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## United States v. Garner: From Speeding Ticket to Drug Bust- Highlighting the Necessity of an Alternative Approach to Analyzing Traffic Stop Extensions

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2021]

*UNITED STATES v. GARNER*: FROM SPEEDING TICKET TO DRUG  
BUST—HIGHLIGHTING THE NECESSITY OF AN  
ALTERNATIVE APPROACH TO ANALYZING  
TRAFFIC STOP EXTENSIONS

INTRODUCTION

The Fourth Amendment to the United States Constitution states that every citizen shall be free from “unreasonable searches and seizures” by their government.<sup>1</sup> Typically, law enforcement officers cannot arrest citizens without probable cause.<sup>2</sup> However, officers may conduct an investigatory seizure when specific and articulable facts support a reasonable suspicion of criminal activity.<sup>3</sup> This means a police officer may tell an individual he or she are not free to leave—and is therefore seized—while that individual is still not formally “under arrest.”<sup>4</sup>

Recently, in *United States v. Garner*,<sup>5</sup> the U.S. Court of Appeals for the Third Circuit held that an officer’s reasonable suspicion based upon missing barcodes on a rental vehicle—along with an over-abundance of air-fresheners, nervous occupants, and traveling through a known drug corri-

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1. U.S. CONST. amend. IV (“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”).

2. *See, e.g.*, *Locke v. United States*, 11 U.S. 339, 348 (1813) (noting that probable cause “in all cases of seizure, has a fixed and well known meaning. It imports a seizure made under circumstances which warrant suspicion.”).

3. *United States v. Garner*, 961 F.3d 264, 270 (3d Cir. 2020) (stating that an officer may conduct an investigatory seizure during a traffic stop when the officer has “an objectively reasonable and articulable suspicion that illegal activity had occurred or was occurring” (first citing *Rodriguez v. United States*, 575 U.S. 348, 355 (2015); then citing *United States v. Clark*, 902 F.3d 404, 410 (3d Cir. 2018))).

4. *See, e.g.*, Thomas Fusco, Annotation, *Permissibility Under Fourth Amendment of Detention of Motorist by Police, Following Lawful Stop for Traffic Offense, to Investigate Matters Not Related to Offense*, 118 A.L.R. FED. 567 (1994) (“According to *Terry*, even in the absence of probable cause, law enforcement officials may stop persons and detain them briefly in order to investigate a reasonable suspicion that such persons are involved in criminal activity[.]”). In *Terry v. Ohio*, the Supreme Court addressed the issue of whether an officer briefly stopping and frisking a defendant absent probable cause constituted an unreasonable search and seizure. *Terry v. Ohio*, 392 U.S. 1, 9 (1968). Ultimately, the Court held that “where a police officer observes unusual conduct which leads [the police officer] reasonably to conclude in light of [the police officer’s] experience that criminal activity may be afoot[.]” the police officer is justified in conducting a brief search of a suspect’s exterior for weapons and does not violate the suspect’s Fourth Amendment right to be free from unlawful search and seizure. *Id.* at 30–31. *Terry* is an example of a judicially created exception to the Fourth Amendment prohibition on unlawful search and seizure.

5. 961 F.3d 264.

dor—justified transforming a simple traffic stop for a speeding violation into a drug-sniffing canine search.<sup>6</sup> While decided appropriately on the facts, the Third Circuit’s decision highlights the necessity of a more objective approach for determining when a law enforcement officer’s reasonable suspicion justifies extending a traffic stop—an approach that avoids consideration of sequencing and timing and instead focuses on an officer’s intentions and the existence of probable cause.<sup>7</sup>

Part I of this Casebrief provides an overview of the most relevant Supreme Court and Third Circuit precedent dealing with extending traffic stops and conducting investigatory seizures. Part II discusses the facts and procedural history of *Garner*. Next, Part III contains a narrative analysis of the court’s decision in *Garner*. Then, Part IV provides a critical analysis of the court’s decision in *Garner* and argues for implementing an alternative approach to determining when a traffic stop is impermissibly extended. Finally, this Casebrief concludes by discussing how implementing an alternative approach will impact courts and law enforcement.

## I. BACKGROUND

Even though the Fourth Amendment prohibits law enforcement officers from searching or seizing citizens without probable cause, exceptions allow officers to conduct investigatory seizures to search suspects and assess whether a crime has occurred or is occurring.<sup>8</sup> In 2015, the Supreme Court in *Rodriguez v. United States*<sup>9</sup> “held that an officer may only extend a traffic stop to conduct a dog sniff unless there is reasonable suspicion of criminal activity beyond the traffic violation.”<sup>10</sup> In response to *Rodriguez*, the Third Circuit refined its approach to extended traffic stops in *United States v. Clark*<sup>11</sup> and *United States v. Green*<sup>12</sup>. Because “*Rodriguez* is the precedent most relevant” to *Garner*, this Part first discusses *Rodriguez*, then *Clark* and *Green*.<sup>13</sup>

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6. *Id.* at 271–72 (finding that because missing rental barcodes, air fresheners, nervousness of vehicle’s passengers, and notoriety of vehicle’s route “are sufficient to show that [trooper’s] suspicion of illegal activity was objectively reasonable[,]” the trooper “could extend the traffic stop and [defendants] were not seized in violation of the Fourth Amendment”).

7. For a discussion of a more objective approach to determining when a traffic stop is impermissibly extended, see *infra* notes 92–111 and accompanying text.

8. See, e.g., *Terry*, 392 U.S. at 30–31 (holding that although suspect was seized and searched by police, that search and seizure was justified and did not constitute a violation of the Fourth Amendment). For a further discussion on *Terry v. Ohio*, see *supra* note 4.

9. 575 U.S. 348 (2015).

10. *Garner*, 961 F.3d at 270 (citing *Rodriguez*, 575 U.S. at 357–58) (summarizing *Rodriguez*’s holding).

11. 902 F.3d 404 (3d Cir. 2018).

12. 897 F.3d 173 (3d Cir. 2018).

13. *Garner*, 961 F.3d at 270.

A. *Rodriguez v. United States: When Should a Traffic Stop Reasonably Be Complete?*

In *Rodriguez*, a police officer pulled over driver Dennys Rodriguez for a traffic violation after observing his vehicle swerving.<sup>14</sup> The officer obtained Rodriguez's license and registration, ran a records check on the documents, and returned to the vehicle.<sup>15</sup> Next, the officer obtained the passenger's driver's license and questioned both Rodriguez and his passenger about their destination.<sup>16</sup> The officer then ran a records check on the passenger's documents and called for a second officer.<sup>17</sup> The officer returned to the vehicle and issued a written warning to Rodriguez for the traffic violation.<sup>18</sup> The officer then asked Rodriguez if he could walk his drug-sniffing canine around the vehicle—which Rodriguez declined—and ordered Rodriguez to exit the vehicle until the second officer arrived.<sup>19</sup> When the second officer arrived—about “seven or eight minutes” after the first officer had issued the written warning—the drug-sniffing canine alerted them to the presence of drugs.<sup>20</sup>

The issue on appeal before the Supreme Court in *Rodriguez* was whether police can, without reasonable suspicion, prolong a lawful traffic stop to conduct a dog sniff search.<sup>21</sup> The Court began by asserting that a seizure during a traffic stop must be limited to tasks related to why the driver was pulled over, such as roadway safety.<sup>22</sup> The Court also noted that absent “reasonable suspicion ordinarily demanded to justify detaining an individual[,]” a traffic stop “may ‘last no longer than is necessary’” to address the traffic violation that caused the stop.<sup>23</sup> If an officer prolongs a traffic stop absent reasonable suspicion, then evidence obtained “after the stop should have ended may be suppressed . . . .”<sup>24</sup> However, the Court

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14. *Rodriguez*, 575 U.S. at 351 (stating that officer observed vehicle swerving, and “Nebraska law prohibits driving on highway shoulders, and on that basis, [the officer] pulled the Mountaineer [vehicle] over . . . .” (citation omitted)).

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.* at 352.

19. *Id.*

20. *Id.* The Third Circuit summarized the drug-sniffing canine's process: [The officer] retrieved his dog and led him twice around the Mountaineer [vehicle]. The dog alerted to the presence of drugs halfway through [the officer's] second pass. All told, seven or eight minutes had elapsed from the time [the officer] issued the written warning until the dog indicated the presence of drugs.

*Id.*

21. *Id.* at 353.

22. *Id.* at 354. For a further discussion on this standard, which was originally introduced in *Terry v. Ohio*, see *supra* note 4.

23. *Id.* at 354–55 (quoting *Florida v. Royer*, 406 U.S. 491, 500 (1983) (plurality opinion)).

24. *United States v. Clark*, 902 F.3d 404, 406 (3d Cir. 2018). In *Clark*, the Third Circuit declared, “If the traffic stop was impermissibly extended . . . any

carefully noted that the “Fourth Amendment tolerate[s] certain unrelated investigations that did not lengthen roadside detention” such as dog sniff searches.<sup>25</sup> Consequently, the Court remanded the case for determination of whether the officer had the necessary reasonable suspicion to justify detaining the driver after issuing the written warning.<sup>26</sup> However, *Rodriguez* is useful—in terms of analyzing *Garner*—for its synthesis of jurisprudence surrounding the extension of a traffic stop and its reiteration of the proposition that, absent reasonable suspicion, an officer may not take actions unsupported by reasonable suspicion once a traffic stop ends or reasonably should have ended.<sup>27</sup>

### B. *Third Circuit Cases*

Because the court’s opinion in *Garner* relies heavily upon precedent, this Section discusses pertinent Third Circuit opinions relating to traffic stop extensions. More specifically, this Section analyzes the court’s reasoning in *United States v. Clark* and *United States v. Green*.<sup>28</sup> This Section is followed by a narrative analysis of the court’s opinion in *Garner* which applied the learnings of both *Clark* and *Green*.<sup>29</sup>

#### 1. *United States v. Clark*

In *Clark*, a police officer pulled over a minivan for multiple traffic violations, collected the driver’s license and registration, and ran a records search on the driver’s documents.<sup>30</sup> When the records search revealed that the driver had a criminal history, the officer asked the driver about his

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evidence seized after the stop should have ended may be suppressed per *Rodriguez* . . . .” *Id.* (citation omitted). This rule is sometimes referred to as the “exclusionary rule” and stems from the Supreme Court’s decision in *Mapp v. Ohio* that evidence obtained unlawfully is inadmissible at trial. *See Mapp v. Ohio*, 367 U.S. 643, 655 (1961).

25. *Rodriguez*, 575 U.S. at 354–55 (first citing *Arizona v. Johnson*, 555 U.S. 323, 327–38 (2009); then citing *Illinois v. Caballes*, 543 U.S. 405, 406 (2005)) (introducing the proposition that dog sniff searches are permissible during traffic stops even though they are unrelated to initial purpose of the stop—the traffic violation—as long as the dog sniffing search does not unnecessarily prolong the traffic stop).

26. *Id.* at 358.

27. *See id.* at 354 (acknowledging that a traffic stop extended “beyond the time reasonably required to complete th[e] mission” of the traffic stop is a violation of the Fourth Amendment (alteration in original) (quoting *Illinois v. Caballes*, 543 U.S. 405, 407 (2005))).

28. For a further discussion on *Clark*’s facts and reasoning, see *infra* notes 30–42 and accompanying text. For a further discussion on *Green*’s facts and reasoning, see *infra* notes 43–63 and accompanying text.

29. For a narrative analysis of the court’s opinion in *Garner*, see *infra* notes 64–91 and accompanying text.

30. *United States v. Clark*, 902 F.3d 404, 406 (3d Cir. 2018) (describing events of traffic stop).

criminal record, his destination, and his passenger, Tyrone Clark.<sup>31</sup> The officer then approached the passenger side of the vehicle and asked Clark similar questions.<sup>32</sup> After allegedly smelling marijuana from Clark's side of the vehicle, the officer ordered him to exit the vehicle and performed a pat-down search.<sup>33</sup> In the course of the pat-down search, the officer discovered a loaded revolver and a marijuana cigarette.<sup>34</sup> After being convicted for possession of a weapon as a convicted felon, Clark appealed his conviction on the grounds that the officer impermissibly prolonged the stop.<sup>35</sup>

On appeal, the Third Circuit explained that a traffic stop's duration depends on the amount of time that an officer takes to complete the tasks related to the "mission" of the stop—"mission" meaning "address[ing] the traffic violation that warranted the stop and attend[ing] to related safety concerns[.]"<sup>36</sup> The court noted that certain inquiries are permissible during a traffic stop because they serve the stop's ultimate objective of ensuring roadway safety.<sup>37</sup> These inquiries typically include "checking the driver's license and any outstanding warrants against the driver, as well as inspecting the vehicle's registration and insurance."<sup>38</sup> For example, "measure[s] aimed at detect[ing] evidence of ordinary criminal wrongdoing" are not considered part of the "mission" of the traffic stop.<sup>39</sup>

The Third Circuit ultimately held that the officer had impermissibly extended the traffic stop and granted the Clark's motion to suppress the evidence of the revolver and marijuana.<sup>40</sup> The court determined that the traffic stop in *Clark* was complete once the officer completed the driver's records check.<sup>41</sup> By returning to the vehicle *after* the records check and

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31. *See id.* at 407 (describing events of traffic stop). The officer asked the driver about "his criminal record, specifically, whether he had been arrested, for what kinds of crimes, and the date of his last arrest. [The driver] answered that he had been arrested for drug crimes . . . ." *Id.*

32. *Id.*

33. *Id.* at 407–08.

34. *Id.* at 408.

35. *Id.* In an attempt to get the evidence of the revolver and marijuana suppressed in court, Clark argued that the officer impermissibly prolonged the traffic stop. *Id.* This suppression of evidence would be affected through application of the exclusionary rule. The exclusionary rule is an evidentiary rule that holds that all evidence obtained in an illegal search is inadmissible. *See Mapp v. Ohio*, 367 U.S. 643, 655 (1961) ("We hold that all evidence obtained by searches and seizures in violation of the Constitution is, by that same authority, inadmissible in a state court.").

36. *Clark*, 902 F.3d at 409–10 (quoting *Rodriguez v. United States*, 575 U.S. 348, 354 (2015)).

37. *Id.* at 410.

38. *Id.* (citing *Rodriguez*, 575 U.S. at 349).

39. *See id.* (alterations in original) (quoting *Rodriguez*, 575 U.S. at 355).

40. *Id.* at 411.

41. *Id.* ("[W]e hold that, after [the officer's] computerized check confirmed [the driver's] authority to drive the vehicle and without any other indicia [the driver] lacked that authority, the traffic stop was effectively completed.").

asking questions about the driver's criminal history, the officer impermissibly extended the stop. As a result, any evidence obtained thereafter was inadmissible under the exclusionary rule.<sup>42</sup>

## 2. United States v. Green

In *Green*, over the course of forty-eight hours, a Pennsylvania State trooper made three separate traffic stops, two of which involved the same driver.<sup>43</sup> In the first stop, the trooper pulled over a vehicle for suspected drug trafficking, but let the vehicle go with a warning for tailgating.<sup>44</sup> In the second stop, the trooper pulled over a vehicle for an illegally tinted window.<sup>45</sup> The driver, Warren Green, informed the trooper that he was traveling to Philadelphia and did not know how long he planned to stay there.<sup>46</sup> The trooper performed a records check on the Green's driver's license and discovered multiple prior arrests.<sup>47</sup> After the trooper wrote a ticket for the illegal window tint and told Green he was free to go, he asked Green for permission to conduct a search of the vehicle, to which Green acquiesced.<sup>48</sup> The search produced no indication of crime, and the trooper sent Green on his way.<sup>49</sup>

The next day, the trooper again spotted Green's vehicle and pulled it over for speeding.<sup>50</sup> The trooper became suspicious when he noticed that Green was now traveling with a dog that appeared similar to a dog the trooper encountered two days earlier on the first stop—a stop that did not involve Green.<sup>51</sup> After briefly speaking with Green, the trooper returned to his own vehicle and “called a colleague to fill him in on the events” of the previous two traffic stops.<sup>52</sup> The trooper called for backup, issued a warning to the driver for the speeding, and began conversing with Green

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42. *See id.* (“[The officer’s] inquiry into [the driver’s] criminal history was thus not tied to the traffic stop’s mission, and, at that point, ‘tasks tied to the traffic infraction . . . reasonably should have been . . . completed.’” (alterations in original) (quoting *Rodriguez*, 575 U.S. at 354)). “Because addressing the infraction is the purpose of the stop, it may ‘last no longer than is necessary to effectuate th[at] purpose.’” *Rodriguez*, 575 U.S. at 354 (alteration in original) (quoting *Florida v. Royer*, 460 U.S. 491, 500 (1983)). For a further discussion on the exclusionary rule, see *supra* note 35.

43. *United States v. Green*, 897 F.3d 173, 175–77 (3d Cir. 2018) (stating facts surrounding the traffic stops).

44. *Id.* at 175 (describing first traffic stop).

45. *Id.* at 176 (describing second stop).

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

50. *See id.*

51. *See id.* at 176–77 (describing third stop).

52. *Id.* at 177. The fact that the trooper returned to his own vehicle to make a phone call unrelated to the initial reason for the stop—the speeding—was an important factor in the court’s analysis of when the traffic stop had been completed. *See id.* at 182 (discussing the significance of the off-mission phone call).

about the dog.<sup>53</sup> The trooper then repeated his actions from the day before by first telling Green he was free to go, but then asking for permission to search the vehicle.<sup>54</sup> This time, Green declined.<sup>55</sup> The trooper ordered Green to “wait in his car until further notice.”<sup>56</sup> A drug-sniffing canine arrived fifteen minutes later and searched the vehicle, uncovering twenty pounds of heroin.<sup>57</sup> Green pled guilty to drug charges but appealed his conviction based on arguments that the officer impermissibly extended the traffic stop and the court should have granted his motion to suppress evidence.<sup>58</sup>

On appeal, the Third Circuit struggled to identify the “*Rodriguez* moment”—i.e., when the “mission” of Green’s traffic stop was complete under *Rodriguez*, and whether, at that point, the trooper had reasonable suspicion that justified prolonging the stop.<sup>59</sup> Because the court struggled to pinpoint the exact moment the trooper began to diverge from the traffic stop’s “mission,” the court focused on whether the trooper had reasonable suspicion *at the earliest possible point* he diverged from the stop’s mission.<sup>60</sup> The court determined that point occurred when the trooper called his colleague to ask about prior traffic stops—a conversation that was more akin to a drug trafficking stop rather than a stop for a speeding violation.<sup>61</sup> The court then assessed whether the trooper had a reasonable suspicion that justified extending the traffic stop.<sup>62</sup> Ultimately, it held that the trooper had a reasonable suspicion warranting the extension

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53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.* at 177–78.

59. *Id.* at 178 (“Green argues that the stop was prolonged in violation of the Fourth Amendment. To address this claim, we must first decide when the stop was extended, and then determine whether, at that point, the extension was justified by a reasonable suspicion of criminal activity.”); *see also* United States v. Garner, 961 F.3d 264, 270 (3d Cir. 2020) (“In *Green*, we recognized the difficulty in pinpointing the moment when tasks tied to the traffic stop are completed or reasonably should have been completed (what we called the ‘*Rodriguez* moment’).”). Green also argued that the trooper lacked reasonable suspicion to pull his vehicle over in the first place, and that the traffic stop had been conducted in an unconstitutional manner. *Id.* Because those arguments are not germane to this Casebrief’s eventual analysis of *United States v. Garner*, they are not discussed in this Casebrief.

60. *See id.* at 179–80 (discussing the difficulty in pinpointing “the *Rodriguez* moment.”).

61. *Id.* at 179 (“In light of such uncertainty—and solicitous of Green’s Fourth Amendment rights—we will err on the side of caution and assume the earlier of the two plausible ‘*Rodriguez* moments’ from which to assess reasonable suspicion.”).

