



**IN THE SUPREME COURT OF THE STATE OF DELAWARE**

STATE OF DELAWARE, )  
 ) No. 312,2018  
 Plaintiff – Below, )  
 Appellant, ) ON APPEAL FROM  
 ) THE SUPERIOR COURT OF THE  
 v. ) STATE OF DELAWARE  
 ) ID No. 1710003809  
 BAKR DILLARD, )  
 )  
 Defendant – Below, )  
 Appellee. )

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ON APPEAL FROM THE SUPERIOR COURT OF  
THE STATE OF DELAWARE

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**APPELLEE’S ANSWERING BRIEF**

**COLLINS & ASSOCIATES**

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Dated: October 26, 2018

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## **NATURE OF THE PROCEEDINGS**

Appellant Bakr Dillard concurs with the nature of the proceedings as set forth in the State's Opening Brief.<sup>1</sup>

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<sup>1</sup> Opening Brief at 1.

## SUMMARY OF THE ARGUMENT

### **I. DENIED. THE SUPERIOR COURT’S DECISION GRANTING MR. DILLARD’S MOTION TO SUPPRESS WAS CORRECT AND SHOULD BE AFFIRMED.**

The Superior Court acted within its discretion in granting Mr. Dillard’s motion to suppress. The traffic stop for improper window tint was lawful. However, the officer measurably extended it in contravention of Mr. Dillard’s constitutional rights when he engaged in several activities unrelated to the mission of the stop: asking further questions of Mr. Dillard, putting him on the curb after the window tint investigation had completed, calling the K-9 officer, and instructing the K-9 officer once he arrived.

After careful consideration of these facts and after a suppression hearing and another hearing on the State’s motion for reargument, the Superior Court judge properly applied the law to the facts and denied the motion to suppress. Because the judge’s decision was not clearly erroneous, this Court should affirm.

## STATEMENT OF FACTS

### *Officers from Operation DISRUPT conduct a car stop.*

On October 6, 2017, Bakr Dillard was driving a minivan down Spruce Street.<sup>2</sup> Wilmington Police Patrol Officer Joshua Wilkers and his partner Officer Daniel Vignola of Operation DISRUPT happened to be at the intersection of 5<sup>th</sup> and Spruce.<sup>3</sup> Despite working for DISRUPT for two years, Wilkers testified that no one in the department knew what the acronym stood for.<sup>4</sup> He testified the purpose of DISRUPT was to “try to suppress crime in the community.”<sup>5</sup> Actually, Operation DISRUPT stands for Dealing with Issues of Stabilization Through Respect, Understanding, and Promoting Trust.<sup>6</sup> The operation has been disbanded.<sup>7</sup>

Wilkers noticed the windows of the van were heavily tinted.<sup>8</sup> Wilkers ran the registration through his computer. The van was registered to a Rubin Harper and the registration did not have a tint waiver.<sup>9</sup>

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<sup>2</sup> A50.

<sup>3</sup> A50.

<sup>4</sup> A63.

<sup>5</sup> A64.

<sup>6</sup> A103.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> A52.

Wilkers initiated a traffic stop. He called in the stop so other DISRUPT units could respond.<sup>10</sup> Wilkers explained that DISRUPT policy was that multiple police cars responded to routine traffic stops.<sup>11</sup> He never did explain why multiple units were needed to issue a traffic ticket.<sup>12</sup> None of the officers in this case had any body cameras or recording devices.<sup>13</sup>

Mr. Dillard was driving the van and a female companion was in the passenger seat.<sup>14</sup> At the stop location of 4<sup>th</sup> and Lombard Streets, Wilkers took Mr. Dillard's documents and returned to his police car.<sup>15</sup> The van's registration was valid, as was Mr. Dillard's license.<sup>16</sup> Then Wilkers went back to the van and asked Mr. Dillard to get out and come to the rear of the van.<sup>17</sup> At no time did Wilkers pat down Mr. Dillard or put handcuffs on him.<sup>18</sup> Wilkers wanted to question Mr. Dillard about "the window tint, who the car belonged to, where he was coming from."<sup>19</sup> But Wilkers admitted he was not investigating a potential stolen vehicle.<sup>20</sup>

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<sup>10</sup> A53.

