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DISTRICT III

February 14, 2023

To:

Hon. John M. Yackel
Circuit Court Judge
Electronic Notice

John W. Kellis
Electronic Notice

Marge Kelsey
Clerk of Circuit Court
Sawyer County Courthouse
Electronic Notice

Megan Elizabeth Lyneis
Electronic Notice

You are hereby notified that the Court has entered the following opinion and order:

2021AP1389-CR State of Wisconsin v. James Quinton Griffin
(L. C. No. 2020CF33)

Before Stark, P.J., Hruz and Gill, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

James Griffin appeals from a judgment convicting him of possession with intent to deliver more than fifty grams of heroin. Griffin contends that evidence seized during a traffic stop should have been suppressed because law enforcement officers improperly extended the duration of the stop to accommodate a dog sniff of his vehicle. After reviewing the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2021-22).¹ We affirm.

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

It is constitutionally permissible under the Fourth Amendment for a law enforcement officer to briefly detain an individual for investigative questioning when there exists a reasonable suspicion, based upon specific and articulable facts together with rational inferences drawn from those facts, that criminal activity may be afoot and that action regarding that criminal activity would be appropriate. See *Terry v. Ohio*, 392 U.S. 1, 21-22 (1968). An investigatory stop “must be temporary and last no longer than is necessary to effectuate the purpose of the stop.” *Florida v. Royer*, 460 U.S. 491, 500 (1983). If during an investigatory stop an officer becomes aware of facts sufficient to give rise to a reasonable suspicion that the person has committed or is committing a distinct offense, however, the purpose of the stop may expand and the length of the stop may be properly extended to investigate the new suspicion. *State v. Colstad*, 2003 WI App 25, ¶19, 260 Wis. 2d 406, 659 N.W.2d 394.

In the context of a traffic stop, routine measures such as checking a driver’s license, determining whether there are outstanding warrants against the driver, and inspecting the automobile’s registration and proof of insurance do not unreasonably extend the stop because they are related to the same objective as enforcement of the traffic code: ensuring that vehicles on the road are operated safely and responsibly. *Rodriguez v. United States*, 575 U.S. 348-49, 354 (2015) (holding that a dog sniff is not part of the traffic mission, and it does not justify prolonged detention once a ticket has been issued). Absent reasonable suspicion of other criminal activity, the authority for a traffic stop ends “when tasks tied to the traffic infraction are—or reasonably should have been—completed.” *Id.* at 349 (emphasis added). This means that law enforcement officers can lawfully conduct a dog sniff of the exterior of a driver’s vehicle as long as the sniff is “conducted simultaneously with mission-related activities” and

does not “measurably extend the duration of the stop.” *State v. Wright*, 2019 WI 45, ¶43, 386 Wis. 2d 495, 926 N.W.2d 157.

When reviewing a motion to suppress evidence, we will uphold the circuit court’s findings of fact unless they are clearly erroneous. WIS. STAT. § 805.17(2); *State v. Hindsley*, 2000 WI App 130, ¶22, 237 Wis. 2d 358, 614 N.W.2d 48. We will independently determine, however, whether the facts found by the circuit court satisfy applicable constitutional provisions. *Hindsley*, 237 Wis. 2d 358, ¶22.

Here, based upon testimony at the suppression hearing,² the circuit court found that Sawyer County Sheriff’s Deputy Casey Culhane stopped Griffin’s vehicle because it did not appear Griffin was wearing a seat belt. Culhane advised Griffin that he was going to issue him a citation for the seatbelt violation and check his driving and warrant statuses. Culhane collected Griffin’s identification and proof of insurance, and he then returned to his squad car. While in the squad car, Culhane requested that a police canine (K-9) unit respond to the traffic stop. Culhane discovered from dispatch that Griffin did not have a valid driver’s license and that he had a nonextraditable warrant from another state.

The K-9 unit arrived and conducted a dog sniff while Culhane was still completing citations. The K-9 officer returned the dog to his squad car and advised Culhane that the dog had positively alerted for the presence of drugs while Culhane was issuing the citations to Griffin.

² Griffin refers in his appellate brief to additional facts set forth in a police report that was attached to the complaint. The report is not before us, however, because it was not introduced into evidence at the suppression hearing.

The circuit court concluded there was “no evidence to show that the stop was delayed beyond the time when, as [*Rodriguez*] says, the mission should have been completed.” (Formatting altered.)

Griffin contends that the State failed to meet its burden of proof by establishing that the K-9 officer completed his dog sniff before Culhane completed the stop. Instead, he argues that the suppression hearing testimony established that Culhane’s “mission related tasks ended—or reasonably should have ended—by the time [the K-9 officer] completed the dog sniff, placed his dog back in his vehicle, and approached Culhane about the dog’s alert.” This contention is flawed in two ways. First, the constitutionally relevant moment providing grounds to search Griffin’s car for drugs was when the dog actually alerted to the presence of drugs in Griffin’s car, not when the dog sniff was completed, when the dog was returned to the vehicle, or when the K-9 officer informed Culhane about the alert. See *State v. Miller*, 2002 WI App 150, ¶12, 256 Wis. 2d 80, 647 N.W.2d 348. Second, we review the timing of when the dog sniff occurred in relation to when the citations were issued as a question of fact, not as a burden-of-proof issue. The circuit court’s finding that the dog sniff occurred “while” Culhane was working on the citations was directly supported by Culhane’s testimony and is not clearly erroneous. Indeed, Griffin himself acknowledges in his brief that Culhane testified he did not get out of his squad car to issue the citations until *after* the K-9 officer “did his exterior sniff.”

We conclude, as did the circuit court, that the dog sniff did not measurably extend the traffic stop in this case because the two missions were performed simultaneously and the dog alerted for the presence of drugs before the citations were issued. In light of our conclusion that the dog sniff did not measurably extend the traffic stop, we need not address Griffin’s additional argument that there were no other facts providing reasonable suspicion to extend the stop.

Therefore,

IT IS ORDERED that the judgment of conviction is summarily affirmed under WIS. STAT. RULE 809.21(1).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals