

NOTICE
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2018 IL App (5th) 160325-U

NO. 5-16-0325

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

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| THE PEOPLE OF THE STATE OF ILLINOIS, |) | Appeal from the |
| |) | Circuit Court of |
| Plaintiff-Appellee, |) | Fayette County. |
| |) | |
| v. |) | No. 15-CF-180 |
| |) | |
| JULIA AUGUSTA CONSTAN MACRI, |) | Honorable |
| |) | Don M. Sheafor, Jr., |
| Defendant-Appellant. |) | Judge, presiding. |

JUSTICE OVERSTREET delivered the judgment of the court.
Justices Welch and Moore concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court properly denied the defendant’s motion to suppress because the officer possessed reasonable and articulable facts indicating illegal activity to prolong valid traffic stop beyond time required to complete the stop’s initial mission.

¶ 2 Following a stipulated bench trial, the defendant, Julia Augusta Constan Macri, was convicted in the circuit court of Fayette County of unlawful manufacturing or delivery of cannabis (720 ILCS 550/5(g) (West 2014)) and sentenced to eight years’ imprisonment. She appeals from the denial of her motion to suppress evidence, arguing that she was illegally searched, detained, and arrested in violation of her constitutional rights because the traffic stop resulting in her arrest was extended in a way that was

constitutionally impermissible in order to obtain a canine open air sniff. For the reasons that follow, we affirm the circuit court's decision.

¶ 3 BACKGROUND

¶ 4 On October 23, 2015, the defendant was charged by information with unlawful manufacture or delivery of over 5000 grams of a substance containing cannabis (720 ILCS 550/5(g) (West 2014)), cannabis trafficking of more than 2500 grams (720 ILCS 550/5.1(a) (West 2014)), and unlawful possession of over 5000 grams of a substance containing cannabis (720 ILCS 550/4(g) (West 2014)). On January 14, 2016, the defendant filed a motion to suppress, alleging that she was illegally searched, detained, and arrested in violation of her fourth and fourteenth amendment rights under the United States Constitution (U.S. Const., amends. IV, XIV) and article I, section 6, of the Illinois Constitution of 1970 (Ill. Const. 1970, art. I, § 6). The defendant requested that the court enter an order suppressing any evidence obtained by way of this illegal search and arrest. On January 21, 2016, at the hearing on the motion to suppress, the following evidence was adduced.

¶ 5 On October 22, 2015, Stacy McElroy, a deputy with the Fayette County Sheriff's Department, spoke with Special Agent Task Force Officer Kevin Thebeau at approximately 2 p.m. Officer Thebeau told Deputy McElroy that he and Task Force Officer Matt Plassman, both municipal officers assigned as task force agents to the Drug Enforcement Administration (DEA), had stopped the defendant in a black GMC for driving with an expired registration tag and had issued her a warning for expired registration. The officers indicated that the defendant's GMC Terrain had Utah tags and

that the defendant was uncooperative. The defendant's written warning indicated that the officers had stopped the defendant on Interstate 70, eastbound, at mile marker 22. During this stop, the officers had become suspicious of the defendant's travel plans but did not have access to a K-9 unit for a narcotics-detection dog sniff during the stop.

¶ 6 Thereafter, Deputy McElroy began following the defendant's vehicle at mile marker 57. Recognizing that the defendant was following the vehicle in front of her too closely, Deputy McElroy stopped the defendant at mile marker 68, about 46 miles after the defendant's first stop that day. Prior to initiating the defendant's stop, Deputy McElroy contacted Fayette County Sheriff Chris Smith, who advised that he would contact K-9 Handler Ronnie Stevens to prepare for a narcotics-detection dog sniff if necessary. Deputy McElroy initially approached the defendant's vehicle at approximately 2:55 p.m., and Sheriff Smith, wearing a time-recorded body camera, arrived at 2:57 p.m.

