

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2011 IL App (3d) 100298-U

Order filed November 22, 2011

IN THE APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2011

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 10th Judicial Circuit, Peoria County, Illinois
Plaintiff-Appellee,)	
v.)	Appeal No. 3-10-0298
)	Circuit No. 09-CF-457
MARTIN RAY WILLIAMS, JR.,)	Honorable
Defendant-Appellant.)	James E. Shadid, Judge, Presiding.

PRESIDING JUSTICE CARTER delivered the judgment of the court.
Justice O'Brien concurred in the judgment.
Justice McDade dissented in the judgment.

ORDER

¶ 1 *Held:* In a case in which the defendant was stopped for a traffic violation and subjected to an approximately 18 to 20-minute detention, the appellate court held that the circuit court did not err when it denied the defendant's motion to suppress because the duration of the detention was not unreasonably prolonged.

¶ 2 The defendant, Martin Ray Williams, Jr., was charged with possession of cannabis with intent to deliver (720 ILCS 550/5(g) (West 2008)) and possession of cannabis (720 ILCS 550/4(g) (West 2008)). He filed a motion to suppress evidence, alleging, *inter alia*, that he was detained for an unreasonable amount of time during the traffic stop. At the hearing on the

¶ 7 Peoria police officer Loren Marion III, who was in plain clothes, testified that he followed the Trailblazer in an unmarked police car. Marion stated that it was common practice for the police to follow vehicles that leave a house under surveillance for drug activity. The police would follow the vehicle until the driver committed a traffic violation, and a stop would be initiated and the investigation would continue. If the driver did not commit any traffic violations, "it turns into intelligence gathering, and we conduct surveillance and figure out where that person goes, where they live."

¶ 8 Marion followed the Trailblazer until he determined that it was traveling 48 miles per hour in a 40-mile-per-hour zone. Marion radioed for a marked police car to effect a traffic stop of the Trailblazer. A Bradley University police officer responded, as well as Peoria police officer Chris Campos shortly thereafter.

¶ 9 Marion pulled in behind Campos and observed the other officers approach the Trailblazer. After a short time, the defendant exited the Trailblazer and walked around to the passenger's side of the vehicle. Marion exited his vehicle to see what the defendant was doing. The defendant was looking through the glove compartment of the Trailblazer. Shortly thereafter, the officers escorted the defendant to the rear of the Trailblazer.

¶ 10 Marion approached the defendant and engaged him in conversation. Marion explained that the defendant was pulled over for speeding. The defendant said he was not speeding, but later apologized after Marion explained his observations of the defendant's driving. Campos said

during the period when the Trailblazer was in the driveway. The Cadillac departed the house a short time after arriving; the Cadillac was followed and stopped. A substantial amount of cannabis was found in the vehicle.

that the defendant did not have an insurance card, so Marion told the defendant would be given a ticket for that as well.

¶ 11 Marion asked to search the defendant's person, and the defendant consented. Nothing illegal was found. Campos walked to his police car to write the tickets, and Marion asked the defendant if he wanted to sit in the police car to wait. The defendant agreed to sit in the police car. Marion stated that he asked the defendant to sit in the police car "so he didn't have to stand outside and wait because we were waiting on a K-9 while the officer filled out the tickets."

¶ 12 Marion asked to search the Trailblazer, but the defendant refused to consent to a search. After the defendant sat down in Campos's police car, Marion went to arrange for a canine unit to respond to the scene. No local units were available; the responding unit came from Creve Coeur.

¶ 13 With regard to the timing of the stop's events, Marion testified that he talked to the defendant at the rear of the Trailblazer for about five minutes, during which time the search of the defendant's person was also conducted. Marion also testified that the canine unit arrived at 8:12 p.m., which was approximately 10 minutes after the call was placed. A short time was taken to brief the canine handler, estimated by Marion to be between one and three minutes, and the canine sniff of the Trailblazer began approximately 18 to 20 minutes after the stop was initiated. The canine alerted on the Trailblazer almost immediately.

¶ 14 Campos testified that he first approached the defendant's vehicle with the Bradley University officer at approximately 7:55 p.m. Campos did not know why the vice squad was requesting the Trailblazer to be pulled over.

¶ 15 The defendant was asked for his driver's license and insurance card. The defendant produced the former, but could not locate the latter. The defendant was allowed to go around to

the passenger side of the vehicle to look through the glove compartment for his insurance card. Campos stated that the defendant was given approximately 5 to 10 minutes to search the glove compartment.

¶ 16 Once it was determined that the card could not be located, the defendant was taken to the rear of the vehicle. Campos testified that at that point, Marion approached the defendant and told him he would be receiving tickets for speeding and failure to provide proof of insurance. The defendant sat in Campos's police car while Campos ran a warrant check on the defendant and wrote up the tickets.

¶ 17 Defense counsel asked Campos, "[h]ow long did it take you to write the tickets?" Campos responded:

"Approximately ten minutes or so. He continually would ask me who Officer Marion was because he was wearing plain clothes, and he didn't know who he was. He wanted to know information about Officer Marion, and I simply responded that it will be explained to him later when Officer Marion comes back up to him. So from the delays where I would stop writing tickets to answer his questions, I would say somewhere in the neighborhood of ten minutes."

¶ 18 Campos testified that he did not immediately give the completed tickets to Marion to sign: "[s]oon after writing the tickets, I advised Officer Marion that I was done and gave them to him because he had to sign them." Campos could not recall if he placed the tickets on the dashboard after he completed them. He was finishing the tickets at about the time that the canine unit arrived.

¶ 19 The defendant testified that he did not speed after he left the house in the Trailblazer. He

pulled into a Walgreens parking lot and exited his vehicle. He was immediately approached by police. It took him less than a minute to retrieve an envelope from the glove compartment; the envelope contained a bill and an insurance card. After that, Campos led him to the rear of the Trailblazer. Campos did not tell the defendant why he had been stopped. The defendant claimed he also asked the Bradley University officer twice why he was stopped, but the Bradley University officer did not answer.

¶ 20 The defendant further testified that Marion approached at that time and said that the defendant was speeding. He talked to Marion for a minute or two. Marion asked to search the Trailblazer and performed a pat-down of the defendant. The defendant claimed that he was not asked whether he wanted to sit in the police car. At the time he was placed in the police car, Marion asked the defendant a second time for consent to search the Trailblazer.

¶ 21 The defendant testified that he asked Campos when the police were going to let him go and what was going on. The defendant claimed that Campos responded, "[w]hen I get through writing your tickets and when these guys are done."

¶ 22 The defendant claimed that Campos completed the tickets and placed them on the dashboard, where they sat for approximately 10 minutes, at which time the canine unit arrived. The defendant estimated that it took Campos approximately five to seven minutes to complete the tickets. The defendant's time frame was based on the fact that he was allowed to smoke a cigar while sitting in the police car; typically, it took him 20 minutes to complete a cigar and he was able to smoke approximately half of the cigar while in the police car.

¶ 23 After the defendant rested, the State moved for a directed verdict, claiming that the defendant failed to meet his burden on the motion. The State argued that both a traffic stop and a

stop pursuant to *Terry v. Ohio*, 392 U.S. 1 (1968).

¶ 24 The circuit court limited its ruling to whether the traffic stop was justified and whether the police unreasonably delayed the stop. The court found that the police had probable cause to initiate the traffic stop because the defendant was speeding. The court noted the time involved with the defendant searching for the insurance card and the time involved with writing the tickets and found that the 17 minutes that had elapsed between the time the stop was initiated and the arrival of the canine unit did not constitute an unreasonable delay. Accordingly, the court denied the defendant's motion to suppress.

¶ 25 Later, the case proceeded to a stipulated bench trial, in which the defendant was found guilty on both counts. At sentencing, the circuit court dismissed the possession of cannabis charge and entered judgment of conviction on the possession of cannabis with intent to deliver charge. The court also sentenced the defendant to 9½ years of imprisonment. The defendant appealed.

¶ 26 ANALYSIS

¶ 27 On appeal, the defendant argues that the circuit court erred when it denied his motion to suppress because the traffic stop was unreasonably prolonged.

¶ 28 On appeal from a circuit court's decision on a motion to suppress, we will not disturb the court's factual findings unless they are against the manifest weight of the evidence, and we review the court's ultimate legal ruling on the motion under the *de novo* standard. *People v. Luedemann*, 222 Ill. 2d 530, 542 (2006).

¶ 29 Both the fourth amendment of the United States Constitution and article I, section 6, of the Illinois Constitution protect citizens from unreasonable searches and seizures. U.S. Const.,

amend. IV; Ill. Const. 1970, art. I, § 6. A police officer who initiates a traffic stop based on probable cause lawfully seizes a vehicle and its occupants. *Brendlin v. California*, 551 U.S. 249, 255-56 (2007); *People v. Harris*, 228 Ill. 2d 222, 231-32 (2007). In this case, there is no question that the Peoria police had probable cause to stop the defendant for speeding; therefore, a lawful seizure occurred. What is at issue in this case is the lawfulness of the police action occurring during the stop. See *People v. Baldwin*, 388 Ill. App. 3d 1028, 1031 (2009) ("an initially lawful seizure can become unlawful if subsequent police conduct violates the fourth amendment's reasonableness standard").

¶ 30 "[P]olice conduct occurring during an otherwise lawful seizure does not render the seizure unlawful unless it either unreasonably prolongs the duration of the detention or independently triggers the fourth amendment." *Baldwin*, 388 Ill. App. 3d at 1033. This case falls under the duration principle, as the police action in requesting consent to search and calling for a canine unit did not independently trigger the fourth amendment. See *Baldwin*, 388 Ill. App. 3d at 1033.

¶ 31 There is no bright-line rule to determine the time at which a detention becomes unreasonably prolonged. *Baldwin*, 388 Ill. App. 3d at 1034. Determining whether a stop has been unreasonably prolonged requires "a contextual, totality of the circumstances analysis that includes consideration of the brevity of the stop and whether the police acted diligently during the stop." *Baldwin*, 388 Ill. App. 3d at 1034; see also *People v. Koutsakis*, 272 Ill. App. 3d 159, 164 (1995) ("Courts must consider the purpose to be served by the stop as well as the time reasonably needed to effectuate those purposes").

