

No. 1-14-1616

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 11 CR 21446
)	
FREDY ARROYO-ORTUNO,)	Honorable
)	William H. Hooks,
Defendant-Appellee.)	Judge Presiding.

PRESIDING JUSTICE McBRIDE delivered the judgment of the court.
Justices Howse and Ellis concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court erred in granting defendant's motion to quash arrest and suppress evidence because the police had probable cause based on extensive surveillance information to conduct a warrantless search and because defendant had no expectation of privacy in the contraband seized.

¶ 2 In January 2012, defendant Fredy Arroyo-Ortuno was charged with one count of criminal drug conspiracy, one count of methamphetamine conspiracy, one count of controlled substance trafficking, one count of methamphetamine trafficking, one count of possession of a controlled substance with intent to deliver, and one count of possession with intent to deliver methamphetamine. Defendant filed a motion to quash arrest and suppress evidence, contending

that the State lacked probable cause to arrest him. Following a hearing, the trial court granted defendant's motion.

¶ 3 The State appeals, arguing that the trial court erred in granting defendant's motion to quash arrest and suppress evidence because the totality of the circumstances indicated that the officers had probable cause to believe that defendant was involved in narcotics trafficking.

¶ 4 Between September and November 2011, the Drug Enforcement Administration (DEA) and the Illinois State Police conducted an ongoing investigation into a drug trafficking operation. The long-term electronic surveillance indicated that drug transporters left California on October 31, 2011, and were driving to Chicago. The electronic surveillance showed that it would take the transporters approximately 30 hours to make the drive. According to the electronic surveillance, the transporters were driving a black Dodge Ram truck with California license plates and were directed to the Presidential Hotel, located at 3922 South Harlem Avenue in Lyons, Illinois on November 1, 2011. Police stopped the truck before they reached the hotel. Defendant was the passenger in the truck. The driver consented to a search of the truck. A canine officer alerted to the presence of narcotics, and a subsequent search of the vehicle revealed one kilogram of heroin and one kilogram of methamphetamine. Defendant was released that night, but later charged as part of the drug trafficking conspiracy along with several codefendants.

¶ 5 In September 2012, defendant filed a motion to quash arrest and suppress evidence, arguing that the police lacked probable cause to arrest him. The following evidence was presented at the April 2014 hearing on defendant's motion.

¶ 6 The parties entered into several stipulations at the hearing. The stipulations included the foundation for the wiretaps, the translation of the electronic surveillance from Spanish to English, that the canine was properly trained and certified in the detection of narcotics, and the

officer was a certified handler. The parties also stipulated that testimony given by DEA Agent Christopher O'Reilly in a hearing involving a codefendant would be consistent with his testimony at the instant hearing.

¶ 7 Agent O'Reilly testified that as of November 2012, he had been a special agent with the DEA for 17 years. He previously worked for six years as a narcotics investigator for the Cook County State's Attorney's Office. He has been trained on the coded language used by drug traffickers to indicate quantity, quality, and types of narcotics. Agent O'Reilly had participated in 50 to 75 investigations and intercepted over 10,000 phone calls during those investigations. Most of the individuals he was investigating in Chicago were connected to Mexican drug cartels. During the investigation, the DEA compiled "linesheets," which were transcribed conversations recorded over the wiretaps. The intercepted conversations were translated by DEA linguists from Spanish to English.

¶ 8 In July 2011, Agent O'Reilly received information from a confidential source regarding narcotics activity involving codefendants Maria Garza and Carmelo Rios. During the course of his investigation, Agent O'Reilly read conversations between Garza and other codefendants, including Victor Zaragoza, concerning the purchase and resale of heroin.

¶ 9 Garza and Rios lived in Arlington Heights, and Garza ran DeLuca's Pizza in Buffalo Grove. In October 2011, the confidential source told Agent O'Reilly that Jose Lomeli Mejia, who was part of a Mexican drug trafficking organization, was in Chicago and looking for customers to sell kilograms of heroin. On October 12, 2011, DEA agents conducted surveillance near 29th Place and 53rd Street while the confidential source met with Garza and Zaragoza. After the meeting, the confidential source told the agents that Zaragoza planned to sell a kilogram of heroin to Garza for \$55,000. A couple days later, the agents observed the

confidential source meeting with Rios at the Tio Loco restaurant in Cicero, Illinois. The source told the agents after the meeting that he discussed the purchase of heroin from Zaragoza with Rios.