¶ 7 When Deputy McElroy approached the vehicle, the defendant did not roll the window completely down to address him, but instead, she rolled the window down approximately six inches. Deputy McElroy testified that, in his experience, failing to roll the window completely down has revealed a driver's intent to limit the exposure of narcotics odor exiting from the interior of the vehicle. Deputy McElroy indicated to the defendant that he would be issuing warnings for following too closely and driving with an expired registration, and the defendant appeared agitated and irritated, explaining that she had previously been stopped by officers. When Deputy McElroy asked the defendant to step out of the vehicle and return to his squad car with him, she refused. Deputy

McElroy testified that if the defendant would have exited the vehicle, as he had requested, the process would have taken less time because he could have spoken to her while simultaneously issuing the warnings and running the checks.

¶ 8 Reviewing the time-recorded video of the defendant's stop, Deputy McElroy testified that at approximately 3:06 p.m., he had approached the defendant's vehicle a second time, and he was issuing the defendant's warning while running her criminal history. Deputy McElroy testified that at 3:05, dispatch had indicated it was having trouble running the defendant's criminal history because of the defendant's two middle names.

¶ 9 During Deputy McElroy's initial approach to the defendant's vehicle, the defendant provided her rental car agreement, and Deputy McElroy noticed that it was a quick-rental that required return of the vehicle to Salt Lake City in two days, on October 24, 2015. Deputy McElroy noted, however, that when questioned, the defendant stated she was traveling east to reach Pennsylvania and had rented the vehicle for a week and a half, with the required return date as the following Thursday. After Deputy McElroy's second approach, the defendant stated that Deputy McElroy could contact the rental car company. When Deputy McElroy telephoned the rental car company, it confirmed that October 24, 2015, was the vehicle's return date, which was inconsistent with the defendant's contention regarding her rental agreement.

¶ 10 Deputy McElroy testified that when Fayette County Deputy K-9 Handler Stevens arrived, he had finished writing the defendant's warning but was still in his squad car, concluding his conversation with the rental car company. Deputy McElroy

acknowledged that the video recorded a narcotics-detection dog at 3:17 p.m., 22 minutes after he had initiated the defendant's stop. Deputy McElroy testified that the narcotics-detection dog approached the vehicle at 3:18 p.m., 23 minutes after the stop began. Deputy McElroy testified that he was in his vehicle when the canine alerted to the presence of drugs in the defendant's vehicle. Deputy McElroy placed the defendant under arrest at 3:22 p.m. A subsequent search of the car revealed in excess of 5000 grams of cannabis.

¶ 11 On February 29, 2016, the circuit court entered its order on the defendant's motion to suppress. In its order, the circuit court found that Deputy McElroy's stop of the defendant's vehicle was based upon probable cause to believe that the defendant was driving too closely to another vehicle independent of any prior stop by other police officers. The circuit court found that subsequent to his two approaches to the defendant's vehicle, Deputy McElroy contacted the rental car company to check on the defendant's rental car agreement. The circuit court found that Deputy McElroy was 17 to 20 minutes longer into the stop on the rental agreement issue. The circuit court held that Deputy McElroy's contact with the rental car company was appropriate police action, as the defendant's statements were inconsistent with the rental document. The circuit court found that because Deputy McElroy testified that he had just finished his call with the rental car company or was completing the call while the K-9 unit was circling the defendant's vehicle, the narcotics-detection dog sniff was completed contemporaneously with the traffic stop. Accordingly, the circuit court denied the defendant's motion to suppress.

¶ 12 On April 13, 2016, after a stipulated bench trial, the circuit court found the defendant guilty of unlawful delivery or manufacture of cannabis more than 5000 grams (720 ILCS 550/5(g) (West 2014)); cannabis trafficking of 2500 grams of cannabis (720 ILCS 550/5.1(a) (West 2014)); and unlawful possession of more than 5000 grams of cannabis (720 ILCS 550/4(g) (West 2014)). On May 9, 2016, the defendant filed a motion for a new trial, which the circuit court denied on July 1, 2016. On July 5, 2016, the circuit court sentenced the defendant to eight years' imprisonment and three years' mandatory supervised release for unlawful manufacture or delivery of cannabis (720 ILCS 55/5(g) (West 2014)). On July 29, 2016, the defendant filed a notice of appeal.