<sup>11</sup> A65-67.

<sup>12</sup> A66-68.

<sup>13</sup> A69.

<sup>14</sup> A54.

<sup>15</sup> A55.

<sup>16</sup> A82.

<sup>17</sup> A55.

<sup>18</sup> A56.

<sup>19</sup> *Id.*

<sup>20</sup> A75.



Wilkens recognized Mr. Dillard from an earlier arrest earlier in 2017.<sup>21</sup>

Wilkens testified he arrested him for an illegal craps game in which Mr. Dillard had \$25,000 on his person.<sup>22</sup> Wilkens further opined that having \$25,000 in an illegal craps game is “usually consistent with drug activity.”<sup>23</sup> The prosecutor then corrected the record. There were five participants in the game and the aggregate amount seized was \$25,000.<sup>24</sup> The parties stipulated to these facts.<sup>25</sup>

Mr. Dillard told Wilkens he was coming from “around 7<sup>th</sup> Street.”<sup>26</sup> Wilkens found that significant because 7<sup>th</sup> Street “is a high drug trafficking area. There’s a lot of crime, shooting guns in that area.”<sup>27</sup> But Wilkens then admitted that the fact of someone driving a car from 7<sup>th</sup> Street does not give rise to suspicion of criminal activity.<sup>28</sup>

Finally, Wilkens asked Mr. Dillard “if there was anything of an illegal nature in the car that I needed to know about.”<sup>29</sup> According to Wilkens, Mr. Dillard

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<sup>21</sup> A55.

<sup>22</sup> A77.

<sup>23</sup> A78.

<sup>24</sup> A85.

<sup>25</sup> A86.

<sup>26</sup> A57.

<sup>27</sup> A73.

<sup>28</sup> A74.

<sup>29</sup> A56.

responded, “no, and you cannot search it.”<sup>30</sup> Then Wilkers made Mr. Dillard sit on the curb.

Wilkens was asked why Mr. Dillard was put on the curb during a routine traffic stop. He replied that whether he puts a motorist on the curb “depends on the situation.”<sup>31</sup> Wilkers testified that he will put someone on the curb if they attempt to flee, if they have a suspended license, or if the car needs to be towed. He admitted that none of these factors were present in this case.<sup>32</sup>

Wilkens also admitted that his investigation regarding the window tint was complete before he put Mr. Dillard on the curb. It was completed at the back of the van when Mr. Dillard did not give consent to a search.<sup>33</sup> Putting Mr. Dillard on the curb occurred after that.

***Officer Wilkers calls in the K-9.***

With Mr. Dillard seated on the curb and the passenger still in the car, Wilkers returned to his police car to start writing up the e-ticket.<sup>34</sup> As he was doing so, he called in Officer Caetz on the radio to come over to the stop location to do a K-9 sniff of the van.<sup>35</sup> By this time, Officer Rosado and Sergeant Schmid had

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<sup>30</sup> *Id.*

<sup>31</sup> A81.

<sup>32</sup> A81-82.

<sup>33</sup> A72.

<sup>34</sup> A57, 60.

<sup>35</sup> A58-59, A80.

arrived.<sup>36</sup> Caez was in Southbridge, not far away.<sup>37</sup> Caez came up to Wilkers and asked if that was the car in question.<sup>38</sup> Officer Wilkers agreed that the time he spent questioning Mr. Dillard outside the van, putting him on the curb, and calling in Caez was all time he could have spent working on the e-ticket.<sup>39</sup>

Upon questioning from the Court, Wilkers testified that what caused him to call in the K-9 was that Mr. Dillard was coming from the area of 7<sup>th</sup> Street, the tinted windows, and his previous dealings with Mr. Dillard.<sup>40</sup>

Officer Kecia Rosado testified she arrived at the traffic stop to assist.<sup>41</sup> She testified that Caez arrived with the dog no more than two minutes after Wilkers got back in his car.<sup>42</sup> Sergeant William Schmid, also on scene, testified that it took about a minute for Caez to get from Southbridge to the stop location.<sup>43</sup> Upon direction from Wilkers, she asked the female passenger to get out of the van.<sup>44</sup>

Officer Jesus Caez is an officer who works with a K-9 narcotics dog named Storm.<sup>45</sup> he was at the obstacle course in the 900 block of New Castle Avenue, or

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<sup>36</sup> A61.

