Angela Williams
angelajwms@gmail.com

THE FOURTH AMENDMENT-SEARCH AND SEIZURE LEGISLATION-THE EXCLUSIONARY RULE
STATE V. GARCIA, 123 S.W.3D 335 (TENN. 2003)

I. Introduction

On May 9, 1999, at approximately 10:50 p.m., the defendant was stopped by Officer Debra Kohl of the Metropolitan Nashville Police Department while driving in Davidson County in Nashville, Tennessee.[1] Kohl, whom had worked for the police department for eleven years, had been assigned to the Judicial District Drug Task Force[2] approximately eight months before stopping the defendant.[3]

Officer Kohl testified that on the evening of the stop, she had just completed an unrelated traffic stop.[4] She was traveling in a marked police cruiser when she noticed that the defendant's car had begun to swerve onto the line demarcating the right boundary of its lane.[5] Noticing the erratic driving, Kohl slowed her patrol car and began monitoring the defendant's vehicle. [6] After trailing the vehicle, Kohl came to the conclusion that the driver of the vehicle (the defendant) was driving carelessly.[7] Kohl testified:

> The vehicle would drive in its lane--it stayed in its lane of traffic; but, as the vehicle was going in its lane of traffic, it would go to the left-lane marker, then it would swerve over to the right-lane marker, then it would swerve over to the left-lane marker. And I became concerned for his safety, as well as the safety of other motorists, and decided to stop the vehicle, at that point in time.[8]

Kohl further stated that she suspected the defendant could be intoxicated. [9] Kohl stopped the defendant's vehicle and approached it from the passenger side.[10] When she reached the door, she motioned for the defendant to roll down the window, which he did.[11] Kohl introduced herself as a Nashville Metro Police Officer. However, Kohl stated, the defendant appeared confused, so she asked the defendant if he spoke Spanish. The defendant replied, "Yes."[12] Kohl then asked the defendant to exit the car and follow her to the rear of the vehicle.[13] Officer Kohl then stated to the defendant, in Spanish: "I'm a police officer in Nashville, Tennessee. The reason I stopped you was for a moving violation. The moving violation was weaving."[14] The defendant responded, in English, "I was weaving."[15] Kohl assumed that the defendant sufficiently knew English because of his reply, thus they continued the remainder of the conversation in English.[16]

Officer Kohl then asked the defendant whether or not he had been drinking alcohol. She stated that, despite her question, she did not believe the defendant was intoxicated and noticed that the defendant did not act as if he was intoxicated.[17] "In fact, Kohl testified that two minutes into the traffic stop, she was satisfied that the defendant was not intoxicated."[18] Moreover, Kohl testified that, though she did observe the defendant weaving, she did not observe the defendant "speed, drive too slowly, cross any lanes of traffic, illegally pass another vehicle, follow too closely, commit a violation regarding use of the turning signal, or drive on the shoulder."[19] Kohl asked the defendant if he was tired. He responded that he was tired because he left Los Angeles the day before and had only stopped briefly.[20] The defendant then told the officer, upon her inquiry, that he was traveling to Georgia.[21] Kohl stated that the defendant gave inconsistent answers regarding his destination as well as the ownership of the vehicle. She checked and learned that the car was not stolen and the registration matched the vehicle.[22]

Kohl continued to question the defendant about his driving record and police records.[23] Then, she decided to issue the defendant a warning[24] citation.[25] Next, Officer Kohl instructed the defendant to wait in his vehicle.[26] She retained the defendant's license and registration, and returned to her patrol car where radioed for another officer to transport a drug-detection dog to the scene.[27] Finally, Officer Kohl prepared a warning citation for a violation of "lane restrictions," and wrote out a "Consent to Search" form in Spanish.[28] She then returned to the defendant's vehicle and motioned for the defendant to get out of his car. She returned his license and vehicle registration and stated, "The stop's complete.[29]

The defendant turned to return to his car. Officer Kohl turned "as though to return to her vehicle" and then quickly turned around and asked the defendant if she could ask him a few more questions.[30] She asked the defendant if he was carrying any weapons or had any long-bladed knives in his vehicle; to which the defendant replied, "No."[31] Kohl then asked the defendant if he had any illegal drugs in his vehicle; the defendant answered, "No."[32] Kohl testified that at this time, the defendant's demeanor changed.[33]

> He gave me a—a nervous, laughing, "No." And he—he became fidgety. You could see him scratching on his back. He was nervous and you could literally see his Adam[s] apple, a nervous sign, bobbing up and down, when I was talking to him, which, to me, is an indicator of some type of deception.[34]

Officer Kohl asked the defendant for permission to search the vehicle and Kohl claimed that the defendant promptly gave her permission[35] to inspect the trunk.[36] Officer Kohl declined and asked him to read the "Consent to Search" form she had prepared in Spanish[37].[38] The consent form stated that the defendant had a right to refuse consent[39], the right to limit portions of the vehicle, as well as the right to revoke his consent at any time.[40] The defendant read[41] the form, printed his name, and then signed the form.[42]

Officer Dean Hunter, who had arrived with his drug-detection dig prior to the defendant signing the consent form, permitted the dog to smell around the vehicle.[43] The dog indicated that he detected the presence of illegal drugs on both the driver and passenger side of the vehicle so the two officers began to search the vehicle.[44] The officers began to do an in-depth search of the vehicle; examining the interior of the vehicle as well as the vehicle's rocker panels.[45] Continuing the search inside the rocker panels, the officers eventually found "duct-taped bundles" of cocaine inside the panels.[46] Officer Kohl then placed the defendant under arrest and laboratory results tested that the bundles contained 40.1 pounds of methamphetamine.[47]

At trial, the defendant moved to suppress any evidence obtained as a result of the traffic stop[48]. Following conviction of the jury trial, the defendant appealed. The Court of Criminal Appeals upheld the ruling on the suppression.[49] The defendant appealed by permission. On certiorari to the Tennessee Supreme Court, *held*, reversed. The Supreme Court of Tennessee held that the evidence found as a result of the illegal seizure of the defendant was subject to suppression because it was the result of an illegal seizure and the defendant's consent was not sufficiently attenuated from the unlawful seizure.[50]

On May 28, 2003, the Supreme Court of the State of Tennessee convened to hear arguments presented by both parties regarding whether the evidence[51] collected as part of the illegal stop should be suppressed.[52] First, the court analyzed whether the traffic stop was based upon "reasonable suspicion of criminal activity."[53] Next, the court considered whether the defendant's consent to search his vehicle was "sufficiently attenuated from the [] stop."[54] The court reviewed, in light of the consent given, whether the evidence from the illegal detainment should be suppressed and the convictions from the lower courts reversed. The question before the court was, in light of the facts, whether the defendant's Fourth Amendment rights had been violated by the seizure and subsequent search by Officer Kohl.[55]