¶ 13

ANALYSIS

¶ 14 On appeal, the defendant argues that the circuit court erred in denying her motion to dismiss because the canine free-air search was constitutionally impermissible because it occurred after a reasonable time had elapsed for completion of an investigation into the reasons for the traffic stop and because the officer's investigation into her rental car agreement was unrelated to said stop and, therefore, impermissibly extended the traffic stop.

¶ 15 We review the circuit court's ruling on a motion to suppress evidence under a two-part standard of review. *People v. Harris*, 228 Ill. 2d 222, 230 (2008). The circuit court's findings of fact are entitled to deference and will be reversed only if they are against the manifest weight of the evidence. *Id.* The circuit court's ultimate ruling as to whether suppression is warranted is reviewed *de novo*. *Id.*

¶ 16 The fourth amendment to the United States Constitution (U.S. Const., amend. IV) and article I, section 6, of the Illinois Constitution (Ill. Const. 1970, art. I, § 6) protect an individual from unreasonable searches and seizures, and to be constitutionally reasonable, a warrantless arrest must be supported by probable cause. *People v. O’Dell*, 392 Ill. App. 3d 979, 985 (2009). “It is well established, however, that, absent probable cause to arrest, a law enforcement officer ‘may stop and temporarily detain an individual for the purpose of a limited investigation if the officer is able to point to specific articulable facts which, taken together with reasonable inferences drawn from the officer’s experience, reasonably would justify the investigatory intrusion.’ ” *Id.* (quoting *People v. Frazier*, 248 Ill. App. 3d 6, 13 (1993)); see also *Terry v. Ohio*, 392 U.S. 1, 28 (1968); 725 ILCS 5/107-14 (West 2014) (peace officer may stop person in public place for reasonable period of time when officer reasonably infers that person has committed an offense and may demand name, address, and explanation of actions).

¶ 17 “A seizure for a traffic violation justifies a police investigation of that violation.” *Rodriguez v. United States*, 575 U.S. ___, ___, 135 S. Ct. 1609, 1614 (2015). As a relatively brief encounter, a routine traffic stop is more akin to a *Terry* stop than to a formal arrest. *Id.*; *Knowles v. Iowa*, 525 U.S. 113, 117 (1998); *Terry*, 392 U.S. 1. “Like a *Terry* stop, the tolerable duration of police inquiries in the traffic-stop context is determined by the seizure’s ‘mission’—to address the traffic violation that warranted the stop, [*Illinois v.*] *Caballes*, 543 U.S. [405,] 407 (2005)], and attend to related safety concerns.” *Rodriguez*, 575 U.S. at ___, 135 S. Ct. at 1615; see also *Florida v. Royer*, 460 U.S. 491, 500 (1983) (plurality opinion) (“The scope of the detention must be carefully

tailored to its underlying justification.”). Because addressing the infraction is the purpose of the stop, it may last no longer than necessary to effectuate that purpose. *Rodriguez*, 575 U.S. at ___, 135 S. Ct. at 1614. “Authority for the seizure thus ends when tasks tied to the traffic infraction are—or reasonably should have been—completed.” *Id.*; see also *United States v. Sharpe*, 470 U.S. 675, 686 (1985) (in determining the reasonable duration of a stop, “it [is] appropriate to examine whether the police diligently pursued [the] investigation”).

¶ 18 “Beyond determining whether to issue a traffic ticket, an officer’s mission includes ‘ordinary inquiries incident to [the traffic] stop.’” *Rodriguez*, 575 U.S. at ___, 135 S. Ct. at 1615 (quoting *Caballes*, 543 U.S. at 408). “Typically such inquiries involve checking the driver’s license, determining whether there are outstanding warrants against the driver, and inspecting the automobile’s registration and proof of insurance.” *Id.* at ___, 135 S. Ct. at 1615. “These checks serve the same objective as enforcement of the traffic code: ensuring that vehicles on the road are operated safely and responsibly.” *Id.*

¶ 19 “A dog sniff, by contrast, is a measure aimed at ‘detect[ing] evidence of ordinary criminal wrongdoing.’” *Id.* (quoting *Indianapolis v. Edmond*, 531 U.S. 32, 38 (2000)). “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.* Although a dog sniff conducted during a lawful traffic stop does not violate the fourth amendment’s proscription of unreasonable seizures (*Caballes*, 543 U.S. at 410), the critical question becomes whether conducting the dog sniff prolongs—adds time to—the stop. *Rodriguez*, 575 U.S. at ___, 135 S. Ct. at 1616.

