched before the request to search was made. For these reasons this Court found the trial court was entitled to conclude “the purpose of the initial stop had been concluded and that further conversation was consensual. . . . We further believe, a reasonable motorist or vehicle owner would understand that with the return of his license or other documents, the purpose of the initial stop had been accomplished and he was free to leave, was free to refuse to discuss matters further, and was free to refuse to allow a search. *Id.* at 287–88).

This court’s conclusion in *Heien* was grounded in the assumption that there is a clear line between encounters with law enforcement that occur before and after an officer returns a person’s driver’s license and other documentation. That an officer lacks legal license to continue to detain a motorist after a traffic stop has finished is unknown to most drivers, and a reasonable person would not feel free to leave, remain silent, or refuse to allow a search. *See,* Wayne R. LaFave, *The “Routine Traffic Stop” from Start to Finish: Too Much “Routine,” Not Enough Fourth Amendment*, 102 Michigan Law Review. 1843, 1899 (2004).

By contrast, our Supreme Court in *State v. Reed*, 373 N.C. 498 (2020), found that the defendant’s continued detention after a traffic stop was completed was unconstitutional and his consent to search his car, given while unlawfully detained, was invalid. In *Reed,* the defendant was stopped for speeding. The trooper examined the defendant’s documents, took him to his patrol car, told him to close the door, and began to question him and check the rental agreement for the defendant’s car. *Id.* at 500–01. He gave the defendant a warning ticket and said, “[T]his ends the traffic stop and I'm going to ask you a few more questions if it is okay with you.” *Id.* at 502.Nonetheless, the defendant was not free to leave. *Id.* at 502. The trooper asked for permission to search the car. The defendant responded, “You could break the car down.” He told the trooper he should ask the passenger for consent to search, since she had rented the car. When the trooper asked the passenger if he could search the car, she stepped out. In the search that followed, cocaine was recovered in the backseat area of the car. *Id.* at 503.

Our Supreme Court upheld the opinion of this court, which reversed the trial court’s denial of Reed’s motion to suppress. This court held “the governing inquiry is whether under the totality of the circumstances a reasonable person in the detainee’s position would have believed that he was not free to leave.” *Id.* at 505. Our Supreme Court agreed. It expressly contrasted the facts of *Reed* with those of *State v. Bullock*, 370 N.C. 256 (2017) (holding a traffic stop was not unlawfully prolonged because the officer developed reasonable suspicion of drug activity), and those of *Heien,* discussed above:

The mission of defendant's initial seizure—to address the traffic violation and attend to related safety concerns—was accomplished. Trooper Lamm's authority for the seizure of defendant terminated when the trooper's tasks which were tied to the speeding violation had been executed. Therefore, as dictated by the United States Supreme Court in *Caballas* [*Illinois v. Caballes*, 543 U.S. 405 (2005)] and reinforced by *Rodriguez* [*Rodriguez v. United States,* 575 U.S. 348 (2015)]*,* the traffic stop in the instant case became unlawful after this point because the law enforcement officer prolonged it beyond the time reasonably required to complete its mission. *Reed* at 511.

 A valid search may be made of a vehicle without a warrant or probable cause when a person in control of the vehicle has given his voluntary consent to search. Consent must be “freely and voluntarily given,” *Schneckloth v. Bustamonte*, 412 U.S. 218, 222 (1973), and not “mere submission to a claim of lawful authority.” *Florida v. Royer,* 460 U.S. 491, 497. While consent must be obtained voluntarily, a defendant need not be informed that he has a right to refuse.  *See* *Schneckloth* at 248-49. Instead, whether a person gives consent voluntarily is evaluated based on "the totality of the circumstances” surrounding the consent. *Royer* at 223. The State bears the burden of establishing the validity of a consensual search. *State v. Romano*, 369 N.C. 678, 691 (2017) (cleaned up). This determination requires an evaluation of factors like “the characteristics of the accused (such as age, maturity, education, intelligence, and experience) as well as the conditions under which the consent to search was given (such as the officer's conduct; the number of officers present; and the duration, location, and time of the encounter).” *Reed* at 522.

“The test for determining whether a seizure has occurred is whether under the totality of the circumstances a reasonable person would feel that he was not free to decline the officers' request or otherwise terminate the encounter.” *State v. Brooks*, 337 N.C. 132, 142 (1994) (cleaned up). “[T]he return of documentation would render a subsequent encounter consensual only if a reasonable person under the circumstances would believe he was free to leave or disregard the officer's request for information.”  *State v. Kincaid*, 147 N.C. App. 94, 99 (2001) (cleaned up).

In the present case, an “objective determination” of a number of factors leads to the conclusion that a reasonable person in Mr. Outlaw’s position would not believe he was free to leave. Although the deputies were courteous, there was an implied, but pervasive, element of coercion throughout. Three officers, including Kelly, stood at the sides and rear of Outlaw’s car while Outlaw remained sitting inside. (R p 41). Kelly stood close enough to Outlaw’s open, driver’s side window to use the door as a writing surface while Outlaw remained seated behind the steering wheel. (Exhibit B, Timestamp 21:29:25). There was no perceptible break in the encounter after Kelly handed Outlaw the documents. Kelly said he was giving Outlaw the warning ticket because of the window tint. Outlaw asked if he needed to remove it. (R p 37). Kelly said that “it would be best,” adding that he would not pass inspection with the window tint and the car’s damaged wiring harness.” (R pp 37–38). Then, without pausing, Kelly asked Outlaw if he “could take a look around your car and make sure everything’s, er, comes back . . . OK with that? . . . Ain’t got a problem with that?” Outlaw shook his head and quietly said, “No.” (Exhibit B, Timestamp 21:29:58; R pp 38-39).

 The traffic stop concluded when Kelly returned Outlaw’s documents and gave him a warning ticket. Outlaw became unlawfully detained when Kelly asked permission to search Outlaw’s car. Under the totality of the circumstances, a reasonable person would not believe he was free to leave or disregard Kelly’s requests. Outlaw’s consent, obtained during an unlawful detention, was invalid. For these reasons the trial court erred in denying Outlaw’s motion to suppress. He deserves a new trial.

**II. Even if Mr. Outlaw gave valid consent, Deputy Kelly’s search of Mr. Outlaw’s car was nonetheless unconstitutional because it exceeded the scope of his consent and constituted a warrantless search without probable cause.**

Assuming *arguendo* Mr. Outlaw’s consent was valid and not obtained during an unlawful detention, the scope of his search was expressly limited to a search around his car, not inside it. Kelly’s search of the interior of Outlaw’s car exceeded the scope of Outlaw’s consent to search.

## Preservation.

Mr. Outlaw alleged in his motion to suppress and argument that the search of his car violated the Fourth Amendment, the North Carolina Constitution, and the North Carolina General Statutes. (R p 6). His claim here, that Kelly’s search exceeded the scope of his consent and therefore violated his Fourth Amendment rights, rests on a different factual basis than he argued before the trial court. Nonetheless, he has not changed his underlying constitutional basis for suppression. *See State v. Smarr*, 146 N.C. App. 44, 56 (2001). The trial court made no finding as to the scope of the search Mr. Outlaw consented to, but nonetheless concluded that Mr. Outlaw “voluntarily consented to Deputy Kelly’s request to search the vehicle.” (R p 43). For this reason Mr. Outlaw’s claim is properly before this court.

Should this Court conclude otherwise, Mr. Outlaw respectfully requests this Court to invoke Rule 2 to consider whether Kelly’s search of Outlaw’s car exceeded the scope of Outlaw’s consent. N.C.R. App. P. Rule 2 (“To prevent manifest injustice to a party . . . [an appellate court] may . . . suspend or vary the requirements or provisions of any of [the] rules”). *See, State v. McDougald*, 181 N.C. App. 41, 49 (2007) (Elmore, J., dissenting) (opining that he would invoke Rule 2 to avoid manifest injustice and address the merits of a suppression issue not properly before the Court), *rev’d in part on grounds stated in dissent, and remanding for consideration on the merits*, 362 N.C. 224 (2008) (*per curiam*); *State v. Adams*, 250 N.C. App. 664, 674 (2016) (invoking Rule 2 to reach the merits of defendant’s unpreserved motion-to-suppress argument); *State v. Brunson*, 165 N.C. App. 667, 670 (2004) (invoking Rule 2 to review the merits of a statutory argument on appeal where the defendant made only a constitutional argument below); *State v. Hall*, 134 N.C. App. 417, 424 (1999) (invoking Rule 2 to reach the merits of an argument not raised below in the defendant’s motion to suppress identification evidence).

## Argument

A search justified by consent must remain with the scope of the consent given. *State v. Ladd*, 246 N.C. App. 295, 299 (2016). “When an individual gives a general statement of consent without express limitations, the scope of a permissible search is not limitless. Rather it is constrained by the bounds of reasonableness. . . .” *State v. Johnson*, 177 N.C. App. 122, 125 2006 (cleaned up). The defining inquiry for determining the scope of a consent search is “what would the typical reasonable person have understood by the exchange between the officer and the suspect?” *Florida v. Jimeno*, 500 U.S. 248, 251 (1991); *State v. Stone*, 362 N.C. 50, 53 (2007). Further, “[t]he scope of a search is generally defined by its expressed object.” *Jimeno*, 500 U.S. at 251 (cleaned up).

Where a search is based upon the consent of the suspect, “the scope of the search can be no broader than the scope of the consent.” *State v. Belk*, 268 N.C. 320, 322 (1966) (cleaned up). Here, the trial court concluded the search of Outlaw's vehicle was consensual (R p 43), but it made no determination as to whether that consent was limited. “The standard for measuring the scope of a suspect's consent under the Fourth Amendment is that of ‘objective’ reasonableness—what would the typical reasonable person have understood by the exchange between the officer and the suspect. . . . We measure the scope of consent under the Fourth Amendment using a standard of objective reasonableness, considering what an objectively reasonable person would have understood the consent to include.” *State v. Johnson,* 177 N.C. App. 122, 125 (2006) (cleaned up)*.*

In *Johnson* the officer stopped the defendant’s van because of an obscured license plate. He detained the defendant in his patrol car, wrote him a warning ticket and told him he was free to leave. He then asked if he could ask the defendant a few questions, then explained that they had had a lot of problems with drugs being transported on Interstate 95. He asked if the defendant had anything like that in his van, and the defendant responded that he did not. Then he asked if they could search the van, and the defendant consented. The officer located ten kilograms of cocaine in the van after pulling away a plastic panel glued down inside the van. *Id.* at 123–24. Applying the test of objective reasonableness to this circumstance, this court held that neither the officer nor the defendant could reasonably have interpreted the defendant's general statement of consent to include the intentional infliction of damage to the vehicle. . . . *Id.* at 125. Here, Kelly unequivocally asked if he could search “around” Outlaw’s car. It was unreasonable for Outlaw to understand that by “around” Kelly meant the extensive search that followed.

If Outlaw’s consent had included consent to search the inside of the vehicle, then the reasonable scope of that search would have included the areas within plain view of the interior vehicle and any open containers within the vehicle. *Jimeno,* 500 U.S. at 252. In *Jimeno*, the Supreme Court held that a general consent to search the car for narcotics included consent to search a paper bag lying on its floor. *Id.* The Court indicated a different result would have followed if the officers had dismantled the vehicle or searched a locked container rather than simply looking in an open container on the floor of the vehicle. “It is very likely unreasonable to think that a suspect, by consenting to the search of his trunk, has agreed to the breaking open of a locked briefcase within the trunk, but it is otherwise with respect to a closed paper bag.” *Id.* Here, Kelly located the cocaine only after he opened the lower compartment of the console between the two front seats.

Further, probable cause is necessary to justify the extension of a warrantless search beyond the scope of plain view, consent, or inventory searches. *Arizona v. Hicks*, 480 U.S. 321, 328 (1987). North Carolina Courts have reiterated this principle. “So long as a stop is investigative, the police only need to have a reasonable suspicion. However, if the police conduct a full search of an individual without a warrant or consent, they must have probable cause, and there must be exigent circumstances.” *State v. Pittman*, 111 N.C. App. 808, 812 (1993) (cleaned up).

The search of the interior of Outlaw’s car exceeded the reasonable scope of his consent to a search “around” his car. Further, the search exceeded the reasonable scope of an investigative search without probable cause. For these reasons, the search of the interior of the car was invalid and violated the Mr. Outlaw’s rights, whether or not there was valid consent to search. The trial court erred in failing to suppress the results of this search.

**CONCLUSION**

The trial court erred by denying Mr. Outlaw’s motion to suppress the evidence seized in this case. The uncontested evidence and the trial court's findings of fact demonstrate that the defendant was unlawfully detained beyond the purpose and justification for the traffic stop. The evidence (particularly the bodycam recording of the encounter) shows that that Outlaw acquiesced to Kelly’s request to conduct a limited search of his car when it was not reasonable for him to believe he was free to leave. Even if the detention were lawful and the consent valid, Deputy Kelly’s extensive search exceeded the scope of a reasonable search within the meaning of the Fourth Amendment. The motion to suppress should have been granted on these grounds alone.

For these reasons, Mr. Outlaw respectfully requests this Court to reverse the trial court’s denial of his motion to suppress and remand this case for further proceedings in accordance therewith.

Respectfully submitted, this the 18th day of January, 2022.

Electronically submitted

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**CERTIFICATE OF COMPLIANCE WITH N.C. R. APP. P. 28(j)(2)**

Undersigned counsel hereby certifies that this brief is in compliance with N.C. R. App. P. 28(j)(2) in that it is printed in 13-point Century Schoolbook font and contains no more than 8,750 words in the body of the brief, footnotes and citations included, as indicated by the word-processing program used to prepare this brief.

This this this the 18th day of January, 2022.

Electronically submitted

Stephen G. Driggers

Attorney for Defendant-Appellant

**CERTIFICATE OF FILING AND SERVICE**

I hereby certify that the original Defendant-Appellant’s Brief has been filed by electronic means with the Clerk of the North Carolina Court of Appeals pursuant to Rule 26 of the North Carolina Rules of Appellate Procedure.

I further hereby certify that I have served a copy of the Defendant-Appellant's Brief by electronic means to Robert J. Pickett, Assistant Attorney General, North Carolina Department of Justice, P.O. Box 629 Raleigh, NC 27602, email: rpickett@ncdoj.gov.

This this the 18th day of January, 2022.

Electronically submitted

Stephen G. Driggers

Attorney for Defendant-Appellant

1. State’s Exhibit S-2, the bodycam worn by Deputy Kelly, is transcribed in part in the Order denying the motion to suppress, pp 36-41. The trial court in the Order refers to it as “Exhibit B.” Herein it will be referred to as “Exhibit B, Timestamp \_\_\_\_\_.” As noted in the Order, the timestamps on the bodycam video are about five hours later than the time of the encounter. (R p 32). [↑](#footnote-ref-1)