¶ 10 The DEA agents later intercepted telephone calls from Garza's phone. Agent O'Reilly testified that the phone calls between Garza and an unknown male discussed a transaction involving two kilograms of narcotics. Agent O'Reilly discussed multiple phone calls and meetings over the course of several days involving Garza, Zaragoza, and Rios concerning the sale and distribution of heroin. Also, during the investigation, the agents observed Garza meeting a man named Angelo Smith, who is a heroin and marijuana distributor in the Englewood and Roseland neighborhoods. On October 26, 2011, the agents intercepted a phone call between Garza and Zaragoza in which they discussed "what the gay guys want." Agent O'Reilly understood this to be coded language referring to methamphetamine.

¶ 11 On October 29, 2011, DEA agents overheard a phone call between Zaragoza and another individual discussing "cold apple fruit" coming from Santa Ana and it would take 30 hours. Agent O'Reilly testified that he believed that "cold apple fruit" was a coded term for drugs, but was unsure if it was methamphetamine. He stated that the "cold apple fruit" was coming from Santa Ana and it would take 30 hours, meant the drugs were coming from California and the 30 hours referred to the driving time from California to Chicago. On October 31, 2011, Zaragoza spoke with a woman named Erica and a reference was made to "the guy leaving tonight," which Agent O'Reilly understood to mean that the transporters were leaving California with the drugs and driving toward Chicago. On November 1, 2011, Zaragoza spoke again with Erica and discussed hotel arrangements and about individuals who were on "80 near 55." Agent O'Reilly understood this to mean that the transporters were close to Chicago, driving on Interstate 80 and

approaching the connection with Interstate 55. In another phone call between the same people, Zaragoza indicated that he would have "the lady" guide them because they were arriving near her house. Agent O'Reilly stated that he believed "the lady" referenced was Garza.

¶ 12 Also on November 1, 2011, at approximately 10:05 p.m., Agent O'Reilly overheard phone calls on Garza's phone. One conversation was between Garza and an unknown male. The man said that he was calling on behalf of the "fruit guy," which Agent O'Reilly understood as calling on behalf of Zaragoza and using the same coded language to let Garza know that he is part of the transaction. Garza gave the man directions and said that she was going to "the place right now where [she was] going to check [them] in so [they] have a place to arrive."

¶ 13 In another phone call at around 10:25 p.m., Garza gave the unknown man the address of 3922 South Harlem Avenue in Lyons, which is the address for the Presidential Inn Motel. The man then stated he was "going to put the guy on the phone [because] he understands better." Garza then spoke with a second unknown man and gave him the address again. She asked him to put the address in the GPS and call her back to tell her when they will arrive. Later, in a subsequent phone call at approximately 11:05 p.m., the unknown man told Garza that he was driving a "black Ram," and Garza responded, "me too, same style, blue." Agent O'Reilly testified that Garza drove a blue Chevy truck that evening. He understood this conversation to mean that Garza was trying to find out what vehicle the transporters would be in so she could meet with them.

¶ 14 Agent O'Reilly testified that on November 1, 2011, he was working with a team and they established surveillance on Garza. He further stated that officers had set up surveillance right off Interstate 55 and Harlem Avenue.

¶ 15 After the stipulated testimony was entered into evidence, defendant was given the opportunity to cross-examine Agent O'Reilly in court. Agent O'Reilly stated that the individuals in the electronic surveillance phone calls spoke mostly in Spanish. Agent O'Reilly did not speak Spanish, but read the translations of the intercepted conversations. He testified that the calls described the vehicle as a black Ram with California license plates, but did not offer any other identification marks, such as license plate number. Agent O'Reilly admitted that defendant was never mentioned by name in the transcripts of phone calls.

¶ 16 On redirect, Agent O'Reilly stated that on November 1, 2011, at approximately 11:35 p.m., he was driving up and down Harlem Avenue between Pershing Road and Interstate 55. One surveillance team was on Garza and the other was in position based on information from Garza's phone and Zaragoza's phone about where Garza was going to meet the transporters. Surveillance was established in the area of Interstate 55 and Harlem Avenue. He testified that based on his experience and the documents and transcripts he had reviewed, he believed that Garza was meeting people that were transporting drugs from California to the area of Lyons, Illinois. He observed the black Ram as it was driving north on Harlem Avenue. He stated that officers confirmed that the vehicle had California license plates and communicated that information to the officers assigned to stop the vehicle.

¶ 17 Officer Theodore Kotlarz testified that he was employed as a detective with the Des Plaines police department. In addition, he stated that he previously worked as a DEA task force officer until November 2013. In November 2011, he was working as a task force officer involved in a long term narcotics investigation involving targets Garza and Zaragoza.