II. History and Scope of Search and Seizure Legislation

The exclusionary rule is a key element in the Fourth Amendment because it deters police officers from unreasonably holding or searching citizens. It forces police officers to have "reasonable suspicion"[56] that the person is about to commit a crime before an officer may legally detain them. The exclusionary rule, or the "fruit of the poisonous tree doctrine[57]," precludes the admissibility of evidence that is the direct result of a violation of the defendant's Fourth Amendment rights as well as any evidence obtained by an exploitation of that violation.[58] "The essence of a provision forbidding the acquisition of evidence in a certain way is that [the evidence should not be used before a court at all]. . . . [T]he knowledge gained by the government's own wrong cannot be used . . . ."[59]

Fourth Amendment

The right to privacy has been seen as a fundamental human right and ought to be protected at all costs. The maxim, "[e]very man's house is his castle" was strictly enforced and highly respected in England as a right of every citizen.[60] The idea behind the law was, a man had a right to protect his home, even against agents of the King.[61] However, the King's agents could break and enter the house of another upon notice to arrest or otherwise carryout the lawful commands of the King.[62]

The Fourth Amendment to the Constitution provides that, "[t]he right of the people to be secure . . . against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause." [63]The Founding Fathers intended for the Fourth Amendment to prevent unwarranted[64] and unreasonable[65] invasion of the privacy of the homes of citizens.[66] The intent of the Founding Fathers was to protect citizens from police invasion into private homes that did not directly correlate with reasonable suspicion of illegal activity.[67] They created the amendment to prevent police from having absolute control

and reign over the streets by governing their ability to enter into the private sphere of citizens.[68] The amendment did not create any new rights; rather it was created to protect rights the Founding Fathers believed were basic human rights.[69] The amendment was not enacted because government officials believed that police would invariably be corrupt and abuse their powers.[70] Rather, it was created as a safeguard against the *possibility* of corruption.[71] "The Fourth Amendment was not a construct based on abstract considerations of political theory, but was drafter by the framers for the express purpose of providing enforceable safeguards against a recurrence of highhanded search measures which Americans, as well as the people of England, had recently experienced."[72]

The Fourth Amendment underwent countless revisions before it was finalized into the today's statute.[73] The language of the Fourth Amendment experienced modest changes on its passage through the Congress, and it is possible that the changes reflected more than a modest significance in the interpretation of the relationship of the two clauses of the amendment. Madison's introduced version provided:

> "The rights to be secured in their persons, their houses, their papers, and other property, from all unreasonable searches and seizures, shall not be violated by warrants issued without probably cause, supported by oath or affirmation, or not particularly describing the places to be searched, or the persons or things to be seized."[74]

Over the years, Courts have faithfully recognized the intent of the Founding Fathers in their creation of the Fourth Amendment and have upheld its spirit in order to protect the privacy of Americans. However, Courts have differed on the interpretations of the terms under the Fourth Amendment, "unreasonable searches and seizures." The Supreme Court, in its opinion of *Boyd v. United States*[75], addressed the historical importance of the Fourth Amendment.[76] "The practice had obtained in the colonies of issuing writs of assistance to the revenue officer, empowering them, in their discretion, to search suspected pleases for smuggled goods. . . ."[77] This was seen as the "worst instrument of arbitrary power . . ."[78] In *Entick v. Carirington and Three Other King's Messengers*, on the authority of the Secretary of State, John Wilke's home was searched and his papers seized in order to discover evidence to convict him for libel.[79] The English court was outraged and awarded Wilkes one thousand pounds against one of the parties who had made the search and four thousand pounds against the Secretary of State for issuing the warrant.[80] This case was monumental in British history and had a strong impact on the Founding Fathers' wording of the American Constitution, specifically the Fourth Amendment.[81]

Vagrancy Laws: The Power of Broad Discretion Given to Police

While the purpose of the Fourth Amendment has always been to protect the right to privacy, it has not always been so strictly applied to street level policing.[82] "Before the late 1960s, policing on the street was basically unregulated."[83] Police did not have to adhere to the strict rules of "reasonably suspicion" in order to search and arrest citizens on the street. Police were able to circumvent rules for "reasonable suspicion" through vagrancy laws. The Code for the District of Columbia defined vagrants as, "'any person wandering abroad and lodging . . .in the open air, and not giving a good account of himself"[84] is a vagrant."[85] The D.C. Code also defined vagrant as "[a]ny person who wanders about the streets at late or unusual hours of the night without any visible or lawful business and not giving a good account of himself."[86]

Vagrancy laws broadly gave police the power and discretion to arrest citizens on suspicion of a crime, no matter how unwarranted.[87] Police were able to arrest citizens even when the arrest might otherwise be unlawful.[88] Often times, vagrancy arrests were cover-ups for other crimes which the police could not prove.[89] One incident involved a group of waterfront strikers in California who were convicted of vagrancy when, in reality, their arrests were the result of police crack downs on citizens they labeled as "radicals."[90]

"[L]oitering and vagrancy laws were sufficiently broad to give the police authority to stop or arrest almost anyone, or at least, anyone they were plausibly interested in stopping or arresting." [91] Arrests on vagrancy were often devices for making "an arrest on suspicion."[92] Vagrancy laws gave police the power and authority to have unregulated control of the streets with no set guidelines as to how to go about searching citizens or when they are allowed to search citizens. The rationale behind vagrancy laws was that vagrants were "a potential menace to the community" and who was in the better position than police who were on the streets everyday to make these judgments? Perkins wrote in *The Vagrancy Concept*, "[i]n metropolitan centers . . . the vagrancy law is one of the most effective weapons in the arsenal of law enforcement, and if the officer's use of this weapon should be seriously impaired the security of the citizen would be grievously weakened."[93]

"Not until the latter half of the 1960's, when those loitering and vagrancy laws started to fall to vagueness challenges[94], did ordinary police-citizen encounters on the street become a serious Fourth Amendment issue.[95] Citizens began to challenge their arrests on vagrancy and cases involving vagrancy arrest began to flood the courts. In 1958, there were 7,367 persons arrested for vagrancy, and all of them were later released.[96] It wasn't until *Terry v. Ohio*, 88 S.Ct. 1868 (Ohio 1968)[97] that the Supreme Court attempted to use legal tools to govern police behavior in the streets.[98]

It became important to monitor police behavior in order to, not only protect the rights of citizens, but also to prevent forced confessions by persons interrogated (sometimes violently) and intimidated by police.[99] Citizens were often times intimidated by police and there was a "coercive influence" in questioning a suspect in a police station.[100] In *Terry,* the court articulated its disdain for police misconduct and identified punishments, such as the exclusionary rule, for evidence taken improperly from persons whose rights have been violated.

III. History of the "Exclusionary Rule": *Terry v. Ohio*

Critics argue that the exclusionary rule prevent officers from freely doing their job of keeping streets safe and arresting criminals. *Terry v. Ohio* is the first time the United States Supreme Court addressed the problem of police behavior on street and whether police had the right to "stop and frisk" (or seize and search) citizens without evidence to warrant "reasonable suspicion"[101]. As argued in *Terry*, it is frequently argued that:

> [D]istinctions should be made between a "stop" and an "arrest" (or a "seizure" of a person), and between a "frisk" and a "search.". . . police should be allowed to "stop" a person and detain him briefly for questioning upon suspicion that he may be connected with criminal activity. Upon suspicion that the person may be armed, the police should have the power to "frisk" him for weapons. If the "stop" and the "frisk" give rise to probably cause to believe that the suspect has committed a crime, then the police should be empowered to make a formal "arrest," and a full incident "search" of the person.[102]

The court justified this argument by stating that "a 'stop' and 'frisk' amount to a mere 'minor inconvenience and petty indignity' which can properly be imposed on the citizen in the interest of effective law enforcement on the basis of a police officer's suspicion."[103] *State v. Riviera[104],* supports this argument, stating:

> [T]he evidence needed to make the inquiry is not of the same degree of conclusiveness as that required for an arrest. The stopping of the individual to inquire is not an arrest and the ground upon which the police may make the inquiry may be less incriminating that the ground for an arrest for a crime known to have been committed. . . .And as the right to stop and inquire is to be justified for a cause les conclusive then that which would sustain an arrest, so the right to frisk may be justified as an incident to inquiry upon grounds of elemental safety and precautions which might not initially sustain a search . . . .[105]

Furthermore, some critics have argued that the exclusionary rule allows known criminals to circumvent prosecution through a "loop hole" of the judicial system. However, the exclusionary rule does not prevent officers from arresting criminals, it simply calls for the officer to make more stringent judgment calls as to whom they label as "suspects."

"On the other side of the argument is made that the authority of the police must be strictly circumscribed by the law of arrest and search as it has developed [to reflect] the Fourth Amendment."[106] The exclusionary rules does not take away police power, rather it challenges officers to have more evidentiary proof before detaining citizens and invading their privacy to search for evidence of criminal activity. The exclusionary rule simply reverses the order of police investigation; making police have some type of evidentiary proof to support a "reasonable suspicion" that the detainee will participate in some kind of criminal activity. The exclusionary rule reiterates the purpose of the Fourth Amendment by making it "a severe requirement of specific justification [before an officer may make] any intrusion [into] protected personal security [of citizens]."[107]

The *Terry* court echoed these arguments in its opinion, "[r]eflective of the tensions involved [in this argument] are the practical and constitutional arguments pressed with great vigor on both sides of the public debate over the power of the police to "stop and frisk" [persons who have not been arrested][108]."[109]

Angela Williams
angelajwms@gmail.com

IV. Illegal Search and Seizure

The primary purpose of the exclusionary rule is to deter police misconduct.[110] If a police officer "seizes" a citizen without a warrant or without "probable cause;" that seizure is unconstitutional and any evidence gained there from is seen as "fruit of the poisonous tree" and subject to suppression.

Seizure

Courts have differed on exactly what may constitute the "seizure" of a defendant under the Fourth Amendment. It should be noted that the Fourth Amendment does not "proscribe all contact between the police and citizens, but is designed 'to prevent arbitrary and oppressive interference by enforcement officials with the privacy and personal security of individuals.'"[111] However, the Supreme Court has stated that it is hesitant to strictly define limits on police-citizen encounters due to the diversity of interactions the two may have.[112]

State v. Pully[113], held that a police officer merely approaching a vehicle in a parked public place and asking for driver identification and vehicle registration without any reasonable suspicion of illegal activity was not a "seizure" within the meaning of the Fourth Amendment.[114] However, "[u]pon turning on the blue lights of a vehicle, a police officer has clearly initiated a stop"[115] and has seized the subject of the stop within the meaning of the Fourth Amendment of the Federal Constitution and Article I, section 7 of the Tennessee Constitution.[116] The Supreme Court of Utah echoed these beliefs in *State v. Hansen*, holding that "'[S]topping an automobile and detaining its occupants constitute a "seizure" within the meaning of the [Fourth] Amendment, even though the purpose of the stop is limited and the resulting detention quite brief.'"[117] The *Terry* court further defined a "seizure" as whenever a police officer restrains the freedom of a person to walk away. [118]

Physical force is another means by which an officer may "seize" a person.[119] The *Terry* court recognized that physically restraining a person is, of course, a "seizure" under the Fourth Amendment analysis, clearly because no reasonable person that has been physically restrained by police officers would feel free to walk away[120]. The Court stated that while not all police and citizen interactions involve "seizures," "when an officer by means of physical force or show of authority has restrained the liberty of a citizen we may conclude that a 'seizure' has occurred."[121]

The test to be applied in analyzing whether a person is "seized" is measured by a reasonable person standard and whether a reasonable person in the suspect's position would believe they are "seized" or if they have the right to walk away from the police officer.[122] The courts have increasingly recognized that, generally, once citizens are in the custody of police officers, they generally do not feel as if they have the ability to leave, thus they reasonably deduce that they have been "seized" even though there has been no formal arrest. In *State v. Anderson*[123]the Tennessee Supreme Court held that courts may determine whether a person is "seized" depends on the totality of the circumstances.

> Factors which may be considered include time, duration, location and character of the interview, the tone and demeanor of the officer . . . the number of law enforcement officials present, limitations or restraints placed on the suspect's movement, interaction between the suspect and the questioning officer, . . . and whether the suspect is informed that he or she may refuse to answer questions and may end the questioning at any time.[124]

These factors are important because they do not rely solely on the objective language of the officer, but also factor in the subjective feelings of the detainee. If an officer communicates to a detainee that they are free to leave after a traffic stop, however the officer stands directly in front of the detainee, or the detainee remains surrounded by police officers, then reasonably, the detainee would not feel free to leave.