<sup>37</sup> A59.

<sup>38</sup> A61.

<sup>39</sup> A80.

<sup>40</sup> A98.

<sup>41</sup> A101.

<sup>42</sup> A102.

<sup>43</sup> A108.

<sup>44</sup> *Id.*

<sup>45</sup> A110.

starting back from there, when he got the call from Wilkers.<sup>46</sup> He advised Wilkers he could be there in two or three minutes, and he arrived within that timeframe.<sup>47</sup>

*After the dog alerts, Wilkers searches the van*

The dog alerted on the passenger side door.<sup>48</sup> Wilkers opened the door and found a small bit of marijuana in the “cubby” near the interior door handle.<sup>49</sup> Although he testified that he then sought a search warrant,<sup>50</sup> that is not exactly what happened. According to the search warrant he swore to the magistrate,<sup>51</sup> Wilkers entered the car, opened the center console, and “observed a large sealed bag containing a green leafy plant like substance and a large amount of United States currency banded together with rubber bands.”<sup>52</sup> Then Wilkers “stopped the search and transported the vehicle to central.”<sup>53</sup>

Wilkens then admitted that he did conduct a warrantless search prior to obtaining a search warrant: “at the time, yes, but when the dog alerted, gave me reasonable suspicion to search the vehicle.”<sup>54</sup> The judge confirmed, “that’s when

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<sup>46</sup> A111.

<sup>47</sup> A112.

<sup>48</sup> A62.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> A27-33. The search warrant was made part of the record as an exhibit to the Motion to Suppress.

<sup>52</sup> A33.

<sup>53</sup> *Id.*

<sup>54</sup> A92.

you believe you had reasonable suspicion? Wilkers responded, “Yes, ma’am.”<sup>55</sup>

After searching the center console, Wilkers then applied for a search warrant, which was granted.<sup>56</sup>

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<sup>55</sup> *Id.*

<sup>56</sup> A62.

## ARGUMENT

### **I. DENIED. THE SUPERIOR COURT’S DECISION GRANTING MR. DILLARD’S MOTION TO SUPPRESS WAS CORRECT AND SHOULD BE AFFIRMED.**

#### A. Question Presented

Whether the Superior Court abused its discretion by granting Mr. Dillard’s Motion to Suppress. This issue was preserved upon the filing of a Motion to Suppress<sup>57</sup> and by Mr. Dillard’s opposition to the State’s Motion for Reargument.<sup>58</sup>

#### B. Scope of Review

This Court reviews a trial court’s decision to grant a motion to suppress after a hearing on an abuse of discretion standard.<sup>59</sup> Legal conclusions are reviewed *de novo* for errors in formulating or applying legal precepts.<sup>60</sup> Factual findings will be reversed only if clearly erroneous.<sup>61</sup> The clearly erroneous standard is a deferential one based on the judge’s credibility determinations and findings of historical fact based on evidence or inferences from other facts.<sup>62</sup>

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<sup>57</sup> A18-35.

<sup>58</sup> A173-181.

<sup>59</sup> *Lopez-Vasquez v. State*, 956 A.2d 1280, 1284 (Del. 2008).

<sup>60</sup> *Downs v. State*, 570 A.2d 1142, 1144 (Del. 1990)

<sup>61</sup> *State v. Henderson*, 892 A.2d 1061, 1066 (Del. 2006)(citing *Woody v. State*, 765 A.2d 1257, 1261 (Del. 2001)).