¶ 18 At approximately 10 p.m. on November 1, 2011, Officer Kotlarz was assigned to make a traffic stop of a vehicle coming from California that was to be transporting a large amount of

narcotics. He testified that this information was based on intercepted telephone conversations. He was parked on Harlem Avenue, just north of the exit for Interstate 55. He was in an unmarked vehicle equipped with lights and sirens. He was in plain clothes and working with a partner, Officer Freddie Summers. He stated that he parked in that location at approximately 11 p.m. He was in radio contact with other members of the team and was receiving updates related to the targets of the investigation. Officer Kotlarz testified that he was looking for a black pickup truck with California license plates.

¶ 19 At approximately 11:30 p.m., Officer Kotlarz received information that another officer reported a black Dodge truck with California license plates had exited Interstate 55 and was driving north on Harlem Avenue. He subsequently observed the vehicle matching the description at approximately 4700 South Harlem Avenue. Officer Kotlarz stated that he observed two occupants inside the vehicle. He saw that the vehicle had California license plates and matched the general description he had been given. He pulled out behind the vehicle and started following it and noting its speed. He observed that the vehicle had exceeded the speed limit. He based this observation on his own speed as he followed the vehicle. He pulled the vehicle over at approximately 11:35 p.m. Officer Kotlarz testified that he was going to stop the vehicle regardless of the speeding violation because it was a target in the narcotics investigation.

¶ 20 After he pulled the vehicle over, Officer Kotlarz approached the driver while Officer Summers approached the passenger side. He testified that the driver was identified as Ricardo Abarcavargas. The officer stated that he told Abarcavargas that he was with the police department and that Abarcavargas had been speeding. Officer Kotlarz asked Abarcavargas for his driver's license and he told the officer that he did not have his driver's license with him. Officer Kotlarz asked Abarcavargas where he was going, and he indicated that he was going to a

friend's house, but did not give any additional information about the friend. Officer Kotlarz identified defendant as the passenger in the truck. He stated that he did not have any interaction with defendant.

¶ 21 Officer Kotlarz testified that he asked Abarcavargas to step out of the vehicle. He escorted him to between the patrol car and the truck. Officer Kotlarz did a safety pat down, placed Abarcavargas in handcuffs, and told him he was under arrest for not having a valid driver's license. He observed defendant speaking with Officer Summers on the parkway, but was not able to hear the conversation.

¶ 22 Officer Kotlarz described the truck as "a beater," and said there was "junk everywhere, sheet metal, steel, scrap metal." Both the bed and the cab area were filled with stuff. Officer Kotlarz asked Abarcavargas if he had anything illegal in the vehicle and he said he did not. Officer Kotlarz then asked for permission to search the vehicle and Abarcavargas consented to a search. Defendant was standing five feet away at this time and did not interject in any way. At this point, he turned Abarcavargas over to additional officers who had arrived at the scene. He stated that Abarcavargas subsequently signed a consent to search form, but he was not present when it was signed. Officer Kotlarz testified that he performed a cursory search of the vehicle for weapons or anything in plain view. He received notification that the canine was on the way, and he then rolled up the windows and turned the car off.

¶ 23 Officer Kotlarz stated that the canine officer arrived on the scene by 11:50 p.m., approximately 15 minutes after the initial stop of the vehicle. Officer Kotlarz observed the canine officer walk the dog around the vehicle. The officer stated that the dog had indicated the presence of narcotics inside the vehicle. The canine officer then let the dog inside the vehicle and the dog alerted to the presence of narcotics on the passenger compartment of the vehicle.

Officer Kotlarz testified that he did a five minute search of the vehicle looking for large items, but did not recover anything at that time. Abarcavargas and defendant were taken to the nearby Forest View police department. Officer Kotlarz then drove the vehicle to Homan Square for a search, but nothing was found. The vehicle was then relocated to the Palos Hills police department because a facility had a "skyjacker lift" to lift the vehicle up. When the vehicle was lifted, the officers found narcotics. Officer Kotlarz testified that one kilogram of methamphetamine and one kilogram of heroin were recovered "inside of a cooking pot that was originally in the cab of the vehicle."

¶ 24 On cross-examination, Officer Kotlarz testified that to the best of his knowledge defendant was kept in custody for approximately one hour. He admitted that nothing was recovered from defendant's person.

¶ 25 Officer Freddie Summers testified that he was employed with Illinois State Police. He additionally worked as a task force officer with DEA in the past. In November 2011, he was part of the task force involved in a long term narcotics investigation. On November 1, 2011, he was working with Officer Kotlarz as his partner. He participated in the traffic stop of the black Dodge Ram. After the truck was stopped, Officer Summers approached defendant who was the passenger in the vehicle.