62. *See id.* at 184 (explaining reasoning behind choosing the trooper’s call to his colleague as earliest possible “*Rodriguez* moment” and outlining how determination on reasonable suspicion is made).

based on the defendant's "misleading statements regarding his travel . . . the smell of marijuana in [his] trunk . . . and [his] criminal history."<sup>63</sup>

## II. FACTS, PROCEDURAL HISTORY, AND NARRATIVE ANALYSIS

The focus of this Casebrief is a recent opinion from the United States Court of Appeals for the Third Circuit—*United States v. Garner*.<sup>64</sup> This Part summarizes *Garner*'s pertinent facts and procedural history.<sup>65</sup> Additionally, this Part provides a narrative analysis of the court's opinion specifically explaining the court's reasoning in reaching its decision.<sup>66</sup>

In *Garner*, Pennsylvania State Trooper Kent Ramirez ran the New York license plate of a speeding vehicle and learned that the vehicle was rented even though it lacked typical barcode rental stickers.<sup>67</sup> Upon approaching the vehicle, Trooper Ramirez noticed a strong scented air freshener clipped into each of the car's vents.<sup>68</sup> He explained to Jerry Fruit—the driver—that he had noticed the vehicle was speeding, then noticed it was a rental car without barcode rental stickers.<sup>69</sup> Trooper Ramirez questioned Fruit about the vehicle's rental status.<sup>70</sup> Fruit explained that although the rental agreement appeared to have expired twenty days prior to the stop, the vehicle was a loaner from his insurance company, and the rental period had been extended.<sup>71</sup> Before returning to his own vehicle to run a records check on Fruit's driver's license and verify the rental period extension, Trooper Ramirez asked Fruit "about his employment, prior traffic tickets, and criminal history."<sup>72</sup> Trooper Ramirez then proceeded to similarly question the vehicle's passenger, Tykei Garner, about his destination, criminal history and other "questions unrelated to the traffic stop."<sup>73</sup>

Finally, twelve minutes after the traffic stop began, Trooper Ramirez returned to his own vehicle to run Fruit and Garner's driver's licenses and to confirm Fruit's claims about the rental period extension.<sup>74</sup> Trooper

63. *Id.* at 185.

64. 961 F.3d 265 (3d Cir. 2020), *cert. denied*, 141 S.Ct. 687 (2020).

65. For a discussion of *Garner*'s facts and procedural history, see *infra* notes 64–82.

66. For a discussion of the court's opinion in *Garner*, see *infra* notes 83–91.

67. *Garner*, 961 F.3d at 267. The vehicle traveled along Interstate 81 near Harrisburg, Pennsylvania, which the trooper later indicated was a known drug-trafficking corridor. *Id.* at 272.

68. *Id.* at 267. This was considered by the court in determining whether the trooper had reasonable suspicion that a drug trafficking crime was occurring. *Id.* at 272 (listing air freshener and odor of air freshener among other pieces of evidence which supported a finding of reasonable suspicion).

69. *Id.* at 268.

70. *Id.*

71. *Id.* Notably, the rental agreement also appeared to limit the driver to driving within New York State. See *id.*

72. *Id.*

73. *Id.*

74. *Id.*

Ramirez learned that the rental agreement had in fact been extended by Fruit's insurance company, and that neither man had outstanding warrants; however, both had extensive criminal histories and were the subjects of a drug trafficking investigation.<sup>75</sup> Trooper Ramirez then waited for backup before asking Fruit for permission to search the vehicle.<sup>76</sup> When backup arrived—thirty-seven minutes after the traffic stop began—Fruit declined to consent to a search of his vehicle. Trooper Ramirez explained that he would search the vehicle anyway because he had “enough to believe that there may be criminal activity going on.”<sup>77</sup> After a K-9 unit arrived—fifty-six minutes after the traffic stop began—Trooper Ramirez searched the vehicle and discovered large quantities of cocaine and heroin.<sup>78</sup>

Fruit and Garner were both indicted on drug trafficking and conspiracy charges and each moved to suppress the evidence of the cocaine and heroin discovered at the traffic stop.<sup>79</sup> Fruit and Garner, individually as defendants in their own trials, argued that Trooper Ramirez had violated the Fourth Amendment's prohibition on unlawful searches and seizures by impermissibly extending their traffic stop and conducting a subsequent criminal investigation without reasonable suspicion.<sup>80</sup> The district court denied the defendants' joint motion to suppress the evidence, finding that Trooper Ramirez had the requisite reasonable suspicion to extend the traffic stop.<sup>81</sup> Both men appealed their convictions to the Third Circuit, where the case was consolidated.<sup>82</sup>

On appeal, the Third Circuit considered whether Trooper Ramirez unlawfully extended Fruit and Garner's traffic stop.<sup>83</sup> The court began its opinion by reviewing the standards established in *Rodriguez*, *Clark*, and *Green*.<sup>84</sup> The court attempted to pinpoint the “*Rodriguez* moment” in the

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75. *Id.*

76. *Id.*

77. *Id.* (internal quotation marks omitted).

78. *Id.* at 268–69. Trooper Ramirez informed the K-9's handler that Trooper Ramirez was searching the vehicle “because Fruit and Garner gave ‘conflicting stories,’ had ‘long criminal histories,’ and were ‘very nervous.’” *Id.* at 269.

79. *Id.* at 269 (describing driver's and passenger's convictions and subsequent motions to suppress).

80. *Id.* (describing driver's and passenger's arguments in support of motion to suppress).

81. *Id.* (describing district court's denial of motion to suppress).

82. *Id.* (appealing their prison sentences of 120 months).

83. *See id.* (“The question here is whether it became unlawful because it was ‘prolonged beyond the time reasonably required to complete th[e] mission.’” (alteration in original) (quoting *Illinois v. Caballes*, 543 U.S. 405, 407 (2005))). The court also resolved a separate evidentiary issue on appeal raised by the passenger; however, that issue is not relevant to this Casebrief. *See id.* at 273–75 (disposing of passenger's evidentiary claims).

84. *See id.* at 270–71 (reviewing *Rodriguez*, *Clark*, and *Green*). For a discussion of the standards established in *Rodriguez*, *Clark*, and *Green*, see *supra* notes 36–42, 59–63, and accompanying text.

