

NOT FINAL UNTIL TIME EXPIRES FOR REHEARING, AND IF FILED, DETERMINED

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR PASCO COUNTY
APPELLATE DIVISION**

**STATE OF FLORIDA,
Appellant,**

v.

**THOMAS DICKMAN,
Appellee.**

**UCN: 512019AP000086APAXWS
Case No.: 19-AP-86
L.T. No.: 18-MM-6472**

_____/

On appeal from Pasco County Court,
Honorable Joseph Poblick

Justin L. Homburg,
Assistant State Attorney,
for Appellant.

Charalampos G. Demosthernous, Esq.,
for Appellee.

ORDER AND OPINION

Based upon the trial court's factual findings regarding law enforcement's investigation into the vehicle occupants during the traffic stop, this Court affirms the trial court's order granting Appellee's motion to suppress.

STATEMENT OF THE CASE AND FACTS

Appellant was charged by Information with Carrying a Concealed Weapon (count one) and Possession of Paraphernalia (count two) as a result of a search by Pasco Sheriff Deputy Christopher Ramos during a traffic stop. Appellant moved to suppress, arguing that the seized evidence should be suppressed because Deputy Ramos delayed the traffic stop longer than was necessary to issue a citation without having reasonable suspicion or probable cause of other illegal activity. Appellant argued that the deputy took specific actions that prolonged the traffic stop but that the total time of the stop could not

be definitively determined because the deputy intentionally turned off his body-worn camera for a portion of the stop.

During the motion hearing, Deputy Ramos testified that he conducted a traffic stop of Appellant's vehicle because Appellant ran a stop sign. The deputy testified that during the traffic stop he identified Appellant and his two passengers, explained the reason for the traffic stop, and then returned to his patrol vehicle to confirm that Appellant's driver license was valid and to run all of the vehicle occupants' names through FCIC/NCIC and a local database to check for wants and warrants. The deputy also ran the license plate to make sure the vehicle was registered. The deputy testified that during the traffic stop, he called for a K9 unit and that it took approximately ten minutes for the K9 unit to arrive. The deputy testified that the K9 unit arrived while he was drafting the citation for running the stop sign. He further testified that he did not delay the traffic stop to wait for the K-9 unit.

On cross-examination, video from Deputy Ramos's body-worn camera was played. In the video, Deputy Ramos asks an unidentified person on the other end of the radio if he could come to the site of the traffic stop because the passengers were all seen leaving a "Vicky Valentine's house." Deputy Ramos also spoke with an unidentified speaker regarding whether to ask for consent to search Appellant's vehicle. Additionally, the deputy conversed with the unidentified person regarding the vehicle occupants' criminal histories.

After the hearing, the trial court issued an order granting Appellant's motion to suppress, writing:

The authority of the deputy to detain the Defendant during the traffic stop ceased when the mission related to the citation was or should have been completed unless the deputy developed a reasonable suspicion for some other matter. . . . The evidence shows that the primary concern of the deputy was not related to the moving violation, but was to secure a K9 and pursue his hunch that the Defendant, and/or his passengers were in possession of drugs. Immediately upon making contact with the Defendant, the deputy requests a K9 unit be dispatched to the scene. Upon returning to his vehicle, the deputy again requests K9 assistance. Deputy Ramos discusses with another deputy that the Defendant was seen leaving

the suspected drug house of “Vicky Valentin,” and further discusses the criminal history of the occupants of the vehicle. . . . It is clear from the testimony and evidence that what may have been a valid traffic stop had quickly transformed into an investigatory stop, without any reasonable suspicion or probable cause of criminal activity.

Order pp. 1-2. Appellant timely-appealed the trial court’s order

STANDARD OF REVIEW

Appellate review of a motion to suppress involves questions of both law and fact. *Rosenquist v. State*, 769 So. 2d 1051, 1052 (Fla. 2d DCA 2000). An appellate court reviews the trial court’s application of the law to the facts of the case pursuant to a *de novo* standard. *Id.*; *Ornelas v. U.S.*, 517 U.S. 690, 698 (1996); *State v. Petion*, 992 So. 2d 889, 894 (Fla. 2d DCA 2008). A trial court’s ruling on a motion to suppress comes to the appellate court “clothed with a presumption of correctness, and the reviewing court must interpret the evidence and reasonable inferences and deductions derived therefrom in a manner most favorable to sustaining the trial court’s ruling.” *See Pagan v. State*, 830 So. 2d 792, 806 (Fla. 2002). The reviewing court is bound by the trial court’s factual findings if they are supported by competent, substantial evidence. *Id.*

LAW AND ANALYSIS

A defendant cannot be detained during a traffic stop any longer than is necessary to effectuate the purpose of the stop. An officer may conduct certain unrelated checks during an otherwise lawful traffic stop; but the unrelated checks cannot be done in such a way that they prolong the stop unless reasonable suspicion of an additional offense develops during the stop. *Presley v. State*, 227 So. 3d 95, 104-05 (Fla. 2017) (*citing Rodriguez v. United States*, 135 S. Ct. 1609, 1612-15 (2015)).