¶ 26 Officer Summers testified that he spoke with defendant in English. He stated that defendant never asked the officer to clarify or repeat anything nor did defendant indicate that he did not understand what the officer was saying. Officer Summers stated that defendant was removed from the vehicle after Abarcavargas was removed, and defendant was brought to the grassy area next to the vehicle. Officer Summers said that Abarcavargas was approximately five to ten feet away during the conversation. He could hear Officer Kotlarz speaking with

Abarcavargas, but could not tell what they were saying. Officer Summers testified that defendant did not object to the search of the vehicle. Officer Summers later obtained written authorization from Abarcavargas to search the vehicle. Officer Summers stated that defendant and Abarcavargas were taken to the Forest View police department, which was three to four minutes away.

¶ 27 Officer Summers testified that at the station, defendant was fingerprinted, his photograph was taken, and he was released. Officer Summers stated that he estimated 35 minutes had elapsed from the time the vehicle was stopped to the time defendant was released. Officer Summers testified that neither defendant nor Abarcavargas were charged on that date because the narcotics investigation was ongoing and the task force was not ready to arrest any of the individuals.

¶ 28 On cross-examination, Officer Summers stated that defendant was detained at the scene. Officer Summers admitted that defendant was not free to leave and nothing was recovered from his person. Officer Summers further admitted that he did not have an arrest warrant for defendant. At the time the vehicle was pulled over, Officer Summers did not have defendant's name nor did he have a search warrant for defendant.

¶ 29 Officer Walberto Galarza testified that he was employed by the Cicero police department. In November 2011, he was a canine handler. Shortly after 11:30 p.m. on November 1, 2011, he received an assignment to assist an outside agency at 43rd and Harlem. He had no prior involvement with the outside agency. When he arrived on the scene, he observed a traffic stop.

¶ 30 After he did a cursory search of the vehicle for items that could harm the canine, Officer Galarza brought the dog to the vehicle. He gave the dog a command to search. Officer Galarza testified that the canine gave "a positive alert with a behavior change towards the rear bumper,

by the liftgate." Officer Galarza stated that a behavior change is when the canine sits and points with his nose. After the positive alert, he notified one of the agents and then started a search of the interior of the vehicle. He placed the dog inside the interior, closed the doors, and commanded him to search. Officer Galarza testified that the canine gave "a positive alert with behavior change on the passenger floorboard." The officer stated that the dog was only able to search the driver's seat and the passenger seat because the rear seats had a lot of cargo. After the dog gave a positive alert, he notified an officer. He then placed the canine in the vehicle and terminated his participation in the investigation.

¶ 31 During the State's arguments, the following colloquy took place between the prosecutor and the trial court.

"THE COURT: Well, what is the evidence that this Defendant was actually in the vehicle in California before it journeyed into the Chicagoland area?

PROSECUTOR: There is no evidence.

THE COURT: There's absolutely no evidence.

So while there's some evidence that someone caused the vehicle to move down the highway presumably from California, there is no evidence that this Defendant had been in the vehicle for that particular journey. He was in the vehicle at the time that the officers stopped it on the day in [] question, but there is no evidence that he was in the vehicle when the vehicle was loaded with narcotics in California and traveled across the US.

There is no evidence that he would have necessarily even known that the narcotics were in the vehicle, because the narcotics by the officer's testimony was in the floorboard of the vehicle and the bumper of the vehicle, at least based on that particular instance when the dog alerted.

This is not like drugs laying in the vehicle in open view. There is narcotics based on what I'm getting so far that were professionally placed in the vehicle in areas that are not visible to law enforcement, right?

PROSECUTOR: Absolutely.

There is not a scintilla of evidence that Mr. Arroyo Ortuno got in the vehicle in California. There is not a scintilla of evidence that Mr. Arroyo Ortuno was in that vehicle at 11:34. For all we know, the car pulled off on the shoulder of I-55 and Mr. Arroyo Ortuno got into it at that point.

And so what I would assert again is that that may ultimately be a very compelling argument for the Defense to make when it [] comes to the guilt or innocence phase of these proceedings, if we get that far.

But from where we are right now, in the mind of a reasonable officer, which is the way we're looking at the evidence, what would a reasonable officer do under these circumstances, is it

probable that the two occupants of his vehicle are involved in this ongoing enterprise."

¶ 32 On May 2, 2014, the trial court granted defendant's motion to quash arrest and suppress evidence. The court made the following findings in its ruling.