<sup>62</sup> *Guerrini v. State*, 922 A.2d 403, 406 (Del. 2007)(citing *Lopez v. State*, 861 A.2d 1245, 1248-49 (Del. 2004)).

## C. Merits of the Argument

### *Applicable Legal Precepts*

Police may conduct an automobile stop is reasonable when they have probable cause to believe that a traffic violation has occurred.<sup>63</sup> The officer's subjective motivation for the stop is irrelevant in Delaware, so long as there is probable cause for a traffic infraction.<sup>64</sup> But "the duration and execution of a traffic stop is necessarily limited by the initial purpose of the stop."<sup>65</sup> This Court has held that "any investigation of the vehicle or its occupants beyond that required to complete the purpose of the traffic stop constitutes a separate seizure that must be supported by independent facts sufficient to justify the additional intrusion."<sup>66</sup>

Even if the traffic stop does not formally terminate with the issuance of a citation or warning, "the legitimating *raison d'etre* [of the stop may] evaporate if its pursuit is unreasonably attenuated or allowed to lapse into a state of suspended animation."<sup>67</sup> In other words, the mission of the traffic stop may not be put on hold by a separate investigation while the traffic stop is ongoing. Further investigatory

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<sup>63</sup> *State v. Caldwell*, 780 A.2d 1037 (Del. 2001).

<sup>64</sup> *Murray v. State*, 45 A.3d 670, 674 (Del. 2012), citing *Whren v. U.S.*, 517 U.S. 806, 813 (1996).

<sup>65</sup> *Murray v. State*, 45 A.3d 670, 673 (Del. 2012), citing *Caldwell*, 780 A.2d at 1047.

<sup>66</sup> *Caldwell*, 780 A.2d at 1047 (other citations omitted).

<sup>67</sup> *Murray*, 45 A.3d at 674, citing *Caldwell* at 1047.

detention is a separate seizure that must be supported by independent facts justifying it.<sup>68</sup>

The issue of drug dog sniffs during traffic stops has been addressed by the United States Supreme Court. The use of a well-trained narcotics detection dog during a lawful traffic stop does not in and of itself have Fourth Amendment dimension.<sup>69</sup> In *Illinois v. Caballes*, an officer pulled over a motorist, and a K-9 officer heard the dispatch transmission and showed up unbidden to the scene and decided to have his dog sniff the car. While the road officer was writing the ticket, the K-9 officer had his dog walk around the car, so the traffic stop was not extended.<sup>70</sup> The *Caballes* Court accepted the lower court findings that the duration of the stop was not extended by the K-9 activity.<sup>71</sup>

The Supreme Court soon had occasion to determine at what point constitutional questions are implicated when a traffic stop becomes something more. In *Arizona v. Johnson*,<sup>72</sup> during a routine traffic stop, a responding officer wanted to question one of the occupants about gang and criminal activity unrelated to the traffic infraction.<sup>73</sup> A different officer was handling the traffic infraction.

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<sup>68</sup> *Murray* at 674.

<sup>69</sup> *Illinois v. Caballes*, 543 U.S. 405, 409 (2005).

<sup>70</sup> *Id.* at 406.

<sup>71</sup> *Id.* at 408.

<sup>72</sup> 555 U.S. 323 (2009).

<sup>73</sup> *Id.* at 328.



The questioning officer ordered the suspect of the car and patted him down for safety based on a suspicion that he may have had a weapon.<sup>74</sup> Although this activity was obviously not related to investigation of the car's expired registration, it did not measurably extend the stop. The United States Supreme Court held that such inquiries to not convert the stop into an unlawful seizure, "so long as those inquiries do not measurably extend the duration of the stop."<sup>75</sup>

Applying *Johnson* in *Murray v. State*, this Court held:

For something to be measurable, it need not be large; the [*Johnson*] Court could have used the terms 'significantly' or 'substantially' if they intended to proscribe only an extension for a comparatively large period of time. But the United States Supreme Court attached importance to the question of whether the additional extension lengthened the stop at all.<sup>76</sup>

The United States Supreme Court applied the measurable extension standard to drug dog sniffs in the 2015 case of *Rodriguez v. United States* in 2015.<sup>77</sup> In that case, the officer pulling the car over happened to be a K-9 officer who had a dog with him.<sup>78</sup> But the dog stayed in the police car while the officer handled all the activities attendant to giving the driver a written warning.<sup>79</sup> It was only then that he

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<sup>74</sup> *Id.*

<sup>75</sup> *Id.* at 333.