Fruit and Garner stop.<sup>85</sup> The court determined that the earliest point at which the “*Rodriguez* moment” occurred was when Trooper Ramirez questioned Fruit about his criminal history, employment, and other information unrelated to the traffic violation—before the trooper had run Fruit and Garner’s driver’s licenses and confirmed the rental story.<sup>86</sup> Because that was the earliest point at which the trooper would need reasonable suspicion to extend the stop, the court then considered whether the trooper possessed a reasonable suspicion to justify extending the traffic stop.<sup>87</sup>

Ultimately, the court held that at the moment the trooper began asking questions unrelated to the traffic violation, the trooper had a reasonable suspicion that justified extending the stop.<sup>88</sup> To reach this holding, the court considered the abundant evidence available to the trooper before he started asking questions: the New York license plate; the fact the car was traveling down a known drug-trafficking corridor; the lack of barcode stickers typical of rental vehicles; the odor and prevalence of air fresheners in every vent; the apparently-expired rental agreement; and the nervousness of the vehicle’s occupants.<sup>89</sup> Based on these facts, the court determined the officer had reasonable suspicion to extend the stop within minutes of pulling the vehicle over, and therefore, any extension of the traffic stop beyond resolving the speeding issue was justified and did not constitute a Fourth Amendment violation.<sup>90</sup> Ultimately, the court held that the district court did not err in denying the Fruit and Garner’s joint motion to suppress the evidence from the stop and affirmed the men’s convictions.<sup>91</sup>

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85. *See id.* at 270 (defining the “*Rodriguez* moment” as “the moment when tasks tied to the traffic stop are completed or reasonably should have been completed”). For a further discussion on the “*Rodriguez* moment”, see *supra* note 59.

86. *Garner*, 961 F.3d at 271 (“This questioning was not tied to the traffic stop’s mission—the speeding violation—because it was ‘aimed at detecting criminal activity more generally.’” (quoting *United States v. Green*, 897 F.3d 173, 179 (3d Cir. 2018))).

87. *See id.* (“But if Trooper Ramirez had reasonable suspicion when he began questioning Fruit about his criminal history, even if such questioning at that moment measurably extended the traffic stop, there is no Fourth Amendment violation.”).

88. *Id.* (“We hold Trooper Ramirez had reasonable suspicion to extend the stop based on information he obtained during the first few minutes of the traffic stop and before he engaged in any unrelated investigation.”).

89. *Id.* at 271–72.

90. *Id.* at 272 (stating that “[i]n their totality” the facts contributed to a finding of reasonable suspicion and therefore the trooper “could extend the traffic stop and Fruit and Garner were not seized in violation of the Fourth Amendment”).

91. *Id.* at 275.

## III. CRITICAL ANALYSIS

This Casebrief suggests an alternative approach to analyzing traffic stop extensions where the court focuses on the goal of a law enforcement officer's questions and actions rather than the traffic stop's sequence of events, thus avoiding the hassle of pinpointing a "*Rodriguez* moment."<sup>92</sup> This alternative approach comports with the reality that traffic stops vary in length and that traffic-related questioning may be intertwined with unrelated questioning.<sup>93</sup> This approach also recognizes that the "*Rodriguez* moment" is difficult to determine and varies with each stop.<sup>94</sup> Furthermore, this approach still necessarily involves a determination of whether an officer had reasonable suspicion to "extend" a stop and therefore comports with the Supreme Court's holding in *Rodriguez*.<sup>95</sup>

A. *A Conduct-Based Approach: Focusing on Officers' Questions and Actions Rather Than Sequence of Events*

The exclusionary rule forbids the government from using evidence obtained in an illegal search against a criminal defendant.<sup>96</sup> Because an impermissibly extended traffic stop violates the Fourth Amendment, any evidence obtained during the impermissible extension of the stop is inadmissible under the exclusionary rule.<sup>97</sup> In determining the admissibility of such evidence, the court should assess each of an officer's questions or

92. See *id.* at 270–71 (holding trooper had reasonable suspicion "based on information he obtained during the first few minutes of the traffic stop"). *But cf.* *United States v. Green*, 897 F.3d 173, 182 (3d Cir. 2018) (stating that focusing on officer's intentions and motivations is "arbitrary" because of the difficulty in pinpointing a single motivating factor behind an officer's actions).

93. See *Rodriguez v. United States*, 575 U.S. 348, 361 (2015) (Thomas, J., dissenting) (noting length of traffic stops vary); see also *Garner*, 961 F.3d at 268 (stating trooper asked questions both related and unrelated to traffic stop during initial questioning). Justice Alito argued in his dissent in *Rodriguez* that focusing on the sequence of a traffic stop's events is "arbitrary" because a law enforcement officer's actions during a stop may be deemed lawful or unlawful depending on whether the officer performs those actions before or after resolving the initial traffic violation. *Rodriguez*, 575 U.S. at 371 (Alito, J., dissenting).

94. See *Rodriguez*, 575 U.S. at 361 (Thomas, J., dissenting) (noting the varying length of traffic stops); see also *Green*, 897 F.3d. at 180 ("The task of determining when a traffic stop is 'measurably extended' is more difficult than *Rodriguez's* language might suggest."). Determining when a traffic stop ends or reasonably should have ended is critical under *Rodriguez's* holding because any actions a law enforcement officer takes after that point must be justified by reasonable suspicion. See *Rodriguez*, 575 U.S. at 357. For a further discussion of the "*Rodriguez* moment" see *supra* note 59.

95. See *Rodriguez*, 575 U.S. at 355 (stating that an officer may not prolong a stop absent reasonable suspicion).

96. See *Mapp v. Ohio*, 367 U.S. 643, 655 (1961) ("We hold that all evidence obtained by searches and seizures in violation of the Constitution is, by that same authority, inadmissible in a state court.").

97. See, e.g., *United States v. Clark*, 902 F.3d 404, 406 (3d Cir. 2018) ("If the traffic stop was impermissibly extended . . . any evidence seized after the stop should have ended may be suppressed . . . (citation omitted)).

actions to determine whether they are related to the traffic stop, and infer that the stop reasonably could have been completed at the point the officer began asking non-traffic-related-questions.<sup>98</sup>

Under the Third Circuit's current application of *Rodriguez*, an officer needs reasonable suspicion to support any action performed after the traffic stop is or reasonably should have been completed—meaning after the underlying traffic violation that served as the genesis of the stop should reasonably have been resolved.<sup>99</sup> This Casebrief's alternative approach acknowledges that there may be moments where the traffic stop's "mission" is not yet complete, but the officer has nonetheless deviated by pursuing investigations unrelated to the traffic stop's mission.<sup>100</sup> Therefore, instead

98. See *Illinois v. Caballes*, 543 U.S. 405, 407 (2005) (stating that a traffic stop "can become unlawful if it is prolonged beyond the time reasonably required to complete that mission").

99. See *United States v. Garner*, 961 F.3d 264, 269 (3d Cir. 2020) ("The lawful seizure 'ends when tasks tied to the traffic infraction are—or reasonably should have been—completed.'" (quoting *Rodriguez*, 575 U.S. at 354)), *cert. denied*, 141 S.Ct. 687 (2020). The *Garner* court thus defined the "*Rodriguez* moment" as "the moment when tasks tied to the traffic stop are completed or reasonably should have been completed . . ." *Id.* at 270. For a further discussion on the *Rodriguez* moment, see *supra* note 59.

100. See *Rodriguez*, 575 U.S. at 357 (stating that a traffic stop prolonged beyond the "time reasonably required to complete [the stop's] mission" is unlawful (alteration in original) (internal quotation marks omitted) (quoting *Caballes*, 543 U.S. at 407)); see also, e.g., *United States v. Santillan*, 902 F.3d 49, 56 (2d Cir. 2018) ("Under *Rodriguez*, authority for a traffic-stop seizure ends when the tasks tied to the traffic infraction are—or reasonably should have been—completed, unless the officer develops reasonable suspicion of criminal activity sufficient to extend the stop." (citing *Rodriguez*, 575 U.S. at 353–54)). Additionally, *Rodriguez*'s reasoning—that the permissible length of the traffic stop depends on the time necessary to complete the stop's mission—creates a loophole where an officer *does not* require reasonable suspicion to perform a dog search while the officer's partner simultaneously writes up a traffic ticket but *does* require reasonable suspicion to perform a dog search once a traffic ticket has been issued. See Carson Griffis, *Illinois and U.S. Supreme Courts Continue to Define Limits of Police Investigations During Traffic Stops*, 30 CBA Rec. 44, 45, 47–48 (2016) ("[D]uring the time the officer needs to issue the ticket and conduct the 'ordinary inquiries,' he or she may also investigate other matters, even if they have nothing to do with the original reason for the traffic stop." (emphasis added)). Although the opinion was vacated, in *United States v. Campbell*, the Eleventh Circuit described a traffic stop in which the underlying traffic stop was not resolved, yet the officer began asking questions that may or may not have been unrelated to the traffic stop's mission. *United States v. Campbell*, 970 F.3d 1342, 1346–49 (11th Cir. 2020), *vacated*, 981 F.3d 1014 (11th Cir. 2020) (describing a stop where an officer asked defendant to "accompany him to the patrol car while he wrote the warning ticket" then proceeded to ask questions about the defendant's travel, employment, criminal history, firearm possession, and drug possession (emphasis added)). In assessing whether these questions were related to the traffic stop's mission, a court would need to consider whether they were "ordinary incidents" of a traffic stop, or whether they were measures aimed at "detect[ing] evidence of ordinary criminal wrongdoing." *Rodriguez*, 575 U.S. at 355 (alteration in original) (internal quotation marks omitted) (quoting *City of Indianapolis v. Edmond*, 531 U.S. 32, 40–41 (2000)). For a further discussion on whether questions are related to a traffic stop's mission, see *infra* notes 104 and 107.

of examining deviations based on the “*Rodriguez*” moment, an officer would have to possess reasonable suspicion to support *any* deviation during the traffic stop.<sup>101</sup>

B. *Conduct-Based Approach as Applied to Garner and Beyond*

In *Garner*, Trooper Ramirez alternated questions related and unrelated to the traffic stop by asking about “employment, prior traffic tickets, and criminal history.”<sup>102</sup> However, there was no impermissible extension because the officer had reasonable suspicion to extend the traffic stop.<sup>103</sup> Under the alternative approach articulated above, the result would have been the same. But the court would not have had to pinpoint the moment the traffic stop’s mission should have been reasonably completed; instead, the court would have considered each of the officer’s questions and actions during the stop and determined whether they were related to the traffic stop’s mission or, more broadly, to criminal activity.<sup>104</sup> Questions or actions unrelated to resolving the underlying traffic violation would have been considered a deviation from the stop’s mission, and any evidence obtained from the deviation would have been inadmissible under the exclusionary rule.<sup>105</sup> In other words, under this approach, the “*Rodriguez* moment” would be reframed as *any* moment in which an officer asks a question or performs an action unrelated to the underlying traffic violation.<sup>106</sup> This approach also acknowledges that there may be multiple mo-

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101. See, e.g., *Clark*, 902 F.3d at 406 (stating that officer would need to have reasonable suspicion to support the deviation otherwise the stop would be considered unreasonably extended and therefore any evidence obtained during the deviation would be inadmissible under the exclusionary rule). The court in *Garner* even suggested that the “*Rodriguez* moment” may occur “when an officer no longer pursues the tasks tied to the traffic stop even though he reasonably could have continued with those tasks.” *Garner*, 961 F.3d at 270. For a further discussion on the “*Rodriguez* moment” see *supra* note 59.

102. *Garner*, 961 F.3d at 268 (detailing trooper’s line of questioning).

103. See *id.* at 271 (holding trooper had reasonable suspicion “based on information he obtained during first few minutes of the traffic stop”).

104. See, e.g., *id.* at 271–72 (analyzing the nature of the trooper’s questions but ultimately finding that trooper’s questioning unrelated to traffic mission did not impermissibly extend the stop because the trooper had a reasonable suspicion that criminal activity unrelated to the traffic violation was occurring); *Rodriguez*, 575 U.S. at 355–56 (stating that while an officer can make certain inquiries related to the traffic stop—such as “checking the driver’s license, determining whether there are outstanding warrants against the driver, and inspecting the automobile’s registration and proof of insurance”—measures “aimed at ‘detect[ing] evidence of ordinary criminal wrongdoing’” are “not an ordinary incident of a traffic stop” (alteration in original) (first citing *Delaware v. Prouse*, 440 U.S. 648, 658–60 (1979); then quoting *Edmond*, 531 U.S. at 40–41)).

105. See *Rodriguez*, 575 U.S. at 355–56 (stating that measures aimed at “detect[ing] evidence of ordinary criminal wrongdoing” are not the sort of inquiries related to a traffic stop and therefore need to be justified by reasonable suspicion (alteration in original) (quoting *Edmond*, 531 U.S. at 40–41)).

106. Cf. *Garner*, 962 F.3d at 270 (“In *Green*, we recognized the difficulty in pinpointing the moment when tasks tied to the traffic stop are completed or rea-

ments during a traffic stop when an officer diverges from the stop's mission, and that during all, some, or none of these moments, the officer may possess a reasonable suspicion to support a divergence.<sup>107</sup>

Furthermore, this approach accomplishes what the Supreme Court tried to convey in *Rodriguez*—that officers' actions unrelated to the traffic stop do not need to temporally extend the stop in order to violate the Fourth Amendment.<sup>108</sup> Rather, they just need to be unnecessary in resolving the underlying traffic violation.<sup>109</sup> The Third Circuit would have no trouble adopting this new approach, as this seems to be the exact approach the court previously took in *Green*—where it there defined the “*Rodriguez* moment” as the moment when an officer diverts from a stop's

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sonably should have been completed (what we called the ‘*Rodriguez* moment.’”). Although the Third Circuit says it frames the analysis in terms of when the stop is completed or reasonably should have been completed, in reality it appears that the court appears to frame the analysis in terms of when the officer diverts from the stop's mission. See *id.* at 271 (finding “*Rodriguez* moment” would have occurred when “Trooper Ramirez began asking Fruit about his employment, family, criminal history, and other conduct unrelated to the traffic stop.” (emphasis added)). For a further discussion on the “*Rodriguez* moment” see *supra* note 59.