"This matter, in the Court's assessment, there was no probable cause. We going on the assertion that the defendant in this matter, there was no probable cause with respect to this defendant and the passenger of the vehicle involved, the subsequent search was without probable cause. The defense's motion is granted with respect to the matters before this Court.

The conduct of law enforcement with respect this defendant was an overreach which should not have been done. There was absolutely no reason for this defendant to have been subsequently searched and then to be stopped and after certain information was determined by law enforcement. Respectfully, again, I apologize to this defense. I do remember this case very specifically. There was no need – after initially asking the defense to brief this matter – on the face that is presenting this court, in my assessment – in light of that, I will say this I had a question of the credibility of the law enforcement in this case. The Court finds law enforcement was credible, but there was no legitimate bases for the seizure of this defendant, search of this defendant and the evidence that might

be attributed to this defendant cannot be used against this defendant."

¶ 33 The prosecutor asked for clarification of the trial court's position, and the court stated:

"The vehicle was searched, narcotics were not found on this defendant. It's clear to this Court that State did intend to use in some manner with respect to the accountability, constructive possession, the fruits of that particular search against this particular defendant, and the Court is not prepared to accept the fruits of that search to be attributable in this way to this defendant."

¶ 34 The State subsequently filed a certificate of substantial impairment and a notice of appeal. This appeal followed.

¶ 35 On appeal, the State argues that the trial court erred in granting defendant's motion to quash arrest and suppress evidence because the totality of the circumstances indicated that the officers had probable cause to believe that defendant was involved in narcotics trafficking. Defendant responds that the trial court properly granted his motion because no probable cause existed when defendant was "a mere passenger in a car pulled over based on a brief description of Agent O'Reilly, who thought that drugs might be present."

¶ 36 In reviewing a trial court's ruling on a motion to suppress, this court applies a *de novo* standard of review. *People v. Sorenson*, 196 Ill. 2d 425, 431 (2001); see also *Ornelas v. United States*, 517 U.S. 690, 699 (1996). However, findings of historical fact will be reviewed only for clear error and the reviewing court must give due weight to inferences drawn from those facts by the fact finder. *Ornelas*, 517 U.S. at 699. "A reviewing court, however, remains free to undertake its own assessment of the facts in relation to the issues and may draw its own

conclusions when deciding what relief should be granted." *People v. Luedemann*, 222 Ill. 2d 530, 542 (2006). Accordingly, we will accord great deference to the trial court's factual findings, and we will reverse those findings only if they are against the manifest weight of the evidence; however, we will review *de novo* the ultimate question of the legal challenge of the motion to quash arrest and suppress evidence. *Sorenson*, 196 Ill. 2d at 431. Here, the trial court held that it found the police officers' testimony to be credible, and will accord deference to this finding of credibility as we review the ultimate ruling on defendant's motion.

¶ 37 "In a motion to suppress, the burden is on the defendant to establish that the search or seizure was unreasonable or unlawful." *People v. Juarbe*, 318 Ill. App. 3d 1040, 1049 (2001). Defendant must establish a *prima facie* case that the police acted without a warrant and that the defendant was doing nothing to justify the intrusion by the police at the time of the stop or arrest. After defendant has made a *prima facie* case, the burden shifts to the State to provide evidence to justify the stop or arrest. *Id.*

¶ 38 "Both the fourth amendment and the Illinois Constitution of 1970 guarantee the right of individuals to be free from unreasonable searches and seizures." *People v. Colyar*, 2013 IL 111835, ¶ 31 (citing U.S. Const., amend. IV and Ill. Const. 1970, art. I, § 6). "This court has explained that "[t]he "essential purpose" of the fourth amendment is to impose a standard of reasonableness upon the exercise of discretion by law enforcement officers to safeguard the privacy and security of individuals against arbitrary invasions.'" *Id.* (quoting *People v. McDonough*, 239 Ill. 2d 260, 266 (2010), quoting *Delaware v. Prouse*, 440 U.S. 648, 653-54 (1979)). "An arrest without probable cause or a warrant based thereon violates these constitutional provisions." *People v. Lee*, 214 Ill. 2d 476, 484 (2005).

¶ 39 "It is well settled that not every encounter between the police and a private citizen results in a seizure." *Luedemann*, 222 Ill. 2d at 544 (citing *Immigration & Naturalization Service v. Delgado*, 466 U.S. 210, 215 (1984)). "Courts have divided police-citizen encounters into three tiers: (1) arrests, which must be supported by probable cause; (2) brief investigative detentions, or 'Terry stops,' which must be supported by a reasonable, articulable suspicion of criminal activity; and (3) encounters that involve no coercion or detention and thus do not implicate fourth amendment interests." *Luedeman*, 222 Ill. 2d at 544 (citing *United States v. Black*, 675 F.2d 129, 133 (7th Cir. 1982) and *United States v. Berry*, 670 F.2d 583, 591 (5th Cir. 1982)).