¶ 20 Accordingly, a traffic stop becomes unlawful if it is prolonged beyond the time reasonably required to complete the mission; that is the time reasonably required to address the traffic violation that warranted the stop and to attend related safety concerns. *Id.* at ___, 135 S. Ct. at 1614-15. The seizure remains lawful so long as unrelated inquiries do not measurably extend the stop’s duration. *Id.* at ___, 135 S. Ct. at 1615. In *Rodriguez*, after issuing the defendant a warning for a traffic offense, the officer asked the defendant for permission to walk his narcotics-detection dog around the defendant’s vehicle. *Id.* at ___, 135 S. Ct. at 1613. When the defendant refused, the officer detained him until a second officer arrived, and he then retrieved his dog, who alerted to the presence of drugs in the vehicle. *Id.* Seven or eight minutes elapsed from the time the officer issued the written warning until the dog alerted to the presence of drugs. *Id.* The Court held that an officer may not extend an otherwise-completed traffic stop, absent reasonable suspicion, in order to conduct a narcotics-detection dog sniff. *Id.* at ___, 135 S. Ct. at 1614, 1616-17 (because Court of Appeals did not determine whether reasonable suspicion of criminal activity justified detention beyond completion of the traffic infraction investigation, the Court remanded the cause for further proceedings).

¶ 21 In the case *sub judice*, Officer McElroy initiated a traffic stop after observing the defendant driving her vehicle too closely to the vehicle traveling in front of her. It is a violation of the Illinois Vehicle Code to “follow another vehicle more closely than is reasonable and prudent.” 625 ILCS 5/11-710(a) (West 2014). The parties thus do not dispute that Officer McElroy’s stop of the defendant’s vehicle was valid at its inception (see *People v. Moss*, 217 Ill. 2d 511, 527 (2005) (“A vehicle stop based on an officer’s

observation of a traffic violation is valid at its inception.”)) and that, during the entirety of the roadside encounter, the defendant was “seized” (see *People v. Cosby*, 231 Ill. 2d 262, 273 (2008) (“[T]he detention by police of individuals during a traffic stop [i]s a ‘seizure’ of ‘persons’ within the meaning of the fourth amendment.”))).

¶ 22 However, the parties dispute whether the lawful traffic stop was extended beyond the time necessary to issue the warning tickets and to conduct ordinary inquiries incident to such a stop. Compare *Caballes*, 543 U.S. at 410 (where 10 minutes elapsed between stop and arrest and where second officer using narcotics-detection dog to sniff around exterior of vehicle arrived at scene while stop was in progress, no infringement on fourth amendment rights because lawful traffic stop was not extended beyond time necessary to issue warning ticket and to conduct ordinary inquiries incident to such a stop) with *Rodriguez*, 575 U.S. at ___, 135 S. Ct. at 1614 (where seven or eight minutes elapsed from the time written warning was issued until narcotics-detection dog indicated presence of drugs, police improperly extended an otherwise-completed traffic stop in order to conduct dog sniff).

¶ 23 Deputy McElroy initiated the stop at 2:55 p.m. and approached the vehicle, where the defendant provided the rental agreement showing the vehicle was scheduled to be returned in Salt Lake City, Utah, in two days. Deputy McElroy testified that he approached the vehicle a second time at 3:06, with his warning book in hand, and stood next to the vehicle while completing the defendant’s warning citation, conversing with her, and waiting for the defendant’s criminal history, which required additional time due to the defendant’s two middle names. Deputy McElroy contacted the rental car company

after this second approach. Deputy McElroy testified that when Deputy Stevens arrived with the narcotics-detection canine, he had “just hung up with the rental care company,” “had already finished the warning ticket,” and “had already talked to the [rental car company].” Deputy McElroy thus testified that he was finished with his tasks when the canine performed the free air sniff at approximately 3:18 p.m.

