

The Supreme Court of the State of Louisiana

STATE OF LOUISIANA

No.2020-KK-01193

VS.

JAY-QUAN CARTER

IN RE: State of Louisiana - Applicant Plaintiff; Applying For Writ Of Certiorari, Parish of Tangipahoa, 21st Judicial District Court Number(s) 1701960, 1st Circuit Court of Appeal, Number(s) 2020 KW 0504;

January 26, 2021

Writ application granted. See per curiam.

JBM

JLW

JDH

SJC

WJC

Genovese, J., dissents and assigns reasons.

Griffin, J., dissents for the reasons assigned by Justice Genovese.

Supreme Court of Louisiana
January 26, 2021


Clerk of Court
For the Court

01/26/2021

SUPREME COURT OF LOUISIANA

No. 2020-KK-1193

STATE OF LOUISIANA

VERSUS

JAY-QUAN CARTER

**ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,
FIRST CIRCUIT, PARISH OF TANGIPAHOA**

PER CURIAM

We grant the State's writ application to review a judgment from the court of appeal reversing the trial court's denial of respondent Jay-Quan Carter's motion to suppress evidence seized as the result of a dog sniff during a routine traffic stop. The court of appeal found the state trooper had extended the stop beyond the time required to issue a citation for the minor traffic violation to allow the canine unit to arrive in contravention of the parameters set forth in *Rodriguez v. United States*, 575 U.S. 348, 350-351, 135 S.Ct. 1609, 191 L.Ed. 2d 492 (2015).

The testimony and evidence from the suppression hearing disclose the following. At approximately 1:30 a.m., on the morning of April 19, 2017, Louisiana State Trooper Ryan Zimmerman was on routine patrol on I-12 in Tangipahoa Parish when he observed a motorist traveling below the speed limit. He pulled onto the interstate behind the motorist, noticed the vehicle's partially obstructed license plate, and observed the driver cross over the solid yellow line on the left shoulder of the road.¹ At that point, Zimmerman decided to stop the motorist for a traffic violation: improper lane usage. Two men were in the vehicle: Caliph Romero, the driver, and Jay-Quan Carter, the front seat passenger.

Zimmerman made contact with Romero from the passenger side open window. He obtained Romero's license, asked him to exit and step to the rear of the

¹ The vehicle was a Honda Civic with a North Carolina license plate.

vehicle, and explained that he had stopped the vehicle for crossing the yellow line. According to Zimmerman, Romero was nervous and his hands were shaking. Zimmerman asked Romero where he was coming from and where he was going. After repeating the questions back to Zimmerman, which Zimmerman found odd, Romero told him that he had been visiting family in Texas. Romero explained that the vehicle he was driving was a rental which the passenger, Carter, had rented. Romero said Carter was his “brother.”

Zimmerman returned to the passenger side of the vehicle to question Carter. Carter explained the two men were in Houston, where they stayed for a couple of days with friends, but didn’t know the exact area. According to Zimmerman, Carter was nervous as he struggled to remove his driver’s license, so he handed his wallet to Zimmerman to remove it. Carter also gave Zimmerman the rental agreement and told him Romero “is a friend of mine,” but “he’s like a brother to me, though.”

Zimmerman re-entered his police vehicle to conduct a warrant check and examine the rental agreement. The agreement indicated Carter had rented the vehicle in Charlotte, North Carolina on April 17 - two days prior to the stop - and the vehicle had to be returned to Charlotte on April 19, the day of the stop. Zimmerman testified that he doubted Romero’s assertion that the two men had been in Texas for multiple days, believing it was impossible. Zimmerman said he performed a simple google search which indicated a roughly 15-hour drive from Charlotte to Houston. Because the vehicle was rented the afternoon of the 17th, even assuming it was driven straight to Texas with no stops, the two men would not have arrived in Texas until roughly 4 a.m. on April 18. And because the stop occurred roughly four hours from the Texas border on the morning of the 19th, this would mean they would have been in Texas from about 4 a.m. on the 18th to 8 or 9 p.m. on that same date. Zimmerman found it suspicious that one would travel so far for so short a stay. Zimmerman also

noted that the rental agreement placed a 1,000 mile travel limit on the vehicle, which a roundtrip between North Carolina and Texas would exceed by over 1,000 miles.

Zimmerman exited his police vehicle and reengaged Romero. At that point, Zimmerman testified, he felt he had reasonable suspicion to prolong the stop and believed there was “more to it than just issuing a citation.” Zimmerman informed Romero that he was not listed on the rental agreement and therefore should not be driving the vehicle. Romero responded that he recently began driving because Carter was tired; Zimmerman expressed incredulity as to why Romero would be tired, as Houston was only a few hours from the point of the stop. Zimmerman informed Romero that a driver in Louisiana must keep his vehicle in the proper lane of travel.

