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2012 IL App (3d) 120156-U

Order filed October 25, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

THE PEOPLE OF THE STATE OF)	Appeal from the Circuit Court
ILLINOIS,)	of the 14th Judicial Circuit,
)	Henry County, Illinois,
Plaintiff-Appellant,)	
)	Appeal No. 3-12-0156
v.)	Circuit No. 11-CF-203
)	
RICHARD S. BECKER,)	Honorable
)	Richard A. Zimmer,
Defendant-Appellee.)	Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Justices Carter and O'Brien concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court did not err in granting defendant's motion to suppress evidence. The traffic stop of defendant's vehicle was unreasonably prolonged when the police officer withheld the issuance of a warning ticket in order to perform a dog sniff unrelated to the traffic stop.
- ¶ 2 Defendant, Richard S. Becker, was charged with cannabis trafficking (720 ILCS 550/5.1(a) (West 2010)), possession of cannabis with intent to deliver (720 ILCS 550/5(f) (West 2010)), and possession of cannabis (720 ILCS 550/4(f) (West 2010)). The trial court granted

defendant's motion to suppress evidence. The State appealed, arguing that the trial court erred in finding that the police officer unreasonably prolonged the stop of defendant's vehicle by performing a dog sniff on the vehicle before issuing defendant a warning ticket. We affirm.

¶ 3

FACTS

¶ 4 On January 5, 2012, a hearing took place on defendant's motion to suppress evidence. Evidence showed that on June 15, 2011, defendant was traveling on Interstate 80 when he was pulled over by Officer Andrew Fratzke. A video recording of the traffic stopped showed that in the first minute of the stop, Fratzke approached the front passenger side window and explained that he had pulled defendant over for speeding. Fratzke asked defendant for his driver's license and registration, and returned to his squad car with the documentation. Fratzke remained in his squad car for six minutes. Seven minutes into the stop, Fratzke returned to the defendant's vehicle holding a dog leash. He stated:

"I am going to write you up a warning here in just a second; hey while I got you, I got a canine I'm gonna walk around the car real quick—take about 30 seconds—we'll get you your warning and get you on your way, ok, alright? Just roll your window up and stay in the vehicle, ok?"

¶ 5 Fratzke did not wait for a reply from defendant and returned to his vehicle. He retrieved the dog and walked it around defendant's vehicle twice. The dog alerted by lying down near the passenger-side rear fender. Fratzke returned the dog to his squad car and retrieved defendant's paperwork. Eight minutes and thirty-five seconds into the stop, Fratzke returned to defendant's vehicle with paperwork in his hand and told defendant he was giving him a warning. Fratzke requested that defendant turn off his vehicle and give him the keys so defendant could not drive

away. Fratzke questioned defendant about having drugs in the vehicle and then searched the trunk. The search revealed a suitcase with approximately nine pounds of cannabis.

¶ 6 At the suppression hearing, defendant argued that the purpose of the stop was unreasonably prolonged because Fratzke interrupted the process of issuing the warning ticket in order to perform the dog sniff. In ruling on the motion, the trial judge found that the initial stop of defendant's vehicle for speeding was lawful. The trial judge also found that the extension of the stop to facilitate the dog sniff was unreasonable in light of the totality of the circumstances and there was no reasonable articulable suspicion to prolong the stop. The State appealed.

¶ 7 ANALYSIS

¶ 8 On appeal, the State argues that the trial court erred in granting defendant's motion to suppress. It is undisputed that the initial seizure of defendant was lawful because there was probable cause to believe that defendant was speeding. Thus, the sole issue on appeal is whether refraining from issuing a warning ticket in order to explain to defendant that a dog sniff was going to be performed and then performing the dog sniff was an unreasonable prolongation of the stop in violation of the fourth amendment.

¶ 9 We review the circuit court's ruling on a motion to suppress evidence under a two-part test. *People v. Harris*, 228 Ill. 2d 222 (2008). The trial judge's factual findings are entitled to deference and will be reversed only if manifestly erroneous. *Id.* The ultimate ruling on whether to grant the motion to suppress is a question of law reviewed *de novo*. *Id.*

¶ 10 Both the federal and Illinois constitutions protect citizens from unreasonable searches and seizures. U.S. Const., amend. IV; Ill. Const. 1970, art. I, § 6. Thus, the fourth amendment attaches where a search or seizure takes place. *People v. Bartelt*, 241 Ill. 2d 217 (2011).

Stopping an automobile and detaining its occupants constitutes a seizure. *Brendlin v. California*, 551 U.S. 249 (2007); *Harris*, 228 Ill. 2d 222. A seizure that is lawful at its inception can become unlawful as violating the fourth amendment if it either: (1) unreasonably prolongs the duration of the detention beyond the time necessary to effectuate the purpose of the stop; or (2) independently triggers the fourth amendment. *Illinois v. Caballes*, 543 U.S. 405 (2005); *Harris*, 228 Ill. 2d 222. The determination of whether a stop was unreasonably prolonged requires an examination of the totality of the circumstances. *People v. Baldwin*, 388 Ill. App. 3d 1028 (2009).

¶ 11 In this case, Fratzke was ready to conclude the stop after seven minutes. However, instead of issuing the warning ticket, he took additional time to perform a dog sniff. Under these circumstances, we hold that Fratzke unreasonably prolonged the duration of the traffic stop beyond the time necessary to issue the warning. See *People v. Cosby*, 231 Ill. 2d 262 (2008) (providing that the return of the paperwork signals the end of a traffic stop).

¶ 12 The State cites *People v. Driggers*, 222 Ill. 2d 65 (2006), to support its contention that the reasonableness of the duration of the traffic stop is to be evaluated by the total length of the stop. However, in evaluating whether the duration of a stop was unreasonably prolonged, we view the totality of the circumstances, with the total length of a traffic stop only one factor to consider. See *Baldwin*, 388 Ill. App. 3d 1028.

¶ 13 Additionally, *Driggers* does not address the question of whether interrupting a traffic stop in order to execute a dog sniff unreasonably prolongs a traffic stop. In *Driggers*, just as in the present case, the officer stopped writing the defendant a warning ticket in order to perform the dog sniff. However, the issue on appeal in *Driggers* was whether the dog sniff was

unconstitutional because the officer lacked reasonable suspicion to perform the dog sniff. Our supreme court held that reasonable suspicion was not needed to perform the dog sniff. The court found that the dog sniff did not infringe the motorist's constitutionally protected interest in privacy where it revealed no information other than that of materials that a defendant had no right to possess. *Driggers*, 222 Ill. 2d 65, citing *Caballes*, 543 U.S. 405. In *Driggers*, no issue was raised regarding the duration of the stop.

¶ 14 Under the circumstances of this case, we hold that the duration of the traffic stop was unreasonably prolonged beyond the time reasonably required to issue the warning ticket. This is not a case where one officer performed the dog sniff while the other officer continued writing and issuing the traffic ticket. In this case, Fratzke unreasonably prolonged the stop by withholding the issuance of the ticket for the sole purpose of performing a dog sniff.

Accordingly, we hold the circuit court did not err in granting defendant's motion to suppress.

¶ 15 CONCLUSION

¶ 16 The judgment of the circuit court of Henry County is affirmed.

¶ 17 Affirmed.