¶ 32 In this case, it is important to remember that the circuit court's decision came on a motion

for directed verdict made by the State, and the court limited its decision to a consideration of the lawfulness of the stop and whether its duration was appropriate for a stop based on speeding.

The court did not address whether the police had a reasonable, articulable suspicion of criminal activity such that the stop was permissibly prolonged to investigate that suspicion. Accordingly, we will only consider the propriety of the court's limited ruling on the duration of the stop.

¶ 33 Here, the circuit court generally found that the officers' testimony was credible, and we have found nothing in the record to indicate that the court's findings were against the manifest weight of the evidence. The defendant was stopped by a Bradley University police officer and Campos, although the testimony indicated those officers did not know why they stopped the defendant. He was initially unable to locate an insurance card, so he was permitted to search the Trailblazer's glove compartment for a time to locate a card. After that search, the defendant was escorted to the rear of the vehicle. Marion testified that he conversed with the defendant for approximately five minutes at the rear of the car, which included Marion telling the defendant that he would be receiving tickets for speeding and for the failure to produce proof of insurance, searching the defendant's person, and requesting consent to search the Trailblazer. The testimony is unclear as to what Campos was doing during this five-minute period, although it is clear he did not begin writing the tickets during this time.

¶ 34 Next, the defendant sat in Campos's police car while Campos wrote out the tickets, which took approximately 10 minutes. According to Campos, the defendant was not given the tickets right after he completed them, but he completed them around the time that the canine unit arrived. At this point, the stop was 17 minutes old. Marion briefed the canine handler for a period of approximately one to three minutes, and the dog alerted to the vehicle almost

immediately.

¶ 35 Considering the totality of the circumstances, we cannot say that the duration of this stop was unreasonable. The five minutes Marion spent conversing with the defendant at the rear of the Trailblazer was not unreasonable, and the canine unit arrived approximately 10 minutes after that conversation ended, while Campos was completing the initial purpose of the stop by writing up the tickets. We hold that the approximately 18 to 20-minute duration of this detention, the first few minutes of which consisted of the defendant being allowed to search for an insurance card, was not prolonged beyond the time reasonably necessary to complete the stop.

Accordingly, we hold that the circuit court did not err when it denied the defendant's motion to suppress.

¶ 36

CONCLUSION

¶ 37 The judgment of the circuit court of Peoria County is affirmed.

¶ 38 Affirmed.

¶ 39 JUSTICE McDADE, dissenting:

¶ 40 The majority has affirmed the trial court's denial of defendant's motion to suppress after a review of what it characterizes as the trial court's "limited ruling on the duration of the stop."

The majority describes the two potential issues as (1) "the lawfulness of the stop and whether its duration was appropriate for a stop *based on speeding*" (emphasis added) and (2) whether the police had a reasonable, articulable suspicion of criminal activity such that the stop was permissibly prolonged to investigate that suspicion." The majority specifically denies

considering (2) because the trial court only considered (1). Then, based on the "totality of the circumstances," *which includes everything done by the police to investigate their suspicion that defendant was in possession of drugs*, the majority finds the stop's duration was reasonable for a speeding violation.

¶ 41 If we are only going to review the trial court's "limited ruling", that's what we should do. In my opinion, we first eliminate any suspicion or knowledge possessed by the officers because of the drug sting. In a typical speeding stop, the Bradley University police officer or Peoria officer, Chris Campos, would have actually observed the traffic violation and would, therefore, have known what they were stopping defendant for – they would not have had to wait for Peoria police officer, Loren Marion, to come and inform defendant of why he had been stopped. (Indeed, they might not have stopped defendant at all but for the request from Marion.).

¶ 42 In a typical speeding stop, the officer would get the driver's license and might or might not have allowed the driver to search his glove compartment for five minutes seeking his insurance card. The driver would not have been taken out of the car to stand around for another full five minutes with Officer Marion to be told he would be getting tickets for speeding and not producing his insurance card. He would not – at the end of that 10 minutes – have been sitting in Campos's car for another 10 minutes while Campos, who was still pretending that speeding was the reason defendant had been stopped, wrote out two simple traffic citations. Campos would not have then left the tickets on the dashboard for another 10 minutes awaiting the arrival of the canine unit from Creve Coeur. Although the majority states that the stop was 17 minutes old at that time and we are required to take that as true, the combined testimony of the officers and the defendant indicates that it was closer to 30 minutes (see ¶18). Moreover, it is clear from the

testimony of the officers that the stop was prolonged *because* of defendant's suspected drug involvement. It is equally clear that the delay would not have occurred but for the underlying drug knowledge because the record is devoid of any facts that could reasonably have raised Campos's suspicion of illegal drug activity by defendant.

¶ 43 Accordingly, I dissent because (1) I do not believe the analytical dichotomy of our review is appropriate, (2) if it is appropriate, the majority's analysis clearly combines what it purports to have separated, and (3) the conclusion of the majority is belied by the evidence, even taken in the light most favorable to the State.