¶ 40 The United States Supreme Court has "repeatedly" held that " 'probable cause' to justify an arrest means facts and circumstances within the officer's knowledge that are sufficient to warrant a prudent person, or one of reasonable caution, in believing, in the circumstances shown, that the suspect has committed, is committing, or *is about to commit an offense*." (Emphasis added.) *Michigan v. DeFillippo*, 443 U.S. 31, 37 (1979).

¶ 41 Further, "when officers are working in concert, reasonable suspicion or probable cause can be established from all the information collectively received by the officers even if that information is not specifically known to the officer who makes the arrest." *People v. Maxey*, 2011 IL App (1st) 100011, ¶ 54. "Certainly, arresting officers may rely upon police radio transmissions to make a *Terry* stop or an arrest even if they are unaware of the specific facts that established reasonable suspicion to initiate a *Terry* stop or probable cause to make that arrest." *Id.* "An automobile stop is thus subject to the constitutional imperative that it not be 'unreasonable' under the circumstances. As a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred." *Whren v. United States*, 517 U.S. 806, 810 (1996). The Illinois Supreme Court has

held that "a passenger is seized for fourth amendment purposes when the vehicle in which he is riding is subjected to a traffic stop." *People v. Harris*, 228 Ill. 2d 222, 231 (2008).

¶ 42 The initial question we address is whether defendant, as the passenger in the vehicle, fell within the protection of the fourth amendment.

¶ 43 "[T]he relevant inquiry is whether the person claiming the protections of the fourth amendment had a legitimate expectation of privacy in the place searched." *People v. Johnson*, 237 Ill. 2d 81, 90 (2010). "Factors relevant in determining whether a legitimate expectation of privacy exists include the individual's ownership or possessory interest in the property; prior use of the property; ability to control or exclude others' use of the property; and subjective expectation of privacy." *Id.* The burden is on defendant to show that he had a legitimate expectation of privacy in the property searched when challenging a search. *Id.*

¶ 44 We find the decision in *Johnson* to be instructive. In that case, the defendant was found guilty of aggravated battery with a firearm, aggravated unlawful use of a weapon, and unlawful use of a weapon by a felon after a firearm was recovered underneath the passenger seat in which he had been seated in a vehicle. The hearing on the defendant's motion to quash arrest and suppress evidence disclosed the following facts. The police received a report of a shooting. As the responding officers approached the location, they observed the defendant and another man enter a vehicle and drive away. The officers followed the vehicle until it parked a few blocks away. The officers then approached the men as they exited the vehicle, asking for identification and if they knew anything about the reported shooting. When the driver was asked for permission to search the vehicle, the driver refused, but a police lieutenant directed the officer to search the vehicle without a warrant. During the search, a firearm was recovered from underneath the passenger seat. The defendant was subsequently charged. His motion to

suppress was denied and he was later convicted at trial. *Johnson*, 237 Ill. 2d at 86. On appeal, the supreme court found that the defendant as the passenger had no legitimate expectation of privacy and could not challenge the search of the vehicle. *Id.* at 90.

¶ 45 In applying these factors to the vehicle at issue, we find that defendant lacked a legitimate expectation of privacy. Defendant was a passenger in the vehicle, and no evidence in the record shows that defendant had any ownership or possessory interest in the vehicle. Additionally, defendant has not provided any evidence that he had previously used the vehicle, that he could control or exclude others' use of the vehicle, or that he had any subjective expectation of privacy in the vehicle.

¶ 46 Defendant offers no argument that he had a legitimate expectation of privacy in the vehicle. Rather, defendant focuses his argument in his brief on the lack of probable cause in keeping defendant, "a mere passenger," detained during the subsequent canine search that led to the recovery of narcotics. Defendant's brief fails to discuss the ongoing investigation of narcotics trafficking, but instead states that the vehicle was stopped "based on a brief description of Agent O'Reilly, who thought that drugs might be present." Defendant maintains that the State's actions violated the fourth amendment and the evidence recovered was properly suppressed.

¶ 47 In *Johnson*, the supreme court also considered the defendant's argument that the evidence found in the vehicle was tainted by an illegal arrest that occurred when the defendant was handcuffed and placed in the back of the squad car. *Id.* at 92-93.

¶ 48 "[W]here an officer's confinement of a person goes beyond the limited restraint of a *Terry* investigative stop, a subsequent consent to search may be found to be tainted by the illegality." *Johnson*, 237 Ill. 2d at 92 (quoting *People v. Brownlee*, 186 Ill. 2d 501, 519 (1999)).

"Thus, evidence obtained as a result of an illegal arrest may be subject to the exclusionary rule and inadmissible." *Id.* "However, a determination that defendant was illegally detained will not necessarily resolve the issue of whether subsequently obtained evidence is admissible." *Id.* The *Johnson* court observed that the question was whether the evidence bears a sufficiently close relationship to the alleged illegality. " 'Generally, courts resolve this question by considering whether the evidence was obtained 'by means sufficiently distinguishable to be purged of the primary taint' of illegality.' " *Id.* (quoting *People v. Lovejoy*, 235 Ill. 2d 97, 130 (2009)). The attenuation analysis is only required where the evidence was obtained as a result of some illegal government activity. *Id.* (quoting *Lovejoy*, 235 Ill. 2d at 130). " 'There must be some causal nexus between the illegal police activity and the disputed evidence.' " *Id.* (quoting *United States v. Meece*, 580 F.3d 616, 619 (7th Cir. 2009)).

¶ 49 The *Johnson* court rejected the defendant's contention that the firearm was tainted by an illegal arrest without probable cause.

"Even if defendant is correct that the officers' actions escalated an otherwise reasonable *Terry* investigative stop into an arrest, it is clear that the evidence obtained from the car was not obtained 'as a result of' that arrest. According to the testimony at the hearing on defendant's motion, [the lieutenant] directed [the officer] to search the car after [the driver] refused consent. Only then, as the search began, did the officers handcuff defendant and put him in the squad car to facilitate the search. Regardless of whether those actions amounted to an unlawful arrest, the alleged arrest did not

lead to the search. Therefore, the alleged arrest could not have tainted the search with illegality." *Id.* at 92-93.

¶ 50 Here, Officer Kotlarz testified that he curbed the truck because the driver was speeding, but he also stated that he was going to stop the vehicle based on his information that the vehicle may have been transporting narcotics. The fourth amendment does not prohibit pretextual traffic stops. *Juarbe*, 318 Ill. App. 3d at 1051. The Supreme Court has held that "ulterior motives do not invalidate police conduct that is justifiable on the basis of probable cause to believe that a violation of the law has occurred." *Id.* (citing *Whren*, 517 U.S. at 813).

¶ 51 While it is undisputed that the officers did not have a search warrant for defendant and did not know defendant's name prior to the traffic stop, the officers had reason to believe the vehicle was transporting narcotics. In addition, the surveillance linesheets show that a phone call was recorded in which Garza spoke with two unknown males regarding directions to 3922 South Harlem in Lyons at approximately 10:30 p.m. on November 1. During the phone call, Garza gave directions to one man and the man said he was going to "put the guy on the phone he understands better." Over the next half hour, two additional phone calls took place between Garza and an unknown male involving directions and details to facilitate a meeting, including a description of the man's vehicle as a "black Ram."

¶ 52 Further, the testimony of the officers at the hearing established that the vehicle was curbed at approximately 11:35 p.m. Abarcavargas gave written consent to search approximately ten minutes later. The canine officer arrived at approximately 11:50 p.m. and alerted to the rear bumper and the passenger floorboard. Both defendant and Abarcavargas were taken to the Forest View police department as the truck was taken to a different location for a more thorough search which revealed the presence of heroin and methamphetamine. Defendant was not charged

and was released from custody that night within an hour of the traffic stop. The testimony presented shows that this was not a mere traffic stop, and demonstrates there was probable cause to stop and search the vehicle based upon the totality of circumstances known to police officers at the time of the stop.

¶ 53 Assuming *arguendo*, even if defendant's detention that night was illegal, the discovery of the narcotics in the vehicle was not obtained as a result of defendant's arrest. As discussed, Abarcavargas, the driver, gave written consent to a search and the discovery of the narcotics stemmed from this consent, independent of defendant's allegedly illegal arrest. There was no nexus between the discovery of the narcotics and any alleged illegal government activity involving defendant. Thus, defendant's arrest could not have "tainted the search with illegality." See *Johnson*, 237 Ill. 2d at 93. Accordingly, the trial court erred in suppressing the evidence recovered during the search of the vehicle, and we find that defendant's motion to suppress evidence should have been denied.

¶ 54 Defendant's reliance on *People v. Surles*, 2011 IL App (1st) 100068, and *People v. Bunch*, 207 Ill. 2d 7 (2003), is misplaced. Both *Surles* and *Bunch* involved the detention of a passenger following a routine traffic stop.