¶ 24 Between 3:06 and 3:18, Officer McElroy was investigating the defendant’s travel plans in relation to the rental car agreement and the K-9 unit was performing the free air sniff. Although asking questions unrelated to the purpose of a seizure is not unlawful, the questioning may not extend the time the defendant is detained. *Muehler v. Mena*, 544 U.S. 93, 101 (2005); see also *Arizona v. Johnson*, 555 U.S. 323, 333 (2009) (“An officer’s inquiries into matters unrelated to the justification for the traffic stop, this Court has made plain, do not convert the encounter into something other than a lawful seizure, so long as those inquiries do not measurably extend the duration of the stop.”). Likewise, police may not extend an otherwise-completed traffic stop, absent reasonable suspicion, in order to conduct a dog sniff. See *Rodriguez*, 575 U.S. at ___, 135 S. Ct. at 1614. Here, Deputy McElroy was finishing the purpose of the stop, including routine inquiries and related safety concerns, at 3:06; however, his questioning with regard to the defendant’s travel plans and how they corresponded with the rental agreement, along with the narcotics-detection dog sniff, extended the time the defendant was detained. The mission of the stop took a bit over 11 minutes, but Officer McElroy prolonged the stop another 12 minutes, until the canine alerted to the presence of narcotics. Thus, the duration of the detention was prolonged beyond the time reasonably required to complete the traffic

stop's mission and attend to related safety concerns. See *Rodriguez*, 575 U.S. at ___, 135 S. Ct. at 1614-15; *Caballes*, 543 U.S. at 407; *People v. Paddy*, 2017 IL App (2d) 160395, ¶ 44; *People v. Pulling*, 2015 IL App (3d) 140516, ¶ 18.

¶ 25 Given that Deputy McElroy's actions prolonged the traffic stop beyond its mission and related safety concerns, we must address whether those actions had a separate fourth amendment justification. See *Caballes*, 543 U.S. at 407; *People v. Baldwin*, 388 Ill. App. 3d 1028, 1035 (2009). "A traffic stop 'may be broadened into an investigative detention *** if the officer discovers specific, articulable facts which give rise to a reasonable suspicion that the defendant has committed, or is about to commit, a crime.'" *Baldwin*, 388 Ill. App. 3d at 1035 (quoting *People v. Ruffin*, 315 Ill. App. 3d 744, 748 (2000)); see also *Rodriguez*, 575 U.S. at ___, 135 S. Ct. at 1615 (with reasonable suspicion demanded to justify detaining individual, officer may conduct unrelated checks that prolong traffic stop). In other words, an officer may prolong the detention and expand the scope of the stop if he develops a reasonable suspicion of further illegal activity beyond that which prompted the initial stop. *Id.*

¶ 26 "The test for reasonable suspicion is less exacting than that for probable cause." *Village of Lincolnshire v. Kelly*, 389 Ill. App. 3d 881, 886 (2009). "Moreover, even probable cause does not demand a showing that the belief that a suspect has committed a crime be more likely true than false." *Id.* at 886-87 (citing *People v. Jones*, 215 Ill. 2d 261, 277 (2005)). "Therefore, although reasonable suspicion demands more than a mere hunch (*People v. Thomas*, 198 Ill. 2d 103, 110 (2001)), the standard requires only that 'a police officer must be able to point to specific, articulable facts which, when taken

together with the rational inferences from those facts, reasonably warrant the intrusion’ (*People v. Schacht*, 233 Ill. App. 3d 271, 275 (1992), citing *Terry*, 392 U.S. at 21 ***).” *Village of Lincolnshire*, 389 Ill. App. 3d at 887. Articulate suspicion must be drawn from specific facts, and rational inferences therefrom, measured under the totality of the circumstances and in light of the officer’s knowledge. *United States v. Tapia*, 912 F.2d 1367, 1370 (11th Cir. 1990). “For purposes of determining the existence of reasonable suspicion, ‘[t]he facts should not be viewed with analytical hindsight, but instead should be considered from the perspective of a reasonable officer at the time that the situation confronted him or her.’ ” *Village of Lincolnshire*, 389 Ill. App. 3d at 887 (quoting *People v. Thomas*, 198 Ill. 2d 103, 110 (2001)).

¶ 27 Here, the defendant was agitated and uncooperative, and she would not exit the vehicle. See *People v. Sorenson*, 196 Ill. 2d 425, 433 (2001) (“it is well established that following a lawful traffic stop, police may, as a matter of course, order the driver and any passengers out of the vehicle pending completion of the stop without violating the protections of the fourth amendment”). Moreover, when approached by Deputy McElroy during the traffic stop, the defendant did not roll the vehicle’s window down beyond six inches. Deputy McElroy testified that in his experience, failure to fully roll down a vehicle’s window indicates a reluctance to allow narcotics’ odors to escape the vehicle. Deputy McElroy further noted the lived-in condition of the rental car, which in Deputy McElroy’s experience reveals that the driver has been in the vehicle for an extended period of time doing “hard driving to get from Point A to Point B” and is common in criminal interdiction cases. Deputy McElroy further testified to the defendant’s excessive

amounts of luggage, *i.e.*, the “squared off bundle black duffle bags,” including one covered with a pillow or blanket to conceal it. Deputy McElroy testified that, in his experience, an excessive amount of luggage, especially “squared off bundle black duffle bags,” has a common use of transporting narcotics. Deputy McElroy also noted that the defendant was driving a rental vehicle, one with an expired registration tag, and that the defendant’s proffered travel plans did not coincide with her rental car agreement or with what the rental car company told Deputy McElroy during their conversation, thus indicating to him that it was not a legitimate trip in order to visit family in Pennsylvania, as proffered by the defendant. These facts gave rise to a reasonable and articulable suspicion of criminal activity sufficient to extend the traffic stop beyond its initial purpose. *United States v. Stepp*, 680 F.3d 651, 667 (6th Cir. 2012) (information that vehicle occupants were subject of prior narcotics conviction and investigation, when combined with their dubious travel plans and inability to produce rental car agreement, created reasonable suspicion that they might be involved in drug trafficking, as required to justify prolonged detention for questioning and dog sniff after traffic stop); *United States v. Briasco*, 640 F.3d 857, 859-60 (8th Cir. 2011) (officer had reasonable suspicion that defendant was illegally transporting drugs, and thus detaining defendant after traffic stop until drug dog arrived did not violate fourth amendment, where car had strong odor of air freshener, vehicle occupants claimed trunk was empty but car’s rear end was sagging, defendant was nervous, and occupants gave imprecise descriptions of travel plans); *People v. Moore*, 341 Ill. App. 3d 804, 811 (2003) (officer’s observation of nervousness and furtive movements found sufficient to warrant further detention); *People*

v. Welling, 324 Ill. App. 3d 594, 601 (2001) (facts gave rise to reasonable and articulable suspicion sufficient to extend traffic stop where neighbor had complained of drug dealing, defendant or driver had carried red bag from residence to van, defendant and driver subsequently disavowed knowledge regarding bag's contents, and driver's behavior was nervous).

¶ 28 Although Deputy McElroy acknowledged that he did not have probable cause to search the defendant's vehicle until the narcotics-detection dog alerted to the presence of narcotics, we find that the facts gave rise to a reasonable and articulable suspicion that the defendant was involved in criminal activity, sufficient to prolong her detention in order to contact the rental car company, as requested by the defendant, and to accommodate the open air canine sniff for narcotics. Once the drug-sniffing dog alerted to the presence of narcotics, probable cause to search the vehicle then existed. See *People v. Neuberger*, 2011 IL App (2d) 100379, ¶ 9. Accordingly, the evidence obtained as a result of the narcotics-detection dog sniff was properly admitted in the defendant's trial.

¶ 29 CONCLUSION

¶ 30 For the foregoing reasons, the judgment of the circuit court of Fayette County is hereby affirmed.

¶ 31 Affirmed.