<sup>76</sup> 45 A.3d 670, 675 (Del. 2012).

<sup>77</sup> 135 S.Ct 1609 (2015).

<sup>78</sup> *Id.* at 1612.

<sup>79</sup> *Id.*

asked for permission to walk his dog around the car; the request was denied.<sup>80</sup>

Nevertheless, the walk-around was conducted and the dog alerted, leading to search and arrest.<sup>81</sup>

The Eighth Circuit had previously held that dog sniffs are an acceptable *de minimis* intrusion on personal liberty.<sup>82</sup> The Eighth Circuit on this basis had previously upheld extensions of traffic stops of two, four, and up to 10 minutes.<sup>83</sup> The Supreme Court explained there is no *de minimis* exception for dog sniffs. Traffic stops, the Court explained contain certain incidental activities included in the mission of the stop, such as checking the validity of the license and insurance.<sup>84</sup> A dog sniff, however, departs from that mission because it is done to detect criminal wrongdoing. It is not an ordinary incidental activity of a traffic stop nor is it “part of the officer’s traffic mission.”<sup>85</sup>

The Court went on to distinguish such incidental activities as ordering the occupants out of the car due to officer safety concerns as being related to the traffic mission, as opposed to K-9 sniffs, which is a criminal investigative activity.<sup>86</sup>

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<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *United States v. Rodriguez*, 741 F.3d 905, 907 (8<sup>th</sup> Cir. 2014), *rev’d*, *Rodriguez v. United States*, 135 S.Ct 1609 (2015).

<sup>83</sup> *Id.*

<sup>84</sup> *Id.* at 1615.

<sup>85</sup> *Id.*

<sup>86</sup> *Id.* at 1615-1616.

Indeed, this Court has also held that ordering the occupants in a traffic stop to exit the vehicle does not amount to a second detention requiring independent factual support.<sup>87</sup>

Ultimately, the *Rodriguez* Court held, “the critical question 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.”<sup>88</sup>

The Delaware Superior Court has had occasion to apply the measurable extension standard to a dog sniff during a traffic stop. In *State v. Stanley*,<sup>89</sup> a K-9 officer conducted a traffic stop on a motorist with a cracked windshield and dangling muffler. After checking documents, the officer brought a written warning back to the defendant’s car.<sup>90</sup> But he also brought his dog and had the dog walk around the car while he was explaining the warning to the motorist.<sup>91</sup> There was a short period of time lasting less than a minute where the officer had the warning and was standing with the motorist. During this interval, the dog alerted. Just over a minute later, the officer handed the warning to the motorist. A search ensued, and the defendant was arrested.<sup>92</sup>

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<sup>87</sup> *Loper v. State*, 8 A.3d 1169, 1174 (Del. 2010).

<sup>88</sup> *Id.* at 1616.

<sup>89</sup> 2015 WL 9010669 (Del. Super. December 9, 2015).

<sup>90</sup> *Id.* at \*2.

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

Applying *Murray*, the Superior Court granted the motion to suppress because the extension was measurable.<sup>93</sup> Two factors informed the Court’s decision. First, the removal of the defendant from the car was not for officer safety but was instead “for the independent purpose of investigating a likely narcotics violation.”<sup>94</sup> Second, there was a brief interval when the officer had the warning and was with the defendant but did not give it to him while the dog sniffed.<sup>95</sup> As the judge held:

The State also argued that the traffic stop took no longer than the average traffic stop of that type would normally take. But, that is not the proper test to determine whether a traffic stop has been unconstitutionally extended. *Murray* holds that any *measurable* extension of time beyond that needed to complete the traffic stop is a separate seizure.<sup>96</sup>

***The Superior Court properly found that the traffic stop was measurably extended for a drug investigation.***

The State has contended throughout these proceedings that it is unnecessary to consider whether there was appropriate suspicion for a “second detention” because the traffic stop was not measurably extended.<sup>97</sup> The State argues that the

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<sup>93</sup> *Id.* at \*4.

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> *Id.* (emphasis in original).

<sup>97</sup> *State v. Dillard*, 2018 WL 1382394 at \*3 (Del. Super., March 16, 2018); *State v. Dillard*, 2018 WL 2264414 at \*1 (Del. Super., May 17, 2018); Opening Brief at 13.

“open-air sniff of the minivan did not extend the length of Dillard’s detention because those actions occurred *during* the traffic investigation without prolonging it.”<sup>98</sup> However, the judge properly applied the law to the facts, and found that the traffic stop was indeed measurably extended for the drug dog sniff. The Superior Court did not abuse its discretion in granting Mr. Dillard’s motion to suppress.

The officer’s own testimony at the hearing confirms that the traffic stop was measurably extended. Although his initial questions were permissible,<sup>99</sup> the Court properly found that his additional questioning about whether there was anything illegal in the van was not related to officer safety and thereby extended the stop.<sup>100</sup> Wilkers did not even pat Mr. Dillard down for weapons and did not testify he had any safety concerns. Moreover, Wilkers testified that he asks if anything illegal is in a vehicle “if I feel if I have some sort of suspicion or maybe the car is suspicious, suspicious vehicle complaints or something.”<sup>101</sup> Since Wilkers testified he was not investigating the van as potentially stolen,<sup>102</sup> he obviously asked him the “anything illegal” question due to suspicion, not due to concerns for officer safety.

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<sup>98</sup> Opening Brief at 13 (emphasis in original).

<sup>99</sup> *See*, 11 *Del. C.* § 1902.

<sup>100</sup> *State v. Dillard*, 2018 WL 1382394 at \*4-5 (Del. Super., March 16, 2018)

<sup>101</sup> A71.

<sup>102</sup> A75.

Wilkens testified that as soon as the questioning and refusal of consent to search were done, his window tint investigation was completed.<sup>103</sup> As such, the time it took to take Mr. Dillard from the back of the van to the curb measurably extended the stop. None of the reasons Wilkens articulated for why he puts motorists on the curb were germane to this incident. As such, the placing of Mr. Dillard on the curb was directly related to the drug investigation and not the mission of the traffic stop. He was not placing Mr. Dillard on the curb for officer safety or for any other reason than he was taking the time to conduct a drug investigation. He took further time to direct Rosado to take the passenger out of the van also. There was no reason to take the extra time to get the driver and passenger out except in preparation for K-9 sniff.

The Court properly found that the calling of Caez and initiating the dog sniff also measurably extended the stop.<sup>104</sup> Wilkens diverted from his traffic citation mission to call Caez on the radio and to instruct Caez once he arrived a couple minutes later. The State's no-harm-no-foul argument is based on the testimony that Wilkens called Caez while logging into the e-ticket system and that Caez

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<sup>103</sup> A72.

<sup>104</sup> *State v. Dillard*, 2018 WL 1382394 at \*6 (Del. Super., March 16, 2018)

arrived during that e-ticket process.<sup>105</sup> However, Wilkers himself disputes that theory:

DEFENSE COUNSEL: What I'm trying to get that is this: the time you spent talking to Dillard and the time you spend putting him on the curb, right, and the time you spent getting in your car and making your radio transmission to Caez, that's all time that you could have spent logging into E-ticket and issuing, getting ready to issue Dillard a ticket, right?

OFFICER WILKERS: Yes, sir. Once my thorough investigation was complete.<sup>106</sup>

The officer's testimony that he took time to engage in activities unrelated to the mission of the traffic stop completely undermines the State's argument that those activities did not measurably extend the stop. More to the point, the judge's findings based on these facts cannot be found clearly erroneous when it is based on the officer's own testimony.