¶ 55 In *Surles*, a vehicle was stopped for failing to stop at a stop sign. During the traffic stop, the driver was arrested for failing to provide a driver's license and the vehicle was held by police. Then the defendant, a passenger, was asked to step out of the vehicle, handcuffed, and subjected to a pat down search where a firearm was discovered in his waistband. *Surles*, 2011 IL App (1st) 100068, ¶¶ 4-9. The reviewing court held that the defendant was placed under arrest when he was ordered out of the car and handcuffed, and the police lacked probable cause to arrest the

defendant. *Id.* ¶¶ 27-29. The court also found that there was no lawful reason to search the defendant and suppressed the firearm. *Id.* ¶ 41.

¶ 56 In *Bunch*, the defendant was again a passenger in a vehicle stopped for a traffic violation. The driver also failed to provide a driver's license and was arrested. The defendant was then ordered out of the vehicle and asked his name and where he was coming from. The officer shined a flashlight in the defendant's face and saw a small, clear plastic item containing something white in the defendant's mouth. The officer asked the defendant to spit out the item, and a bag with a white substance was recovered. A search of the vehicle yielded two additional plastic bags of a white substance. *Bunch*, 207 Ill. 2d at 9-11. The supreme court found that the detention of the defendant following the conclusion of the purpose of the traffic stop was unreasonable and the recovery of the narcotics was suppressed. *Id.* at 20.

¶ 57 In contrast with *Surles* and *Bunch*, the vehicle at issue was stopped based on extensive surveillance of a narcotics operation. The officers had information that a black Dodge Ram with California license plates would be exiting Interstate 55 at Harlem Avenue around 11 p.m. on November 1. Defendant was the passenger in a vehicle fitting this precise description. Unlike *Surles* and *Bunch*, defendant was not detained in the course of a routine traffic stop. His detention was part of an ongoing and extensive investigation of narcotics trafficking.

Moreover, once the consent to search was given, the officer had authority to search the vehicle.

¶ 58 We also find defendant's reliance on the recent United States Supreme Court decision in *Rodriguez v. United States*, ___U.S. ___, 135 S. Ct. 1609 (2015), to be misplaced. In *Rodriguez*, a K-9 police officer stopped a vehicle after observing it swerve onto the shoulder and then jerk back onto the road. The vehicle had two occupants, the defendant in the case is the driver. The officer conducted and completed his traffic stop and issued a warning. The officer then asked for

permission to walk his dog around the vehicle. The defendant said no, but the officer ordered the driver to turn off the ignition and exit the vehicle, which he did. On the second time around the car, the dog alerted to the presence of narcotics and a subsequent search revealed a large bag of methamphetamine and the defendant was subsequently arrested. *Id.* at 1612-13.

¶ 59 The defendant moved to suppress evidence because the officer prolonged the stop without a reasonable suspicion to conduct the dog sniff. The motion was denied. The Eighth Circuit affirmed the denial, finding the delay of seven or eight minutes to conducted the dog sniff to be *de minimis* and permissible. *Id.* at 1614. The Supreme Court disagreed, finding that the dog sniff could not be justified because it prolonged the time needed to complete the mission of the traffic stop. *Id.* at 1616. "Lacking the same close connection to roadway safety as the ordinary inquiries, a dog sniff is not fairly characterized as part of the officer's traffic mission." *Id.* at 1615.

"How could diligence be gauged other than by noting what the officer actually did and how he did it? If an officer can complete traffic-based inquiries expeditiously, then that is the amount of 'time reasonably required to complete [the stop's] mission.' *Caballes v. Illinois*, 543 U.S. 405, 407 (2005). As we said in *Caballes* and reiterate today, a traffic stop 'prolonged beyond' that point is 'unlawful.' *Ibid.* The critical question, then, is not whether the dog sniff occurs before or after the officer issues a ticket ***, but whether conducting the sniff 'prolongs'—i.e., adds time to—'the stop.' " *Id.* at 1616.

¶ 60 Here, unlike in *Rodriguez*, the mission of the traffic stop was not a routine traffic stop, but the intention was to stop the vehicle believed to be transporting narcotics as part of an extensive trafficking operation. The extension of time to perform the dog sniff, with the consent of the driver, was not prolonging a routine traffic stop, but was part of the mission and, thus, the search did not become unlawful.

¶ 61 Based on the foregoing, we reverse the trial court's order granting of the motion to suppress and we remand for further proceedings.

¶ 62 Reversed and remanded.