



IN THE SUPREME COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,)
)
 Plaintiff – Below,)
 Appellant,)
)
 v.) No. 312, 2018
)
 BAKR DILLARD,)
)
 Defendant – Below,)
 Appellee.)

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE’S REPLY BRIEF

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DATE: December 11, 2018

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ARGUMENT

I. THE SUPERIOR COURT ABUSED ITS DISCRETION IN GRANTING DILLARD’S MOTION TO SUPPRESS.

In his Answering Brief, Dillard contends the Superior Court did not abuse its discretion when it granted his suppression motion because Wilkers’ actions measurably extended the [traffic] stop.”¹ Dillard reasons that the traffic investigation was completed at the moment Wilkers ran his license and the vehicle registration, and any police activity occurring after those “mission-oriented”² steps constituted a second detention. He is wrong.

Dillard’s argument that a constitutional violation occurred when Wilkers’ traffic investigation ended and turned into a drug investigation was rejected by the United States Supreme Court in *Caballes*.³ The authority for a seizure incident to a traffic stop ends when the tasks related to the reason for the stop are, or

¹ *Ans. Brf.* at 22.

² *Ans. Brf.* at 21.

³ 543 U.S. at 408 (stating, “the [Illinois Supreme Court] characterized the dog sniff as the cause rather than the consequence of a constitutional violation. In its view, the use of the dog converted the citizen-police encounter from a lawful traffic stop into a drug investigation, and because the shift in purpose was not supported by any reasonable suspicion that respondent possessed narcotics, it was unlawful. In our view, conducting a dog sniff would not change the character of a traffic stop that is lawful at its inception and otherwise executed in a reasonable manner, unless the dog sniff itself infringed respondent's constitutionally protected interest in privacy.”).

reasonably should have been, completed.⁴ These tasks include ordinary inquiries associated with a traffic stop, such as checking the driver’s license, determining whether there are outstanding warrants against the driver, and inspecting the automobile’s registration and proof of insurance.⁵ A “traffic stop ends when the police have no further need to control the scene, and inform the driver and passengers they are free to leave.”⁶ Here, Wilkers had not completed his “mission-oriented” tasks at the point Dillard claims the authority for the traffic stop evaporated. Wilkers had yet to write or issue the ticket for the window tint violation, which was the last step in the traffic investigation.

In support of his argument that Wilkers’ measurably extended the traffic stop, Dillard cites *State v. Stanley*,⁷ and argues that it is factually similar to his case, thus this Court should apply its reasoning. In *Stanley*, the Superior Court found that the police measurably extended a traffic stop because the officer delayed issuing a warning citation to Stanley while another officer conducted a K-9 sniff of Stanley’s car.⁸ “[I]n determining the reasonable duration of a stop, ‘it [is] appropriate to examine whether the police diligently pursued [the]

⁴ *Rodriguez v. United States*, 135 S. Ct. 1609, 1614 (2015); *Illinois v. Caballes*, 543 U.S. 405, 407 (2005).

⁵ *Rodriguez*, 135 S. Ct. at 1615; see also *Arizona v. Johnson*, 555 U.S. 323, 333 (2009).

⁶ *Johnson*, 555 U.S. at 333 (citing *Brendlin v. California*, 551 U.S. 249, 258 (2007)).

⁷ 2015 WL 9010669 (Del. Super. Dec. 9, 2015).

⁸ *Id.* at *4.

investigation”’).⁹ Here, unlike *Stanley*, the Superior Court did not find that Wilkers delayed issuing the E-ticket. Indeed, Wilkers was still logging into the E-ticket system when he called for the K-9 unit, which arrived within minutes, and conducted the sniff. There is no evidence that Wilkers delayed issuing the ticket for a window tint violation and *Stanley* does not support Dillard’s argument.

Dillard argues that “Wilkens 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, contact Caez, and instructing Caez once he arrived.”¹⁰ During a traffic stop, an officer may order the occupants out of the vehicle.¹¹ And, “[a]n officer's inquiries into matters unrelated to the justification for the traffic stop, [the United States Supreme Court] has made plain, do not convert the encounter into something other than a lawful seizure, so long as those inquiries do not measurably extend the duration of the stop.”¹² Such was the case here.

Under Dillard’s theory, *all* inquiries unrelated to the reason for the traffic stop measurably extend the stop. Dillard’s extremely literal interpretation of the term “measurably extend[s]” is inconsistent with United States Supreme Court

⁹*Rodriguez*, 135 S. Ct. 1609 (quoting, *United States v. Sharpe*, 470 U.S. 675, 686 (1985)).

¹⁰ *Ans. Brf.* at 22.

¹¹ *Loper v. State*, 8 A.3d 1169, 1174 (Del. 2010).

¹² *Johnson*, 555 U.S. 333 (citing *Muehler v. Mena*, 544 U.S. 93, 100–101 (2005)).

precedent, frustrates the reasonableness inquiry under the Fourth Amendment and cannot be practically applied. As an example, under Dillard's interpretation, if a dispatcher radioed Wilkers as he was walking back to his patrol vehicle to log into the E-Ticket system, asked his location, notified him of another complaint he needed to respond to and asked when he would arrive; and Wilkers responded to the dispatcher's inquiry, the exchange between Wilkers and the dispatcher would have measurably extended the stop. Because the dispatcher's inquiry and Wilkers' response were unrelated to the reason for the stop, Dillard would be entitled to suppression on that basis alone. Such an unreasonable result is not contemplated by the Fourth Amendment and is inconsistent with United States Supreme Court's holdings in *Rodriguez*, *Caballes* and *Johnson*.

Here, Wilkers' actions occurred during the course of the traffic investigation and did not measurably extend the stop. The Superior Court abused its discretion when it determined Wilkers' extended the traffic stop by calling for a K-9 unit while he was still logging into the E-ticket system. Wilkers had not yet completed his mission-oriented tasks and there is no evidence to suggest that he delayed the duration of the traffic investigation to pursue an unrelated investigation.

CONCLUSION

For the foregoing reasons the order of the Superior Court granting Dillard's suppression motion should be vacated and the matter be remanded for trial.

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STATE OF DELAWARE
DEPARTMENT OF JUSTICE

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CERTIFICATION OF SERVICE

The undersigned certifies that on December 11, 2018, he caused the attached *State's Reply Brief* to be delivered electronically via Lexis/Nexis File and Serve to the following person:

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