

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOHNATHAN A. TORRES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 70582

FILED

JUN 09 2017

J. M. GREGORY
CLERK OF THE COURT
BY *J. M. Gregory*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Jonathan Torres appeals the denial of a motion to suppress following a guilty plea to trafficking in a controlled substance. Ninth Judicial District Court, Douglas County; Thomas W. Gregory, Judge.

Torres was a passenger in a vehicle stopped by a sheriff's deputy for a minor traffic infraction. During the stop a drug-sniffing dog was dispatched to the scene and alerted on the car. A search by deputies revealed controlled substances. On appeal, Torres argues that the district court should have suppressed the evidence because the deputy unreasonably prolonged the stop under the guise of "officer safety" and delayed writing a traffic citation in order to buy time for the dog sniff.¹

"Suppression issues present mixed questions of law and fact. This court reviews findings of fact for clear error, but the legal consequences of those facts involve questions of law that we review de novo. The reasonableness of a seizure is a matter of law reviewed de novo." *State v. Beckman*, 129 Nev. 481, 486, 305 P.3d 912, 916 (2013) (internal quotation marks and citations omitted).

¹We do not recount the facts except as necessary to our disposition.

A traffic stop can violate the Fourth Amendment if it is prolonged beyond the time “reasonably required to complete the mission of issuing a warning ticket.” *Rodriguez v. United States*, ___ U.S. ___, ___, 135 S.Ct. 1609, 1615 (2015). During a stop, officers may conduct such routine activities as checking the driver’s license, determining whether there are outstanding warrants against the driver, checking the registration and proof of driving insurance, and other activities that “serve the same objective as enforcement of the traffic code: ensuring that vehicles on the road are operated safely and responsibly.” *Id.*

However, police may not prolong the length of a traffic stop in order to conduct an unrelated side investigation aimed at “detecting evidence of ordinary criminal wrongdoing”—like conducting a dog sniff—absent individualized suspicion supporting that search and seizure. *Id.* at ___, 135 S.Ct. at 1619. The length of the traffic stop is always gauged by “the amount of time reasonably required to complete the stop’s mission.” *Id.* at ___, 135 S.Ct. at 1618. “[T]he critical question, then, is not whether the dog sniff occurs before or after the officer issues a ticket . . . but whether conducting the sniff ‘prolongs’—i.e., adds time to—‘the stop.’” *Id.* at ___, 135 S.Ct. at 1616 (internal citations omitted). “A traffic stop that is legitimate when initiated becomes illegitimate when the officer detains the car and driver beyond the time required to process the traffic offense, unless the extended detention is consensual, de minimis, or justified by a reasonable articulable suspicion of criminal activity.” *Beckman*, 129 Nev. at 484, 305 P.3d at 915 (ultimately holding that a nine minute delay was unreasonable because it “doubl[ed] the length of the stop” and the officer lacked reasonable suspicion of criminal activity).

Here, the initial stop occurred shortly after 1:09 a.m. The deputy testified that a "typical" traffic stop takes him approximately 15 to 20 minutes to complete which includes a routine check for outstanding warrants followed by 10 to 15 minutes to write a citation. However, the deputy testified that this stop was more complicated than a typical stop because the car had two occupants, one of whom had no identification, and because the driver's license had been issued from a state other than Nevada (Colorado), and the vehicle was registered in yet a third state (California). Further, the driver provided incomplete information about her address so additional questioning was needed.

At 1:17 and 1:19 a.m. respectively, the deputy initiated radio calls to request information on the driver's license status, the passenger's identity, whether the vehicle was properly registered in California, and whether any warrants were outstanding. He received a negative response regarding warrants, but discovered that the two occupants of the vehicle had previously been arrested together for a drug offense. At some point during the stop he requested the assistance of a canine unit to perform a dog drug sniff, although the exact time of the request is unclear.

The deputy began writing a traffic ticket at 1:31 and the sergeant arrived with the drug dog at 1:36. The drug sniff was complete before the deputy finished writing the ticket although the exact time of the alert by the dog is not stated in the record. The deputy finished writing the ticket sometime between 1:41 and 1:46.

Torres argues that because this stop lasted as long as 32 to 37 minutes (well beyond the 15 to 20 minutes that the deputy testified it normally takes), and the deputy unreasonably extended the stop in order

to conduct an illegal side investigation for drugs without reasonable suspicion.

The problem with Torres' argument is that, on appeal, we are constrained by the factual findings made by the district court. The district court specifically found, as a factual matter, that the deputy did not know the legal status of the driver of the vehicle until sometime after 1:25. This is corroborated by the radio dispatch log (admitted into evidence below) which reflects that the deputy radioed requests for information regarding the occupants at 1:17 and 1:19, and although dispatch responded initially regarding warrants, dispatch radioed back at 1:25 that it was still checking for data about the driver and/or occupant. Thus, even had no dog sniff been conducted, the deputy could have reasonably waited to begin writing the ticket until after 1:25.


In response, Torres argues that the dispatch log still indicates that the deputy inexplicably waited a full six minutes after the 1:25 call before starting to write a traffic citation at 1:31, and he attributes this six-minute delay to the dog sniff. But what's missing from the record is how long the 1:25 radio call lasted. If the radio call lasted only a few seconds, then Torres could possibly be correct that there was a delay of six-minutes. However, if the radio call took several minutes to complete, possibly even up to six minutes, then there was either no delay whatsoever, or only a de minimis delay, between the time the deputy learned the legal status of the driver and the time he began writing the traffic ticket. The deputy did not remember how long the radio call took, and neither party presented any other evidence on this point.

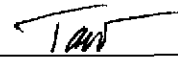
The district court's factual finding appears to be properly based upon the limited information available: since the radio call began at


1:25, the deputy could not have known everything he needed to know to write the ticket until sometime after 1:25, but the precise time when the radio call ended is unclear. Without knowing more about the exact length of the radio call, we cannot determine whether the deputy unreasonably delayed the stop (as Torres alleges), or whether the deputy instead wrote the ticket without delay immediately upon receiving the information he needed from the dispatcher as he testified.

The appealing party always bears the burden of proving that error occurred. As we have not been presented with a clear enough record to believe that the district court's conclusion was erroneous, we accordingly

ORDER the judgment of the district court AFFIRMED.

, C.J.
Silver

, J.
Tao

, J.
Gibbons

cc: Hon. Thomas W. Gregory, District Judge
Las Vegas Defense Group, LLC
Attorney General/Carson City
Douglas County District Attorney/Minden
Douglas County Clerk