The authority to detain ends when tasks associated with the traffic stop are, or reasonably should have been, completed. *Id.* These tasks include checking the driver license, checking for outstanding warrants against the driver or passengers, and inspecting the vehicle’s registration and proof of insurance. *Id.* at 105; *Vangansbeke v. State*, 223 So. 3d 384, 386 (Fla. 5th DCA 2017).

Calling a K9 unit to conduct a dog sniff is “a measure directed at detecting evidence of criminal wrongdoing – something which is not an ordinary incident of a traffic stop, or

part of the officer's traffic mission." *Presley*, 227 So. 3d at 105. Therefore, an officer may not prolong a traffic stop for the purpose of conducting a dog sniff absent reasonable suspicion that goes beyond the traffic stop. *Id.* That said, a dog sniff without reasonable suspicion is permitted if it occurs while the tasks associated with the traffic stop are occurring and therefore the wait for the dog sniff does not prolong the stop. *Sanchez v. State*, 847 So. 2d 1043, 1046 (Fla. 4th DCA 2003).

While the length of the traffic stop is certainly a factor and a shorter traffic stop is more likely to be reasonable, that is not determinative by itself. The detention becomes illegal once it is unnecessarily prolonged. A trial court should look at the specific facts of a particular case in making a ruling. *Compare Sanchez*, 847 So. 2d at 1046 (holding that the detention of a speeding motorist for five to ten minutes was not unreasonable where the officer was still writing the citation when a K9 unit arrived) *with Maldonado v. State*, 992 So. 2d 839, 842 (Fla. 2d DCA 2008) (trial court order affirmed because State conceded that traffic stop was unnecessarily prolonged even though it was only ten minutes).

By itself, a law enforcement officer's motivation for a traffic stop has no bearing on whether the stop is legal. *Holland v. State*, 696 So. 2d 757, 758 (Fla. 1997) (*citing Whren v. United States*, 517 U.S. 806 (1996)). As long as the officer had reasonable suspicion or probable cause to conduct the traffic stop and the traffic stop is not prolonged beyond what is necessary to effectuate the purpose of the stop, it does not matter if the traffic stop is pretextual. *Presley*, 227 So. 3d at

After reviewing the record in this case, this Court cannot say that the trial court erred. In the written order granting Appellee's motions to suppress, the trial court correctly wrote that the deputy's authority to "detain [Appellant] during the traffic stop ceased when the mission related to the citation was or should have been completed." The trial court then made the following factual findings: "Immediately upon making contact with [Appellant], the deputy requests a K9 unit be dispatched to the scene. Upon returning to his vehicle, the deputy again requests K9 assistance. Deputy Ramos discusses with another deputy that [Appellant] was seen leaving the suspected drug house of 'Vicky Valentin,' and further discusses the criminal history of the occupants of the vehicle."

On this record, the evidence supports the inference that the traffic stop was unnecessarily delayed by law enforcement investigating Appellant and his passengers based upon them leaving “Vicky Valentine’s house” and their criminal histories. While law enforcement can conduct a criminal records check for outstanding warrants, once it is determined that there are no warrants, further discussion of and inquiry into the vehicle occupants’ criminal histories can unnecessarily delay a traffic stop. See, e.g., *Whitfield v. State*, 33 So. 3d 787, 791 (Fla. 5th DCA 2010) (holding that a traffic stop was unnecessarily delayed in part because the officer asked the defendant and his son about their prior criminal history). Therefore, the evidence supports the inference that the traffic stop was delayed longer than was necessary to effectuate the purpose of the traffic stop. It is possible that had law enforcement not taken the time to investigate the vehicle occupants’ criminal histories, the traffic stop would not have been delayed and might have been completed before the K9 officer arrived and the dog sniff conducted.

This Court notes that its affirmance is based upon the specific facts of this case. This opinion should not be read to hold that a ten minute traffic stop is unreasonable. A ten minute traffic stop may well be reasonable in the majority of circumstances. See, e.g., *Sanchez*, 847 So. 2d at 1046. But based upon the facts in this case, there is competent, substantial evidence to support the inference that law enforcement delayed the traffic stop beyond what was necessary so that a criminal investigation and dog sniff could be conducted based upon Appellant and his passengers leaving someone’s house and their criminal histories.

CONCLUSION

Because the trial court’s determination that the traffic stop was unnecessarily delayed by a criminal investigation conducted without reasonable suspicion was supported by competent, substantial evidence, the trial court did not err by granting Appellee’s motion to suppress. Accordingly, the trial court’s order granting the motion is affirmed.

It is therefore ORDERED and ADJUDGED that the order of the trial court is hereby AFFIRMED.

DONE AND ORDERED in Chambers at New Port Richey, Pasco County, Florida
this ____ day of _____, 2020.

Original Order entered on November 18, 2020, by Circuit Judges Shawn Crane,
Susan G. Barthle, and Kimberly Campbell.

Copies to:

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