Zimmerman then asked Carter to exit the vehicle and walk back to the police vehicle, where he questioned Carter further about the rental agreement. He also asked Carter who his friend in Texas was, to which Carter responded that he didn't know. Zimmerman asked Carter if he had ever been arrested before, to which Carter replied that he had been arrested for “weed,” and that he was “going to court” soon. Zimmerman then asked Carter whether there was cocaine or other contraband in the vehicle and presented him with a “consent to search form.” Carter withheld consent.

By the 15:34 mark on the video, Officer Shane Tilford, a canine handler, arrived on the scene. The officers conducted a pat down of Romero and Carter, but found no weapons. Tilford's canine then conducted a drug sniff of the vehicle and alerted on the trunk. A search of the vehicle yielded more than 500 grams of cocaine. Carter and Romero were arrested.

The trial court denied Carter's motion to suppress, stating:

In this particular case, based on the violation that was charged, which was improper lane usage, I did find that the stop was in excess of an amount of time which I consider to be reasonable to write a ticket for that type of violation absent some other finding with respect to

reasonable suspicion. I think this is basically a close call with regard to whether or not there is reasonable suspicion.

As is often the case, there was a discussion of nervousness. There was also testimony as to inconsistent statements as to the purpose of the trip that was being engaged in by defendants. There was also some issue with respect to the length relative to the explanation of the trip.

While I think this is a fairly close factual situation, I think there is sufficient reasonable suspicion to justify the actions that were taken, and I will therefore deny the motion to suppress.

The Fourth Amendment to the United States Constitution and Article I, § 5, of the Louisiana Constitution protect people against unreasonable searches and seizures. A defendant may move to suppress any evidence from use at trial on the basis that it was unconstitutionally obtained. La. Code Crim. Pro. art. 703(A). A search and seizure conducted without a warrant issued on probable cause is *per se* unreasonable unless the State can affirmatively show that the warrantless search and seizure was justified by one of the narrowly drawn exceptions to the warrant requirement. *See* La. Code Crim. Pro. art. 703(D); *State v. Surtain*, 2009-1835, p.7 (La. 3/16/10), 31 So. 3d 1037, 1043. The trial court's ruling on the matter must be afforded great weight and will not be set aside unless there is an abuse of discretion. *State v. Thompson*, 2011-0915, p. 13 (La. 5/8/12), 93 So. 3d 553, 563; *State v. Wells*, 2008-2262, p. 5 (La. 7/6/10); 45 So. 3d 580, 581. When a trial court makes findings of fact based on the credibility of the witnesses, a reviewing court owes those findings great deference, and may not overturn those findings unless there is no evidence to support those findings. *Thompson*, 2011-0915, p. 13-14, 93 So. 3d at 563. Legal findings or conclusions of the trial court are reviewed *de novo*. *Id.* at 14, 93 So. 3d at 563.

Pursuant to the investigatory stop recognized by the United States Supreme Court in *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed. 2d 889 (1968), a police officer may briefly seize a person if the officer has an objectively reasonable suspicion, supported by specific and articulable facts, that the person is, or is about

to be, engaged in criminal conduct or is wanted for past criminal acts. Louisiana Code of Criminal Procedure article 215.1(A) provides that an officer's reasonable suspicion of crime allows a limited investigation of a person. However, reasonable suspicion is insufficient to justify custodial interrogation, even though the interrogation is investigative. *Florida v. Royer*, 460 U.S. 491, 499, 103 S.Ct. 1319, 1325, 75 L.Ed.2d 229 (1983); *State v. Fisher*, 1997-1133, p. 5 (La. 9/9/98), 720 So. 2d 1179, 1183.

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, 116 S.Ct. 1769, 1772, 135 L.Ed.2d 89 (1996) (citations omitted). The standard is a purely objective one that does not take into account the subjective beliefs or expectations of the detaining officer. *Id.*, 517 U.S. at 813, 116 S.Ct. at 1774 ("Subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis."). Although they may serve as the prelude to the investigation of much more serious offenses, even relatively minor traffic violations provide an objective basis for lawfully detaining the vehicle and its occupants. *State v. Waters*, 2000-0356, p. 4 (La. 3/12/01), 780 So. 2d 1053, 1056 (*per curiam*). Louisiana Code of Criminal Procedure article 215.1(D) provides that in conducting a traffic stop "an officer may not detain a motorist for a period of time longer than reasonably necessary to complete the investigation of the violation and issuance of a citation for the violation, absent reasonable suspicion of additional criminal activity." During the stop, the officer has the right to conduct a routine license and registration check and, while doing so, may engage in conversation with the driver and any passenger. *See State v. Lopez*, 2000-0562, p. 3 (La. 10/30/00), 772 So. 2d 90, 92-93 (*per curiam*). If the officer develops reasonable suspicion of criminal activity, he may further detain the individual while he diligently pursues a means of investigation likely to quickly confirm or dispel the particular suspicion.