In *I.N.S. v. Delgado*[125], the Supreme Court held that the interrogation of the employees did not amount to a Fourth Amendment "seizure" the I.N.S. agents were acting pursuant to two warrants which gave them permission to question the citizenship of the employees. Nevertheless, the court stated that an "[i]nterrogation relating to one's identity or a request for identification by the police [can] constitute a Fourth Amendment seizure [if] the circumstances of the encounter are so intimidating as to demonstrate that a reasonable person would have believed he was not free to leave if he had not responded. . . ."[126]

However, a traffic stop may stop being a "seizure" and become a consensual encounter. In *Hansen,* the court found that a "traffic stop that begins as a seizure may de-escalate to a mere consensual encounter."[127] "[It] de-escalates to a consensual encounter when a reasonable person would believe, based on the totality of the circumstances, that he or she is free to end the encounter and depart."[128] However, if a

reasonable person would not feel free to depart from the investigation of the officer, the traffic stop is not over and the encounter remains "an investigatory detention."[129]

The *Hansen* court further articulated that a traffic stop cannot reasonably end until all documents belonging to the detainee, such as driver's license and vehicle registration, have been returned to the detainee.[130] Thus the question of whether a "seizure" has occurred lies in a fact based analysis of objective and subjective standards, applying a test of whether a reasonable person in the position of the detainee would believe that they have been "seized" by a police officer or whether they have the freedom to discontinue the encounter.

Reasonable Suspicion Required for Seizure

The Fourth Amendment requires that any search and seizure of persons or their property must be reasonable.[131] The requirement for reasonableness developed as a means to "safeguard the privacy and security of individuals against arbitrary invasions of government officials."[132] The legislature sought to prevent police from having the free reigning power that they had at the time vagrancy laws were enforced. In order to prevent this broad discretion of police power, the courts began to enforce the requirement under the Fourth Amendment that any police searches or seizures be based on reasonableness.[133]

Reasonable suspicion is not a subjective standard.[134] "[I]t must be based upon a particularized and objective basis for suspecting the particular person . . . of criminal activity."[135] The determination of whether a stop is "reasonable" is a fact determinative question, thus specific facts are key to a "reasonableness" analysis. It requires "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant" an investigatory stop.[136] This heightened requirement of specificity in support of a "reasonable" belief that someone was about to engage in criminal activity acted as a safeguard against ambiguous and broad police discretion and potential abuse of that authority. The government did not want police to be able to invade the privacy of citizens at their own will. They placed safeguards in place in order to ensure that if some police officer was corrupt, then the innocent citizen would have laws in place to protect from any unreasonable, bad faith search.

"The evidence offered as grounds for reasonable suspicion is to be viewed using a common sense approach, as understood by those in the field of law enforcement."[137]

> Whether an officer formed the requisite reasonable, articulable suspicion during a traffic stop under a "totality of the circumstances" analysis. This means that we must determine whether the individual factors, taken as a whole, give rise to reasonable suspicion, even if each individual factor is entirely consistent with innocent behavior when examined separately.[138]

Searches that derive from an illegal seizure (a seizure not based upon reasonable suspicion) is held illegal and thus the evidence is subject to suppression. Moreover, because warrant-less searches are held *per se* illegal, then evidence gathered from a warrant-less search is also considered "fruit of the poisonous tree" and subject to suppression.

Consent to Search

Though generally, the exclusionary rule prohibits the admission of evidence obtained in violation of an individual's Fourth Amendment rights, it will not always hold evidence obtained as a result of police misconduct as "'fruit of the poisonous tree' simply because the evidence would not have come to light but for the illegal actions of the police." [139] If a detainee, after being unlawfully held, consents to a police search, then the search is not a violation of the detainee's Fourth Amendment rights and the evidence will not be suppressed at trial.

However, whether or not a defendant is in custody is a major factor as to whether a defendant's consent is held valid. In *United States ex rel. Holloway v. Reincke*[140], the court held that, where the defendant unlocked his room for the officers who had him in custody and consented to their searching it, there was insufficient evidence to prove that the defendant's consent was "freely and unequivocally" given because the defendant was in custody. "[T]he consent was not preceded by a voluntary confession, and he did not actively co-operate in the search [thus his consent was not valid]."[141] "However in *Shaeffer v. State*[142] . . . the court expressly declined to rule that, as a matter of law, a person who is in police custody cannot, since coercion is inherent in such custody, consent to a search and seizure."[143] Moreover, an illegal seizure does not *per se* render consent from the defendant invalid. [144]

In, *Brown v. Illinois*[145] the Supreme Court articulated three major factors in for determining whether consent attained after an illegal seizure would be valid. Although the *Brown* factors were specifically aimed at determining whether a confession (and not a consent) was obtained by exploitation of an illegal arrest (as opposed to an illegal seizure), these factors have also been used to evaluate a connection between unlawful seizure and a following consent.[146] The *Brown* factors are: 1) the temporal proximity of the illegal seizure and consent; 2) the presence of intervening circumstances; and 3) the purpose and flagrancy of the official misconduct.[147]

Many courts have used the first *Brown* factor in analyzing whether consent was valid after an illegal seizure[148]. "The purpose of an attenuation analysis is found in the basic truth that the government must use lawful means to achieve its objectives. This includes not seizing a citizen to unearth wrongdoing except under well-defined circumstances."[149] Analyzing the proximity of the defendant's consent to the illegal seizure is key to determining whether the defendant's consent was freely given.

A defendant may give consent, technically by signing a form, but that consent can be influenced by factors, such as fear or intimidation, that have carried over from the original, unlawful stop. Clearly the court does not recognize a coercion in a lengthy passage of time, however the court will recognize coercion if the passage of time is short between the unlawful stop and the consent.[150] "The attenuation analysis evaluates the relationship between official misconduct and subsequently discovered evidence to determine if excluding the evidence will effectively deter future illegalities."[151]

A reasonable defendant may not feel that, at a time closely following the unlawful seizure, they have the ability to refuse consent to a police officer. Generally, people are intimidated by police and do not feel as if they have the ability to refuse consent to a police search, even if the police officer unequivocally conveys to the defendant that they have the right to freely refuse consent, either before the search or any time during the search. Courts analyze the attenuation of the consent by the proximity in time of the illegal stop in order to prevent police officers from unlawfully stopping a citizen, ending the illegal seizure, and then quickly asking the defendant's consent to another, often unrelated search whereby the police officer may find incriminating evidence.