107. See *e.g.*, *Garner*, 961 F.3d at 268 (reviewing events of traffic stop and finding trooper asked questions about defendants' employment and prior criminal history before returning to cruiser to run license plate and verify registration agreement). In *Garner*, the court held that the trooper obtained reasonable suspicion to support any deviations within minutes of approaching the vehicle based on the missing registration stickers, multiple air fresheners, and known drug trafficking route. *Id.* at 271–72. Without probable cause, this unrelated questioning before resolving the underlying traffic mission would have been a Fourth Amendment violation. See *Rodriguez*, 575 U.S. at 355 (stating measures aimed at “detect[ing] evidence of ordinary criminal wrongdoing” during traffic stop need to be supported by reasonable suspicion (alteration in original) (internal quotation marks omitted) (quoting *Edmond*, 531 U.S. at 40–41)). Thus, the answers to the questions would have been inadmissible under the exclusionary rule. See *Mapp v. Ohio*, 367 U.S. 643, 655 (1961) (holding that “all evidence obtained by searches and seizures in violation of the Constitution is, by that same authority, inadmissible in a state court”). However, under this Casebrief's alternative approach, evidence obtained from the answers to the initial questions about employment and criminal history would be inadmissible, but any answers to *later* questions supported by reasonable suspicion would not be subject to the exclusionary rule, thus allowing for the possibility of an officer to get back on track and re-focus on a stop's mission. See, *e.g.*, *Garner*, 961 F.3d at 271 (stating that an officer's actions in “extend[ing]” a traffic stop must be supported by “an objectively reasonable and articulable suspicion that illegal activity had occurred or was occurring” (first citing *Rodriguez*, 575 U.S. at 355; then citing *United States v. Clark*, 902 F.3d 404, 410 (3d Cir. 2018))).

108. See *Rodriguez*, 575 U.S. at 354–55.

109. See *id.* (stating that a stop is impermissibly extended when it is “‘prolonged beyond the time reasonably required to complete th[e] mission’ of issuing a warning ticket” (alteration in original) (quoting *Illinois v. Caballes*, 543 U.S. 405, 407 (2005))); see also George M. Dery III, *Is Asking for Consent to Search Necessary to Effectuate the Purpose of a Traffic Stop? The Court in Rodriguez v. United States Rejects “Mission” Creep*, 26 GEO. MASON UNIV. C.R.L.J., 293, 294 (2016) (noting that the *Rodriguez* Court's decision represents a shift in emphasis “away from time on the clock to an officer's change in purpose” and noting the Court's focus on officer “‘objective[s.]’ ‘aims,’ and ‘missions.’” (alteration in original) (quoting *Rodriguez*, 575 U.S. at 354–55)).

traffic-based purpose to investigate other crimes absent reasonable suspicion.<sup>110</sup> Because this alternative approach is essentially a reframing of *Rodriguez*—and still necessarily requires a finding of reasonable suspicion to support deviations from a traffic stop’s mission—the Third Circuit could adopt this approach and still comport with *stare decisis*.<sup>111</sup>

#### IMPACT

Focusing on the officer’s intentions and actions seems to be the approach taken by the Third Circuit in *Green* and *Clark*.<sup>112</sup> Despite the court in *Garner* defining the “*Rodriguez* moment” as the point in time when the stop “reasonably should have ended,” it appears the court actually identified the point at which the officers deviated from the traffic stop’s mission—highlighting the fact that this Casebrief’s suggested approach is consistent with the court’s line of reasoning in this area.<sup>113</sup> Although the

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110. See *United States v. Green*, 897 F.3d 173, 179 (3d Cir. 2018) (“An unreasonable extension occurs when an officer, without reasonable suspicion, diverts from a stop’s traffic-based purpose to investigate other crimes.” (citing *Rodriguez*, 575 U.S. at 354–55)).

111. See, e.g., *Garner*, 961 F.3d at 271 (stating that a traffic stop extension is a Fourth Amendment violation if the officer lacks reasonable suspicion to extend the stop); see also *United States v. Murillo-Salgado*, 854 F.3d 407, 419 (8th Cir. 2017) (Kelly, J., dissenting) (stating “key question” in case applying *Rodriguez* was “whether [the officer] had reasonable suspicion *before* he extended the stop with off-topic questions”).

112. See *Clark*, 902 F.3d at 410 (stating necessity of determining whether officer’s questioning “was tied to the traffic stop’s mission, or instead whether the traffic stop must reasonably be seen as having been completed before that questioning began”); *Green*, 897 F.3d at 182 (acknowledging that *Rodriguez* seems to require determination of motivation behind officer’s actions). By framing the issue in this way, the court implied that when an officer takes actions unrelated to the traffic stop’s mission, then the traffic stop should reasonably have been completed and any unrelated actions taken would need to be supported by reasonable suspicion. See *Clark*, 902 F.3d at 411 (holding that officer’s unrelated questioning impermissibly extended traffic stop because stop reasonably should have been completed); *Green*, 897 F.3d at 182 (assuming earliest possible point at which “*Rodriguez* moment” occurred was when officer made phone call unrelated to stop’s mission). Although this approach was appropriate based on the facts of these cases, it would not be a workable approach in a situation where an officer mixes related and unrelated questions while the traffic stop hasn’t reached the point where it “reasonably should have been completed.” See, e.g., *Garner*, 961 F.3d at 268 (describing officer’s mixing of questions related and unrelated to the traffic stop).

113. See *Garner*, 961 F.3d at 270–71 (defining “*Rodriguez* moment” to mean when the stop “reasonably should have ended,” but later identifying the *Rodriguez* moment in the instant case as occurring when the officer asked questions unrelated to the initial reason for the traffic stop). See also *Clark*, 902 F.3d at 411 (judging officer’s reasonable suspicion based on the point at which the officer’s questioning became unrelated traffic stop); see also *Green*, 897 F.3d at 182 (assuming earliest moment at which “*Rodriguez* moment” could have occurred was when officer made phone call unrelated to traffic mission). The court took a similar approach in *Garner*, where it said that it was searching for the “*Rodriguez* moment”—yet in reality, the court again assumed the earliest point at which the “*Rod-*

alternative approach suggested in this Casebrief may appear as a minor change in the phrasing of the court's reasoning in the *Rodriguez* line of cases, it offers a practical alternative that has the beneficial effect of deterring law enforcement officers from co-mingling questions related and unrelated to the traffic stop when officers lack reasonable suspicion to ask such unrelated questions.<sup>114</sup>

Interpreting the “*Rodriguez* moment” as occurring anytime an officer deviates from the traffic stop's mission will encourage law enforcement officers to pursue unrelated criminal investigations *only* if they are certain they have reasonable suspicion to do so.<sup>115</sup> This approach would have no

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*riguez* moment” could have occurred was when the trooper diverted from the stop's mission and asked questions about “employment, family, criminal history, and other conduct *unrelated* to the traffic stop.” See *Garner*, 961 F.3d at 271 (assuming, but not deciding, when “*Rodriguez* moment” occurred). For a further discussion of the “*Rodriguez* moment” see *supra* note 59.

114. See, e.g., *United States v. Tello*, 924 F.3d 782, 787 (5th Cir. 2019) (interpreting *Rodriguez* as standing for the proposition that “the critical question is not whether the canine sniff occurs before or after the purpose of the stop is completed, but whether conducting the sniff prolongs the purpose of the stop” (citing *Rodriguez*, 575 U.S. at 357)), *cert. denied*, 140 S. Ct. 172 (2019). *But cf. Garner*, 961 F.3d at 270 (focusing not on temporal prolonging of the stop but instead interpreting the “*Rodriguez* moment” as the moment “when tasks tied to the traffic stop are completed or reasonably should have been completed”). If law enforcement officers are aware that evidence obtained from any non-traffic related deviation would be inadmissible, then officers may not waste their time deviating from the traffic mission unless they are certain they have an articulable reasonable suspicion. See, e.g., Adrienne Arnold, Note, *Rodriguez, Terry, and the Supreme Court's Evolving Fourth Amendment Jurisprudence: How Rodriguez Does (and Does Not) Clarify the Future of the Fourth Amendment*, 6 HOUS. L. REV. 135, 147 (2015) (arguing that officer knowledge of *Rodriguez's* holding may possibly “lead to a decrease in the use of traffic violations as pretexts for drug investigations, along with a decrease in racially motivated traffic-stops”).

115. See *Mapp v. Ohio*, 367 U.S. 643, 655 (1961) (holding that “all evidence obtained by searches and seizures in violation of the Constitution is, by that same authority, inadmissible in a state court”); see also e.g., *Clark*, 902 F.3d at 406 (“If the traffic stop was impermissibly extended . . . any evidence seized after the stop should have ended may be suppressed per *Rodriguez* . . . .” (citation omitted)). One scholar noted that in recent years the Supreme Court has limited application of the exclusionary rule, only using it as a tool to deter wrongdoing by officers. See Andrew Guthrie Ferguson, *Constitutional Culpability: Questioning the New Exclusionary Rules*, 66 FLA. L. REV. 623, 638–39 (2014). This means the Court applies the exclusionary rule only in cases where an officer committed misconduct in a “deliberate, reckless, grossly negligent, or recurring manner.” *Id.* at 638 (citing *Herring v. United States*, 555 U.S. 135, 144 (2009)). The Court has also stated in dicta that:

[I]f the purpose of the exclusionary rule is to deter unlawful police conduct, then evidence obtained from a search should be suppressed only if it can be said that the law enforcement officer had knowledge, or may properly be charged with knowledge, that the search was unconstitutional under the Fourth Amendment.

*United States v. Peltier*, 422 U.S. 531, 542 (1975). Thus, applying these principles to traffic stop extensions case, it can be gleaned that if police officers are aware of *Rodriguez* and the rules surrounding traffic-stop extensions and still choose to divert from a traffic stop's mission by asking unrelated questions, then the officer would be deliberately or knowingly extending the stop and the evidence obtained

effect on officer safety because an officer is still free to take action to defend against danger, and if an officer takes action to respond to danger—for example, ordering suspects out of a car when finding a weapon—it would likely be supported by reasonable suspicion.<sup>116</sup> Moreover, if law enforcement officers have a negative incentive to refrain from prolonging traffic stops unless absolutely necessary, traffic stops might be performed more efficiently and quickly.<sup>117</sup>

In sum, by adopting this approach, which focuses on law enforcement officers' actions and questions rather than sequencing or timing of events, the Third Circuit can avoid the hassle of determining when a traffic stop should have ended.<sup>118</sup> Moreover, this approach could potentially reduce the frequency or duration of traffic stops through strict enforcement of a rule that requires officers to stay on task unless supported by reasonable suspicion.<sup>119</sup> The Third Circuit should adopt this Casebrief's suggested approach to discourage law enforcement officers from questioning persons during traffic stops about activities unrelated to the underly-

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from the stop would be suppressed even under the Court's modern culpability-based exclusionary rule jurisprudence. See *Ferguson*, *supra* note 115, at 638 (stating that "deliberate" actions taken by officers that violate the Fourth Amendment "require the extreme remedy of exclusion." (citing *Herring*, 555 U.S. at 143–44)).

116. See *Rodriguez*, 575 U.S. at 355–57 (noting the difference between the government's interest in preventing crime and the government's interest in officer safety). The *Rodriguez* opinion noted that because the government has a legitimate interest in preventing officer safety that is unrelated to detecting crime, a law enforcement officer can take certain actions to ensure safety and these actions do not impermissibly lengthen a traffic stop. *Id.* at 355–56. The court was also careful to note that while an officer may take steps to ensure a safe traffic stop, any steps the officer takes towards ensuring that the officer's deviation from the traffic stop's mission would constitute an impermissible extension of a traffic stop. See *id.* at 356 ("On-scene investigation into other crimes, however, detours from that mission. So too do safety precautions taken in order to facilitate such detours." (citation omitted)).

117. This argument rests on the assumption that law enforcement officers are aware of the law, or more specifically, aware of case law. A recent review of police officer legal training revealed that in Pennsylvania—where the stop in *Garner* occurred—only eight percent of total police training is devoted to teaching non-statutory law. See Yuri R. Linetsky, *What the Police Don't Know May Hurt Us: An Argument for Enhanced Legal Training of Police Officers*, 48 N.M. L. REV. 1, 19 (2018). This suggests that the assumption that law enforcement officers know the law may not be a strong one. However, given the fact issuing traffic tickets is such a prevalent part of law enforcement officers' responsibilities, it is reasonable to assume that officers would become familiar with caselaw directly pertinent to traffic stops, such as *Garner* or *Rodriguez*. See *Traffic Citations in Pennsylvania*, UNIFIED JUDICIAL SYSTEM OF PENNSYLVANIA (Jul. 29, 2016), <https://www.pacourts.us/news-and-statistics/news/news-detail/912/traffic-citations-in-pennsylvania>.

118. See, e.g., *Garner*, 961 F.3d at 264 (noting "difficulty in pinpointing . . . the '*Rodriguez* moment'"). For a further discussion on the *Rodriguez* moment, see *supra* note 59.

119. See, e.g., Arnold, *supra* note 114, at 135 (arguing that officer knowledge of *Rodriguez*'s holding may possibly "lead to a decrease in the use of traffic violations as pretexts for drug investigations, along with a decrease in racially motivated traffic-stops").

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ing traffic violation and to allow for easier disposition of issues involving evidence obtained from traffic stops.

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