United States v. Sharpe, 470 U.S. 675, 686, 105 S.Ct. 1568, 1575, 84 L.Ed.2d 605 (1985). In determining whether the officer has a reasonable suspicion of some separate illegal activity that justifies further detention, the totality of the circumstances must be taken into account. *State v. Kalie*, 1996-2650, p. 3 (La. 9/19/97), 699 So. 2d 879, 881 (*per curiam*).

In *Illinois v. Caballes*, 543 U.S. 405, 406, 125 S.Ct. 834, 160 L.Ed.2d 842 (2005), the Supreme Court held that a dog sniff conducted during a lawful traffic stop does not violate the Fourth Amendment's proscription of unreasonable seizures. "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" *id.*, 543 U.S. at 407, 125 S.Ct. 834 and attend to related safety concerns, *Rodriguez*, 575 U.S. 348, 135 S.Ct. 1609, 1619-1620, 191 L.Ed.2d 492. In *Rodriguez*, , the Supreme Court reiterated its holding in *Caballes* and added that "[b]ecause addressing the infraction is the purpose of the stop, it may 'last no longer than is necessary to effectuate th[at] purpose'" and "[a]uthority for the seizure thus ends when tasks tied to the traffic infraction are—or reasonably should have been—completed." *Id.* However, recognizing that "detours" from the mission of traffic enforcement can be justified under some circumstances, the *Rodriguez* court found that reasonable suspicion of criminal activity can justify detention beyond completion of the traffic infraction investigation, and the court remanded to the Eighth Circuit to determine whether such reasonable suspicion existed. *Rodriguez*, 575 U.S. at 358, 135 S.Ct. at 1616-17.

In the present case, the trial court found the traffic stop was extended beyond the time he considered reasonable to write a ticket for the traffic violation, absent some finding of reasonable suspicion. The trial court conceded it was a close call, but ultimately concluded the state trooper had reasonable suspicion to extend the stop. The trial court apparently found Zimmerman to be a credible witness,

referencing his testimony that Romero and Carter were nervous and their statements as to the purpose and length of the trip were inconsistent. The trial court's finding of reasonable suspicion based on Zimmerman's testimony is entitled to great deference. Furthermore, the vehicle rental agreement indicates Romero was not an authorized driver and Zimmerman suspected Carter had exceeded the 1000 mile travel limit under the agreement. Last, the dashcam video showed less than 17 minutes had elapsed between the initial stop of the vehicle and the canine's alert to the trunk. Louisiana courts have upheld detentions of similar duration when the detaining officers diligently pursued their investigation. *See e.g., State v. Miller*, 2000-1657, p. 5 (La. 10/26/01), 798 So.2d 947, 951 (Court upheld 53-minute detention where officers acted diligently in summoning K-9 unit to search vehicle suspected of transporting marijuana); *State v. Coleman*, 2019-1458, pp. 5-6 (La. App. 1 Cir. 6/12/20), 305 So. 3d 878, 882, *writ denied* 2020-0868 (La. 10/20/20), 303 So. 3d 294 (court upheld a 20-minute traffic stop where defendant appeared nervous and had no proof of insurance, the trooper observed marijuana residue on the window, and information obtained from a license plate reader indicated defendant was untruthful); *State v. Burney*, 47,056, pp. 11-12 (La. App. 2 Cir. 5/23/12), 92 So.3d 1184, 1192-93 (extension of lawful traffic stop for approximately 43 minutes from the time defendant refused consent to search the vehicle to the K-9 unit's arrival was justifiable); *State v. Romsky*, 2001-1067, p. 10 (La. App. 5 Cir. 4/10/02), 817 So.2d 186, 192 (60-minute detention justifiable where officer called K-9 unit within 5 minutes of stopping vehicle suspected of transporting narcotics).

Given the totality of the circumstances, we cannot say the trial court abused its discretion in denying Carter's motion to suppress the evidence. The testimony and evidence support the trial's court's finding that Zimmerman had reasonable suspicion of possible criminal activity to extend the stop to allow a canine to conduct

a sniff of the vehicle for contraband. Thus, we find the court of appeal erred in reversing the trial court and suppressing the evidence.

Accordingly, the judgment of the court of appeal is reversed and vacated, the judgment of the trial court denying the defendant's motion to suppress the evidence is reinstated, and the case remanded for further proceedings.