Evidence found pursuant to an illegal seizure and absent the defendant's un-coerced, freely given consent to search is considered "fruit of the poisonous tree" and subject to suppression at trial.

V. State v. Garcia: More than a Simple "Stop and Frisk"

In *State v. Garcia*, Justice Barker[152], writing for the majority, addressed whether a police officer, after observing a suspect weave in their own lane, has reasonable suspicion to stop a person and whether if immediately after interrogating the person, the police officer may gain voluntary consent from the person to search his vehicle when the person has not violated any laws, has not given any factually based reason to make the police officer believe he will commit a crime, there is more than one officer present, and there has not been sufficient attenuation from the illegal stop and the voluntary consent[153]. The court addressed whether, in light of a voluntary consent from the defendant to search, evidence gained from an illegal traffic stop is subject to suppression at trial.[154] The court adopted the reasonableness standard[155] in determining whether a defendant's voluntary consent was indeed, voluntary, and not influenced by coercion or intimidation. In the four-one decision, the Tennessee Supreme Court held that a "warrantless search or seizure is presumed unreasonable, and the evidence discovered as a result hereof is subject to suppression unless the State demonstrates that the search or seizure was conducted pursuant to one of the narrowly defined exceptions to the warrant requirement [such as consent from the defendant, properly attained with sufficient attenuation from an illegal seizure]."[156]

Justice Barker began his analysis by analyzing the standard of review for a motion to suppress.[157] Applying the standard the court articulated in *State v. Odom*[158]the court held that they could review the determination of whether the traffic stop was based upon reasonable suspicion *de novo* with no presumption of correctness.[159] He contrasted the case with *State v. Binnette*[160], stating that in *Garcia*, the State presented testimony of Officer Kohl in supplement of the videotape of the traffic stop. This was a mixed question of fact and law; thus the video was reviewed *de novo* while affording the trial court some deference to the findings of fact from Officer Kohl's testimony.

The court analyzed two major points in the case. First, it analyzed whether the traffic stop initiated by Officer Kohl was based upon "reasonable suspicion, supported by specific and articulable facts, that a criminal offense has been or is about to be committed."[161] The court relied on an earlier ruling from the

United States Supreme Court which stated in *Alabama v. White*, that "[i]n determining whether a police officer's reasonable suspicion is supported by specific and articulable facts, a court must consider the totality of the circumstances."[162] Second, the court analyzed whether the voluntary consent given by the defendant was given with sufficient attenuation from the traffic stop.

Justice Barker discussed whether there was actually a "seizure" within the meaning of the Fourth Amendment and whether the seizure was based upon reasonable suspicion supported by specific and articulable facts that a criminal offense has been or is about to be committed.[163] The majority found that there was a seizure.[164] The court relied on *Binette,* that "[u]pon turning on the blue lights of a vehicle, a police officer has clearly initiated a stop and has seized the subject of the stop within the meaning of the Fourth Amendment of the Federal Constitution and Article I, section 7 of the Tennessee Constitution."[165]

Next, he analyzed whether Officer Kohl had reasonable suspicion to stop the defendant by observing the "totality of the situation."[166] After reviewing the videotape as well as the testimony of Officer Kohl at trial, the court found that they were unable to detect any weaving that was either "exaggerated or pronounced" so as to cause a reasonable suspicion in Officer Kohl that the defendant had been or was about to commit a criminal act.[167] Both the majority and the dissenting opinions of the Court of Criminal Appeals concurred with this finding.[168] However, the dissenting Justice Holder opined that there was "noticeable and continual weaving" that would constitute sufficient reasonable suspicion.[169] The court, finding that the defendant was not weaving on the videotape, held that Officer Kohl did not have a reasonable suspicion to stop the defendant. Thus, because there was no reasonable suspicion for which to stop the defendant, the stop was illegal and violated the defendant's Fourth Amendment rights.

Next, the court analyzed whether the consent given by the defendant to search his vehicle was sufficiently attenuated from the illegal traffic stop. The Court of Criminal Appeals held that the stop was illegal; however the evidence would not be barred by the exclusionary rule because the defendant had consented to the search.[170] The Supreme Court of Tennessee took a different approach to the consent given by the defendant. The court noted that a consent can be preceded by an illegal stop and not be "fruit of the poisonous tree" if the consent is voluntary and not an exploitation of the prior illegal stop.[171] The court relied upon the factors articulated by the Supreme Court in *Brown v. Illinois*. The *Brown* factors are the temporal proximity of the illegal seizure and consent, the presence of intervening circumstances, and the purpose and flagrancy of the official misconduct. The court opined that the illegal detention began when Officer Kohl turned on her blue police lights and stopped the defendant.[172] The illegal detention did not end until she stated that the stop was complete. The officer immediately asked the defendant whether she could search the vehicle before either person could even return to their respective vehicles.[173] Thus, "no appreciable time passed between the defendant's unlawful detention and the consent that would have allowed the taint of the misconduct to dissipate."[174]

Furthermore, the majority opinion considered the "flagrancy of the official misconduct."[175] Justice Barker notes that the purpose of the exclusionary rule is to prevent police misconduct.[176] However, as the court notes, Officer Kohl's actions are suspicious because her actions at the stop do not support her statements at trial.[177] The court assumed that Officer Kohl subjectively believed that the defendant was driving erratically and could possibly be under the influence of alcohol. However, as Justice Baker discussed in his opinion, Officer Kohl stated at trial that she knew two minutes into the traffic stop that the defendant was not drunk; however she retained his driver's license and vehicle registration, she continued to interrogate the defendant, and she took the time to write out the Consent to Search form in Spanish. If her true reason for stopping the defendant was belief that he was driving under the influence of alcohol, she knew, as she testified at trial, within two minutes of the stop that the defendant was indeed, *not* intoxicated. Furthermore, Officer Kohl's training and "status as a member of the drug task force adds to the likelihood that her prolonged and unreasonable detention of the defendant was for the sole purpose of obtaining consent to search his vehicle."[178] The continued detention of the defendant was unlawful and done in bad faith because after the initial two minutes of the traffic stop, there was no "reasonable suspicion" that warranted the seizure of the defendant.[179] This led the majority to believe that Officer Kohl acted in bad faith in her traffic stop of the defendant and subsequent permission to search his vehicle; and thus the exclusionary rule would apply to the evidence because the purpose of the rule is to prevent police officers from seizing persons in bad faith.[180]

