

with identifying information. The videotape of the stop, which was admitted into evidence before the trial court, shows that at 6 minutes and 55 seconds into the traffic stop, Gulash was informed by his dispatcher that the defendant's Indiana driver's license was valid and that no arrest warrants existed for the defendant or his passenger. At 7 minutes and 12 seconds into the stop, Gulash nevertheless noted to another officer who had joined him that the defendant appeared to him to be "really, really nervous." At 8 minutes and 44 seconds into the stop, the dispatcher informed Gulash of previous drug arrests of the defendant in Indiana in 2004 and 2008. Immediately thereafter, at 9 minutes and 37 seconds into the stop, Gulash informed the dispatcher that he was going to attempt to gain the defendant's consent to search the truck. The defendant refused Gulash's repeated requests for consent. At 13 minutes and 18 seconds into the stop, Gulash asked the dispatcher to try to get a canine officer to the scene "in a reasonable amount of time." A canine officer from the Collinsville police department arrived on the scene at 28 minutes and 45 seconds into the stop. During the approximately 15 minutes while the dog was en route, Gulash remained outside of his patrol car with the defendant and the defendant's passenger, despite the fact that additional officers had arrived on the scene. At no point did Gulash write one or more citations to the defendant for the alleged traffic violations that purportedly formed the basis of Gulash's initial traffic stop. Once the dog arrived, a sniff of the defendant's truck began at 31 minutes and 15 seconds into the stop, and ended approximately 3 minutes later, with the dog's handler informing Gulash and the other officers present that the dog had "hit" on drug items in the truck.

¶ 5 The defendant was subsequently arrested and charged with unlawful possession of a controlled substance, unlawful possession of a methamphetamine precursor, unlawful possession of methamphetamine-manufacturing materials, and unlawful participation in methamphetamine manufacturing. He filed a motion to suppress, arguing that the traffic stop was unreasonably prolonged. After a hearing on the matter, the trial court granted his motion

to suppress in a six-page written order. The State filed a certificate of impairment, and this appeal followed. Additional facts will be provided as necessary throughout the remainder of this order.

¶ 6

ANALYSIS

¶ 7 We apply a two-part standard of review to a challenge to a trial court's ruling on a motion to suppress. *People v. Davenport*, 392 Ill. App. 3d 19, 24 (2009). We will not disturb the court's findings of fact unless they are against the manifest weight of the evidence. *Id.* However, because we are free to assess those facts relative to the issue presented in the case, our review of the trial court's ultimate legal ruling is *de novo*. *Id.* Even when a traffic stop is initially valid and lawful, it may become unlawful if police conduct during the stop "unreasonably prolongs the duration of the detention" caused by the stop. *People v. Baldwin*, 388 Ill. App. 3d 1028, 1033 (2009). Courts of review in Illinois have declined to adopt a bright-line rule for what constitutes unreasonably prolonging the duration of a traffic stop. *Id.* at 1034. Instead, we consider the totality of the circumstances involved, including "consideration of the brevity of the stop and whether the police acted diligently during the stop." *Id.* If we conclude that police conduct has unreasonably prolonged the duration of the detention caused by the traffic stop, we must ask whether a separate legal justification, such as a reasonable suspicion on the part of the officer involved that criminal activity is afoot, exists to broaden the stop into a lawful investigative detention. *Id.* at 1033.

¶ 8 In the case at bar, the trial judge found "that the original purpose of the traffic stop, driving with bright lights, was completed at approximately" 9 minutes and 59 seconds into the stop, when Gulash returned to the truck more than 3 minutes after having learned that the defendant's driver's license was valid and that he and his passenger had no warrants, but nevertheless asked the defendant to step out of the truck and began to attempt to gain the defendant's consent to search the truck. The trial judge noted that a delay of approximately

22 minutes followed before the dog began its sniff; the judge concluded that "considering the totality of the circumstances[,] this delay impermissibly extended the traffic stop." Additionally, the judge ruled that Gulash had no "specific articulable facts which gave rise to a reasonable suspicion justifying an investigative stop."

¶ 9 On appeal, the State contends that the defendant's "extreme nervousness, his prior drug history and his refusal to allow the search aroused reasonable suspicion to warrant further detention." The defendant points out that although the first two factors—the defendant's nervousness and his prior drug history—were raised by the State before the trial court, the third factor argued on appeal—the defendant's invocation of his constitutional right to refuse to consent to a search of his property—was not raised before the trial court as a ground supporting reasonable suspicion on the part of Officer Gulash, and accordingly is waived. See, e.g., *People v. Flores*, 245 Ill. App. 3d 149, 154 (1993) (issues not raised before trial court generally waived on appeal). We agree and decline the State's invitation to address this factor for the first time on appeal.

¶ 10 With regard to the defendant's nervousness and his drug history, the State points to our recent decision in *People v. Sinegal*, 409 Ill. App. 3d 1130 (2011), as support for its reasonable suspicion argument. However, our conclusion in *Sinegal* that probable cause existed for an officer to arrest the defendant and seize a package found in plain view in the defendant's vehicle after the defendant gave the officer consent to look into the vehicle was based upon more than the nervousness of the vehicle's occupants and the fact that each had prior drug charges: it was also based upon other suspicious behavior of the occupants (such as the officer's belief that they were trying to avoid him before he initiated his traffic stop and the fact that the passenger claimed he did not know where they were going, what was in the package, or how the package got in the car) and upon the officer's knowledge that the package he observed in plain view in the vehicle was the type of package commonly used to

transport illegal drugs. 409 Ill. App. 3d at 1135-36. Accordingly, we find *Sinegal* to be too factually different from the case at bar to provide us with much guidance.

¶ 11 Far more apposite is *People v. Baldwin*, 388 Ill. App. 3d 1028 (2009), which deals with facts similar to those in the case at bar. In *Baldwin*, our colleagues in the Third District affirmed the trial court's granting of the defendant's motion to suppress in a case in which a police officer stopped a vehicle in which the defendant was a passenger after observing two lane violations by the driver of the vehicle. 388 Ill. App. 3d at 1029, 1036. The *Baldwin* court found that at approximately 4 minutes and 30 seconds into the traffic stop, the officer had concluded the initial purpose of the stop, because no issues had arisen when he ran license and warrant information on the driver and his two passengers. *Id.* at 1034. However, rather than issuing a citation or warning ticket, the officer, who claimed the defendant exhibited signs of nervousness such as heavy breathing and avoidance of eye contact, spent approximately four additional minutes trying to gain consent to search the vehicle. When these attempts were rebuffed, the officer ordered the driver to return to the vehicle, then called for a drug-sniffing dog, which arrived two minutes later. *Id.* at 1035. The drug sniff was completed approximately 14 minutes after the officer's squad car camera began to record the stop, with said recording beginning just after the car in which the defendant was riding stopped. *Id.* at 1029, 1035. The court held that because the purpose of the initial stop was completed at 4 minutes and 30 seconds into the stop, "the duration of the detention was prolonged beyond the time reasonably required to complete the traffic stop." *Id.* at 1035. The court also held that the defendant's nervousness did not provide a reasonable suspicion to the officer that would amount to a separate legal justification to broaden the stop into a lawful investigative detention. *Id.* Rather, the court characterized the officer's observations as mere hunches and unparticularized suspicions, which are insufficient to justify broadening a stop into an investigatory detention. *Id.* In the absence of a reasonable, articulable

suspicion to prolong the detention, the trial court did not err in granting the defendant's motion to suppress. *Id.*

¶ 12 Applying the reasoning in *Baldwin* to the case at bar, we conclude that the trial court did not err in granting the defendant's motion to suppress. At 6 minutes and 55 seconds into the traffic stop, Gulash was informed by his dispatcher that the defendant's Indiana driver's license was valid and that no arrest warrants existed for the defendant or his passenger. At that moment, the purpose for the initial stop—driving with brights on and obstruction of the rear license plate by a wire—was completed, and Gulash should have released the defendant to be on his way, or, had he been in the process of writing citations or warnings to the defendant, should have completed that task without further delay. Instead, Gulash, like the officer in *Baldwin*, unreasonably prolonged the duration of the stop by continuing to detain the defendant, and by, after learning of the defendant's criminal history, attempting for several minutes to obtain consent to search the vehicle. We conclude that Gulash was at that time acting on a mere hunch and on unparticularized suspicions, not on a reasonable suspicion that an offense had been committed, regardless of the defendant's purported nervousness and his prior drug charges, and the officer therefore had no legal authority to broaden the stop into a lawful investigative detention. Moreover, as the trial court pointed out, Gulash waited an additional 4½ minutes after learning of the defendant's criminal history before requesting a canine, a fact that undermines the State's argument that reasonable suspicion existed. We note as well that it is apparent from watching the videotape of the stop that Gulash had no intention of writing citations or warnings to the defendant, as Gulash remained outside of his patrol car with the defendant during the entire 15-minute wait for the dog to arrive, despite the fact that other officers were present and the area was secured. It is clear to us that the traffic stop in this case was a pretextual one, and when the officer's conduct is considered in light of the totality of the circumstances surrounding this stop, we

cannot conclude the trial court erred in granting the defendant's motion to suppress.

¶ 13 The State also urges this court to consider the "delay" in this case to have begun when the dog was summoned, and to have ended when the dog arrived, not when the sniff began; thus, according to the State's theory, the delay was just over 12 minutes, not the 22 minutes cited by the trial court. The State contends that in a "small rural community with limited resources" such a delay is reasonable, given the limited number of dogs available and the geographical distance between jurisdictions that might share dogs. We begin by noting that the argument that Troy is a community meriting special treatment in our totality-of-the-circumstances analysis was not made in the trial court and is therefore waived. See, *e.g.*, *People v. Flores*, 245 Ill. App. 3d 149, 154 (1993) (issues not raised before trial court generally waived on appeal). Moreover, although the State asks us to take judicial notice that the population of Troy is just under 10,000 people, the State neglects other facts of which we might be inclined to take judicial notice were we to consider in depth the State's theory, such as the population of the county in which Troy is located (Madison County, population 269,282 in 2010, ninth largest county in the state), the proximity of Troy to other well-populated Madison County jurisdictions such as Collinsville and Edwardsville in the Metro-East area, tax data supporting the notion that Troy has "limited resources," as well as other facts that the State could have developed in the record, but did not, such as the exact number of sniff dogs in the surrounding area and their relative availability at any given time. Accordingly, waiver notwithstanding, we decline in this case to consider the State's argument that Troy should be treated differently than other Illinois communities in our totality-of-the-circumstances analysis.

¶ 14

CONCLUSION

¶ 15 For the foregoing reasons, we affirm the order of the circuit court of Madison County.

¶ 16 Affirmed.