The State argues that this case resembles *Caballes*.<sup>107</sup> But the difference is stark. In *Caballes*, the K-9 officer showed up on his own and went to work, with no request or input from the road officer. As such, the stop was not measurably extended. The State also argues that *Rodriguez* is distinguishable, because in *Rodriguez*, the dog sniff occurred after the traffic stop was complete.<sup>108</sup> The State's contention ignores the holding of the *Rodriguez* Court: "the critical question is not

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<sup>105</sup> Opening Brief at 13.

<sup>106</sup> A80.

<sup>107</sup> Opening Brief at 16-17.

<sup>108</sup> *Id.* at 16.

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.”<sup>109</sup> Ultimately, the facts of neither *Caballes* nor *Rodriguez* are precisely on point. But the legal precepts espoused in those cases, and adopted in Delaware, were properly applied by the Superior Court in this case. Moreover, the Court correctly assessed the facts, and that assessment was not clearly erroneous.

The State spends considerable time<sup>110</sup> discussing a case from the Eastern District of Tennessee: *United States v. Baxter*.<sup>111</sup> This was a Magistrate’s Report that was adopted, but not appealed. Although some of the facts in *Baxter* are similar – window tint violation, refusal of consent search – a key part of the sequence is different. In *Baxter*, the road officer was still investigating the traffic violation. He made the call for the drug dog while still in the process of the traffic stop’s mission: running the license and tag and requesting backup. It was all done in one call to his dispatcher before the decision to issue a ticket was made.<sup>112</sup> The officer believed he had sufficient basis to conduct a drug investigation,<sup>113</sup> although that issue was not litigated.

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<sup>109</sup> *Rodriguez*, 135 S.Ct. at 1616.

<sup>110</sup> Opening Brief at 17-20.

<sup>111</sup> 2018 WL 1598950 (E.D. Tenn., March 13, 2018).

<sup>112</sup> *Id.* at \*2.

<sup>113</sup> *Id.*



In Mr. Dillard’s case, candid testimony from Wilkers established that the window tint investigation was complete before he put Mr. Dillard on the curb and called Caez. The routine, mission-oriented steps of calling dispatch and running license and registration<sup>114</sup> had long been completed. Moreover, the State has not argued in Mr. Dillard’s case that Wilkers had enough facts to justify a second detention because it contends there was no second detention. In *Baxter*, the officer “suspected criminal activity based on Defendant’s nervousness and aggressive behavior.”<sup>115</sup> As such, *Baxter* is unavailing.

The Delaware Superior Court case of *State v. Stanley* is far more similar to Mr. Dillard’s case than the Tennessee decision. In that *Stanley*, the Superior Court properly found that activities related to the drug investigation – putting the motorist on the curb for non-officer safety reasons and delaying handing over the written warning – measurably and impermissibly extended the traffic stop:

The State also argued that the traffic stop took no longer than the average traffic stop of that type would normally take. But, that is not the proper test to determine whether a traffic stop has been unconstitutionally extended. *Murray* holds that any *measurable* extension of time beyond that needed to complete the traffic stop is a separate seizure.<sup>116</sup>

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<sup>114</sup> *Rodriguez* at 1615, citing *Delaware v. Prouse*, 440 U.S. 648, 658-660 (1979).

<sup>115</sup> *Baxter* at \*2.

<sup>116</sup> *Id.* (emphasis in original).

The State's argument should fail in Mr. Dillard's case as it did in *Stanley*.

The record establishes that Wilkers measurably extended the stop by questioning Mr. Dillard about anything illegal, putting Mr. Dillard on the curb, directing Rosado to put the female passenger on the curb, contacting Caez, and instructing Caez once he arrived. All these activities constitute measurable extensions of the traffic stop.

Because the Superior Court properly applied the law and assessed the facts, it did not abuse its discretion in granting the motion to Suppress. The Superior Court's decision should be affirmed.

**CONCLUSION**

For the foregoing reasons, Appellant Bakr Dillard respectfully requests that this Court affirm the judgment of the Superior Court.

**COLLINS & ASSOCIATES**

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