Justice Holder disagreed with the majority's reasoning. Relying on *State v. Troxell*[181], she states "that traffic stops are investigative stops".[182] She echoed the court's prior decision in *Simpson*, stating that in determining whether a detention was unreasonably excessive in length, the court must analyze whether "the police diligently pursued a means of investigation that was likely to dispel their suspicions quickly."[183]

Furthermore, Justice Holder relies on *Smith,* quoting "inconsistent information given to an officer during a traffic stop may give rise to reasonable suspicion of criminal activity."[184] Justice Holder argues that, although Officer Kohl knew two minutes into the traffic stop that the defendant was not intoxicated, the defendant's evasive and inconsistent answers regarding his destination and the owner of the vehicle, along with his implausible statement that he had left Los Angeles only the day before, gave Officer Kohl reasonable suspicion to continue her investigation into the ownership of the vehicle.[185] Reasonable suspicion is a complex area of the law. While courts have attempted to articulate criteria that would define what constitutes "reasonable suspicion[186]," ultimately the determination of whether or not a police officer's actions were based upon reasonable suspicion, depends upon whether the trier of fact agrees with the officer or the defendant.

VI. Conclusion

Garcia re-emphasizes the tradition of American jurisprudence and American freedom. *Garcia* deals with the question of whether police have the freedom to violate the privacy of citizens to search their personal items to find evidence that would incriminate the potential defendant. *Garcia* does more than merely restate and apply the law, it emphasizes just how important the law is to American history and the American legal system. Recapping the facts, the defendant was actually in possession 40.1 pounds of methamphetamine. The drugs, though discovered through illegal means, were evidence of a crime being committed. However, the court decided to look past that illegality and uphold a tradition of disallowing the police from invading the personal space of citizens without a warrant or reasonable suspicion. This outcome demonstrates how strongly the courts regard the amendments to the United States Constitution, particularly the Fourth Amendment.

Furthermore, the holding of the court in *Garcia* proves that courts will not easily find "reasonable suspicion" in order to use, otherwise incriminating, evidence. The court disagrees on whether there was actual "reasonable suspicion" either to stop the defendant or the subsequent continued detention of the defendant. Clearly, the facts are not completely conclusive either way and reasonable minds may differ. However, the court refuses to case a veil over "reasonable suspicion" in order to convict the defendant on drug charges. Instead, the court takes a strict interpretation of "reasonable suspicion" and decides that, instead of liberally interpreting the language and risking later courts misinterpreting the holding, they take the safer approach of strictly construing the language so that in order to prevent future confusion. As a result, while some people who may otherwise be guilty of a crime may be freed, this ruling prevents those persons who would not be guilty from unfairly and illegally having their rights violated.

---

[1] State v. Garcia, 123 S.W.3d 335, 337 (Tenn. 2003).
[2] Kohl's position required training in the investigation and apprehension of drunk drivers. She joined the Highway Interdiction Unit eight months prior to the stop and, because of her position, "attended two conferences on illegal drug interdiction that were organized by the United States Customs Service and Drug Enforcement Administration.
Additionally, she worked with the United States Customs Service in El, Paso Texas for one week. Finally, she attended training conferences in Nashville and Memphis on illegal drug interdiction." *Garcia*, 123 S.W.3d at 338.
[3] *Garcia*, 123 S.W.3d at 337-38.
[4] *Id.* at 338.
[5] *Id.*
[6] *Id.*
[7] *Id.*
[8] *Garcia,* 123 S.W.3d at 338
[9] *Id.*
[10] *Id.*

[11] *Id.*
[12] *Id.*
[13] The opinion does not state whether or not Kohl made her request for the defendant to follow her to the rear of the vehicle in English or Spanish. *Id.*
[14] *Id.*
[15] *Id.*
[16] The opinion does not state whether the defendant *actually* understood English or how sufficient his English skills were.
[17] *Id.*
[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] *Id.*
[23] *Id.* "Kohl could not recall whether the name of the vehicle registration was the same name that the defendant claimed was the owner. After obtaining the vehicle registration and the defendant's driver's license, Kohl asked about the defendant's driving record and arrest record. The defendant claimed that his driving record was 'good' although he admitted that he had one arrest for driving under the influence." *Id.*
[24] Officer Kohl also gave the defendant driving directions to a location where he could park his car and rest. *Id.* at 339.
[25] *Garcia,* 123 S.W.3d at 339. She also told the defendant that the warning citation would not carry a monetary fine, nor require him to go to court, nor affect his driving record. *Id.*
[26] *Id.*
[27] *Id.*
[28] *Id.*
[29] *Id.*
[30] *Id.*
[31] *Id.*
[32] *Id.*
[33] *Id.*
[34] *Id.*
[35] *Garcia,* 123 S.W.3d at 339. At trial, the defendant denied giving permission to Officer Kohl for her to search his car. *Id.*
[36] *Garcia,* 123 S.W.3d at 339. "Kohl claimed that the defendant's invitation to look into the trunk only increased her suspicion. '[I]n the past when I found drugs that weren't in the trunk. And to me, they're trying to divert my attention away from where [the drugs] are [located].'" *Id.*
[37] Kohl asked the defendant if he could read in Spanish and he replied, "Yes." *Id.*
[38] *Id.*
[39] *Id.* The defendant admitted at trial that he did sign the consent form with the full knowledge that he could revoke that consent at any time. *Id.* at 341.
[40] *Id.*
[41] Kohl testified, "[a]s he read, you could follow his finger going along each sentence, which, to—to me, demonstrated that he was actually reading the statement." *Id.*
[42] *Id.*
[43] *Id.*
[44] *Id.*
[45] *Id.* at 340.
[46] *Id.*
[47] *Id.*
[48] *Id.*
[49] The court reversed other parts of the judgment.
[50] State v. Garcia, 123 S.W.3d 335, 351 (Tenn. 2003).
[51] 40.1 pounds of metaphetamine. *Id.* at 340.
[52] *Garcia,* 123 S.W.3d at 342. The Tennessee Supreme Court analyzed whether the Court of Criminal Appeals erred by refusing to suppress evidence obtained as a result of the defendant's traffic stop. *Id.*

[53] *Garcia*, 123 S.W.3d at 342.
[54] *Id.*
[55] *Id.* at 343. Article I, section 7 of the Tennessee Constitution is "identical in intent and purpose with the Fourth Amendment." *Id.* (*citing* State v. Binette, 33 S.W.3d 215, 218 (Tenn. 2000)) (*citing* Sneed v. State, 423 S.W.2d 857, 860 (1968)).
[56] Courts have differed on what constitutes "reasonable suspicion." *Binnette* states that absent a warrant for search, one must have a "reasonable suspicion, supported by specific and articulable facts, that a criminal offense has been or is about to be committed." *Binette*, 33 S.W.3d 215, 218.
[57] "'Fruit of the poisonous tree' doctrine not only precludes the admissibility of evidence which is the direct result of a violation of the defendant's rights, but also any evidence obtained by an exploitation of that violation." 9 TENN. PRAC. CRIM. PRAC. § 18.15. "Obviously, if nothing is found in the initial seizure search there can be no poison fruit." *Id.* at n. 1 (*citing* State v. Wright, 618 S.W.2d 310 (Tenn.Cr.App. 1981)).
[58] 9 TENN. PRAC. CRIM. PRAC. § 18.15.
[59] Wong Sun v. United States, 83 S.Ct. 407, 416 (1963).
[60] Entick, an associate of Wilkes, sued because agents had forcibly broken into his house, broken into locked desks and boxes, and seized many printed charts, pamphlets and the like. In an opinion sweeping in terms, the court declared the warrant and the behavior it authorized subversive "of all the comforts of society," and the issuance of a warrant for the seizure of all of a person's papers rather than only those alleged to be criminal in nature "contrary to the genius of the law of England." 5 Eng. Rep. 817, 818. The court opined that besides its general character, the warrant was bad because it was not issued on a showing of probable cause. Entick v. Carrington, the Supreme Court has said, is a "great judgment," "one of the landmarks of English liberty," "one of the permanent monuments of the British Constitution," and a guide to an understanding of what the Framers meant in writing the Fourth Amendment. Boyd v. United States, 116 U.S.616, 626 (1886).
[61] *Id.*
[62] *Id.*
[63] U.S. CONST. amend. IV.
[64] "One of the evils that the Fourth Amendment was clearly intended to reach was invasions of the privacy of the home pursuant to "general search warrants." RICHARD C. TURKINGTON & ANITA L. ALLEN, PRIVACY LAW: CASES AND MATERIALS 96-97 (West Group 2ed. 2002) (1999).
[65] "Such warrants authorized a search of a home for evidence of crime without the government having to produce evidence that illegal activities or evidence of a crime were in the house to be searched." *Id.* at 97.
[66] *Id*. at 96-97.
[67] *Id.*
[68] *Id.*
[69] *Id.*
[70] *Id.* at 97.
[71] *Id.*
[72] TURKINGTON, *supra* note 64, at 97. "These abuses, which in the American colonies took place largely in the fifteen years before the American Revolution and which extended over a much longer period of time in England, had done violence to the ancient maxim that 'A man's house is his castle.'" *Id.*
[73] 1 ANNALS OF CONG. 434 (1789).
[74] *Id.* at 451-52 (1789).
[75] *Boyd*, 116 S.Ct. 616 (1885).
[76] *Boyd,* 116 S.Ct. at 624-35.
[77] *Boyd,* 116 S.Ct. at 625.
[78] *Id.*
[79] *Boyd,* 116 S.Ct. at 625-26.
[80] *Boyd,* 116 S.Ct. at 626.
[81] *Id.*
[82] William J. Stuntz, *Terry's Impossibility*, 72 ST. JOHN'S L. REV. 1213 (1998).
[83] *Id.*
[84] D.C. CODE ANN. § 22-3302(6).
[85] William D. Douglass, *Vagrancy and Arrest on Suspicion*, 70 YALE L. J. 1, 4 (1960).
[86] *Id.*; *See* D.C. CODE ANN. § 22-302(8).

[87] Douglas, *supra* note 85, at 9 (emphasizing the connection between vagrancy law and the arrest power of police officers).
[88] *Id.*
[89] *Id.* "Vagrancy charge[s] [were] substituted for prostitution and perhaps ameliorat[ed] the punishment." *Id.*; *See* People v. Craig, 152 Cal. 42, 47, 1 Pac. 99, 1000 (1907).
[90] Douglas, *supra* note 85, at 9. "The Court of Appeals reversed the judgment because it was convinced that the convictions were based on vagrancy, but on communism at a time when the Communist Party was on the ballot and wholly lawful in California." *Id.*
[91] Stuntz, *supra* note 82 (1998).
[92] Douglas, *supra* note 85, at 9.
[93] Douglas, *supra* note 85, at 11.
[94] Stuntz, *supra* note 82, at 1216 (1998) (*citing* Algeta v. Commonwealth, 231 N.E.2d 201 (Mass. 1967)) (holding a statute defining vagrant as one who is idle, without visible means of support, and has lived without lawful employment, void for vagueness); Seattle v. Drew, 423 P.2d 522 (Wash. 1967) (holding a statute prohibiting loitering abroad unconstitutionality vague as it failed to provide ascertainable standards of guilt).
[95] Stuntz, *supra* note 82 at 1216; *See* William J. Stuntz, *Implicit Bargains, Government Power, and the Fourth Amendment,* 44 STAN. L. REV. 553, 559-60 & n.28-29 (1992).
[96] Douglas, *supra* note 85, at 12.
[97] Terry v. Ohio, 88 S.Ct. 1868 (Ohio 1968) (Court held that the police officer who observed conduct by Terry and other persons was sufficient for him to believe that they were contemplating daylight robbery of a store, thus he was justified in approaching them, asking their names, and seizing the defendant in order to search him for weapons. The Court held it was not unreasonable and did not violate the defendant's Fourth Amendment rights for the police officer to pat down the outer clothing of the defendant in search for weapons.).
[98] *Id*.
[99] Douglas, *supra* note 85, at 13.
[100] Douglas, *supra* note 85, at n.69.
[101] *Terry,* 88 S.Ct. at 1873. "We would be less than candid if we did not acknowledge that this question thrusts to the fore difficult and troublesome issues regarding a sensitive area of police activity—issues which have never before been squarely presented to this Court." *Id.* at 1874.
[102] *Id.* at 1874.
[103] *Id.*
[104] State v. Riviera, 201 N.E.2d 32 (noting that police have the ability to authority to stop and frisk citizens under reasonable suspicion).
[105] *Id.* at 445-47.
[106] *Terry,* 123 S.W.3d at 1874.
[107] *Id.* at 1875.
[108] It should be noted that these persons that are victim to "stop and frisk" have not yet been arrested. Rather, they are "suspicious persons" who have not committed a crime, but have done some activity which may or may not have caused a reasonable police officer that they are *will* commit a crime. *Id.*
[109] *Id.* at 1874.
[110] State v. Henning, 975 S.W.2d 290, 299 (Tenn. 1998); State v. Huddleston, 924 S.W.2d 666, 676 (Tenn. 1996).
[111] I.N.S. v. Delgado, 104 S.Ct. 1758, 1762 (1984) (*quoting* United States v. Martinez-Fuerte, 428 U.S. 543, 554, 96 S.Ct. 3074, 3081, 49 L.Ed.2d 1116 (1976)).
[112] I.N.S. v. Delgado, 104 S.Ct. 1758, 1762 (1984).
[113]State v. Pully, 863 S.W.2d 29 (Tenn. 1993)
[114] *Pully*, 863 S.W.2d 29, 30 (Tenn. 1993).
[115] *Id.* at 30.
[116] *Pully*, 863 S.W.2d 29, 30 (Tenn. 1993).
[117] State v. Hansen, 63 P.3d 650, 660 (Utah 2002) (*citing* Delaware v. Prouse, 440 U.S. 648, 653).
[118] *Pully,* 863 S.W.2d at 30. "It must be recognized that whenever a police officer accosts an individual and restrains his freedom to walk away, he has seized that person." *Id.*
[119] *Terry*, 88 S.Ct at 1879.

[120] *Id.*
[121] *Id.*
[122] State v. Perry, 13 S.W.3d 724, 737 (Tenn.Crim.App. 1999).
[123] State v. Anderson, 937 S.W.2d 851 (Tenn. 1996).
[124] *Id.* at 855; *See Perry,* 13 S.W.3d at 737.
[125] I.N.S. v. Delgado, 104 S.Ct. 1758 (1984).
[126] *Delgado*, 104 S.Ct. 1758, 1759 (1984).
[127] *Hansen*, 63 P.3d at 660.
[128] *Id.* at 661.
[129] *Id.*
[130] *Id.*
[131] U.S. CONST. amend. IV.
[132] State v. Bridges, 963 S.W.2d 487, 490 (Tenn. 1997) (*quoting* Camara v. Municipal Court, 387 U.S. 523, 528).
[133] *Terry,* 123 S.Ct. at 1874.
[134] Weaver v. Shadoan, 340 F.3d 398, 407 (6th Cir. 2003).
[135] *Weaver*, 340 F.3d 398, 407 (6th Cir. 2003) *citing* Houston v. Clark County Sheriff Deputy John Does 1-5, 174 F.3d 809, 813 (6th Cir. 1999).
[136] *Terry,* 88 S.Ct. at 1880.
[137] United States v. Smith, 263 F.3d 571, 588.
[138] *Smith*, 263 F.3d 571, 588.
[139] Wong Sun v. United States, 83 S.Ct. 407, 417 (1963).
[140] Holloway v. Reincke, 229 F. Supp. 132 (1964).
[141] 9 A.L.R.3d 858, § 8 (1996).
[142] Shaffer v. State, 184 A.2d 689 (Del. 1962).
[143] 9 A.L.R. 3d 858, § 8 (1996).
[144] *See* State v. Simpson, 968 S.W.2d 776, 783 (Tenn. 1998).
[145] Brown v. Illinois, 422 U.S. 590.
[146] *See Huddleston,* 924 S.W.2d at 674.
[147] *See Brown,* 422 U.S. at 603-04.
[148] *See Hansen,* 63 P.3d 650; *see also* United States v. Melendez-Garcia, 28 F.3d 1046; State v. Williams, 571 S.E.2d 703
[149] State v. Shoulderblade, 905 P.2d 289, 292 (Utah 1995).
[150] *Id.*
[151] *Id.*
[152] State v. Garcia, 123 S.W.3d 335, 337 (Tenn. 2003).
[153] *Id.* at 348.
[154] *Id.*
[155] *Id.* at 347. "[O]rdinary people never feel free to terminate a conversation with a police officer." *Id.* (*quoting* Stuntz, 1215).
[156] *Garcia*, 123 S.W. 3d at 343, *citing* State v. Yeargan, 958 S.W.2d 626, 629 (Tenn. 1997); *see also* Coolidge v. New Hampshire, 403 U.S. 443, 454-55, 91 S.Ct. 2002, 29 L.E.2d 564 (1971).
[157] *Garcia*, 123 S.W.2d at 342.
[158] State v. Odom, 928 S.W.2d 19 (Tenn. 1996).
[159] *Garcia,* 123 S.W.2d at 343.
[160] State v. Binnette, 33 S.W. 3d 215.
[161] *Garcia*, 123 S.W.3d at 343 (*quoting Binette*, 33 S.W.3d at 218) (*Binette quoting Terry*, 88 S.Ct 1868).
[162] *Garcia,* 123 S.W.3d at 344 (*quoting* Alabama v. White, 496 U.S. 325, 330).
[163] *Garcia,* 123 S.W.3d at 344.
[164] *Garcia,* 123 S.W.3d at 344.
[165] *Garcia*, 123 S.W.3d at 343 (*quoting Binette,* 33 S.W.3d at 218) (*Binette citing Pully*, 863 S.W.2d 29, 30).
[166] *Cortez,* 101 S.Ct. at 695.
[167] *Garcia,* 123 S.W.3d at 344.
[168] *Id.* at 344.

[169] *Id.* at 350.
[170] *Garcia*, 123 S.W.3d at 345.
[171] *Id.* at 346.
[172] *Id.* at 346-47.
[173] *Id.* at 347.
[174] *Id.*
[175] *Id.*
[176] *Id.*
[177] *Id.*
[178] *Id.* at 347-48.
[179] *Id.* at 347.
[180] *Id.* at 347.
[181] *See* State v. Troxell, 78 S.W.3d 866, 871 (Tenn. 2002).
[182] *Garcia,* 123 S.W.3d at 350.
[183] *Id.* (quoting *Simpson,* 968 S.W.2d at 783); *See Weaver*, 340 F.3d at 408-09 (concluding that a ten to fifteen minute detention was not unlawful); United States v. Wellman, 183 F.3d 631, 656-57 (6th Cir. 1999) (holding that a fifteen to twenty minute detention was not unlawful).
[184] *Garcia,* 123 S.W.3d at 350 (*quoting Smith,* 263 F.3d at 592).
[185] *Id.*
[186] *Yeargan,* 958 S.W.2d at 629 (holding a warrantless search is presumed unreasonable; *See Coolidge*, 403 U.S. at 454-55; *Binette*, 33 S.W.3d at 220 (holding that laterally moving within one's lane while operating his vehicle, if not pronounced, is not reasonable suspicion).