FILED
United States Court of Appeals
Tenth Circuit

September 28, 2021

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOSE ANTONIO CHAVEZ,

Defendant - Appellant.

No. 19-4121
(D.C. No. 2:18-CR-00085-DN-1)
(D. Utah)

ORDER AND JUDGMENT*

Before **PHILLIPS**, Circuit Judge, **LUCERO**, Senior Circuit Judge, and **CARSON**, Circuit Judge.

Leading law enforcement on a high-speed chase in Utah can provide officers with probable cause to arrest the driver. And subject to the "automobile exception" to the Fourth Amendment's warrant requirement, law enforcement officers can then search that vehicle for contraband. Here, Defendant Jose Antonio Chavez fled the scene of a lawful traffic stop and led officers on a high-speed chase for sixty or so miles. Law enforcement officers ended the chase, searched Defendant's vehicle, and found methamphetamine. After a grand jury indicted him, Defendant at first pleaded not guilty. But after the suppression hearing and denial of his motion, he

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* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. Appellant P. 32.1 and 10th Cir. R. 32.1.

conditionally pleaded guilty to possession of a controlled substance with intent to distribute in violation of 21 U.S.C. § 841(a)(1), reserving his right to appeal the district court's denial of his motion. Defendant now appeals the district court's denial of his motion to suppress evidence of methamphetamine confiscated from his rental vehicle. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

I.

Utah State Highway Trooper Adam Gibbs ("Trooper Gibbs"), sat in the median on I-15 when at around 11:44 pm he began traveling northbound behind Defendant. After Trooper Gibbs started driving, he noticed Defendant tailgating a semi-truck. This caught Trooper Gibbs's attention. Trooper Gibbs observed Defendant lawfully move to the left lane. Defendant then quickly moved back into the right lane, but in doing so, he failed to signal for a full two seconds as Utah law requires. Observing the traffic violation, Trooper Gibbs initiated a stop. Defendant pulled over after passing the next exit ramp.

Defendant's decision to pull over after the exit ramp appeared odd to Trooper Gibbs. So too did Defendant's readiness with his driver's license upon Trooper Gibbs's passenger-side approach to the vehicle. Trooper Gibbs then requested the other standard documents—insurance and vehicle registration—and learned the vehicle was a rental. So Trooper Gibbs requested the rental agreement. At first Defendant could not locate the agreement, but he ultimately found it and gave it to Trooper Gibbs. As the stop continued, Trooper Gibbs's suspicion grew.

Trooper Gibbs then requested that Defendant come back to the patrol car to speed the process along. Defendant declined and stayed with his passenger. He asked Trooper Gibbs to just write a citation so he could be on his way. Again, Defendant's actions seemed abnormal to Trooper Gibbs. Returning to his patrol car, Trooper Gibbs learned Defendant's rental agreement had come due ten hours before in Arkansas. And the rental agreement contained no provision allowing the car to leave Arkansas. Consistent with his usual practice, Trooper Gibbs started writing Defendant's citation. Trooper Gibbs then asked dispatch if any K-9 units were available. Learning no K-9 units were currently on patrol, Trooper Gibbs radioed dispatch again to run a background check to verify Defendant had a valid license and did not have any outstanding warrants. Trooper Gibbs also requested a criminal-history report. At the time, based on the facts available to him, Trooper Gibbs suspected Defendant was transporting drugs, so he called dispatch again for a drug-detection K-9 unit.

While waiting for the background check, criminal-history report, and K-9 unit's arrival, Defendant exited the rental vehicle and approached Trooper Gibbs's patrol car. Defendant told Trooper Gibbs that he had an email to confirm he extended the rental car for two days.[1] Trooper Gibbs told him he wanted the actual, updated rental agreement, which Defendant could not produce. As Trooper Gibbs

[1] Defendant's extension email does not exist in the record.

awaited dispatch's response to his request for Defendant's criminal history, the K-9 unit, manned by Officer Moore, arrived.

Officer Moore asked Defendant and his passenger to exit the vehicle. After several minutes of discussion they refused, but Defendant turned off the engine. Officer Moore then conducted a free-air sniff while Trooper Gibbs watched, called the car rental company to confirm the validity of Defendant's rental car, and awaited dispatch's response. Just after Officer Moore completed the free-air sniff, during which the K-9 alerted the officers to the presence of drugs, dispatch notified Trooper Gibbs that Defendant had drug charges on his record. At that point, Trooper Gibbs decided to search Defendant's vehicle because he believed he had probable cause based on the dog's alert and the criminal-history report. Trooper Gibbs approached the vehicle and explained to Defendant that he had probable cause to believe the vehicle's trunk contained contraband. After arguing with Trooper Gibbs about exiting the vehicle, Defendant rolled up the window and sped away.

Trooper Gibbs and Officer Moore pursued Defendant for about sixty miles traveling roughly 110 mph most of the way. At two points authorities deployed spike strips during the pursuit to slow down Defendant, but he evaded them. Finally, two gravel trucks blocked Defendant, slowing him to 45 miles per hour, at which point, Trooper Gibbs successfully used his vehicle to stop Defendant's vehicle. The officers ordered Defendant and the passenger out of the vehicle and placed them in custody. The officers then searched the vehicle and found a safe in the trunk. Upon the officers' request, Defendant gave the combination to them in exchange for

permission to give his passenger a kiss. The safe contained ten sealed packages of methamphetamine.

II.

Defendant appeals a single issue—whether the district court erred in denying a motion to suppress the evidence obtained from his rental vehicle. "On review of a ruling on a motion to suppress, we 'view the evidence in the light most favorable to the prevailing party and accept the district court's findings of fact unless they are clearly erroneous.'" United States v. Goebel, 959 F.3d 1259, 1265 (10th Cir. 2020) (quoting United States v. Hernandez, 847 F.3d 1257, 1263 (10th Cir. 2017)). But "[t]he ultimate determination of reasonableness under the Fourth Amendment . . . is a question of law which we review de novo." United States v. Ross, 920 F.2d 1530, 1533 (10th Cir. 1990) (quoting United States v. Arango, 912 F.2d 441, 444 (10th Cir.1990)).

III.

Defendant's argument focuses on whether the district court erred in finding the scope and duration of Trooper Gibbs's stop constitutional. We agree with the district court that Trooper Gibbs had reasonable suspicion to stop Defendant based on his failure to use his turn signal in accordance with Utah law. And, because the initial stop was reasonable, the totality of the circumstances facing Trooper Gibbs gave him and the other law-enforcement officers probable cause to arrest Defendant and search his vehicle.

A.

The first question we must answer is whether Trooper Gibbs lawfully stopped Defendant in the first instance. A traffic stop is an investigative detention governed by the principles of Terry v. Ohio, 392 U.S. 1 (1968). Rodriguez v. United States, 575 U.S. 348, 354 (2015); United States v. Botero-Ospina, 71 F.3d 783, 786 (10th Cir. 1995). "To determine the reasonableness of an investigative detention, we make a dual inquiry, asking first 'whether the officer's action was justified at its inception,' and second 'whether it was reasonably related in scope to the circumstances which justified the interference in the first place.'" Botero-Ospina, 71 F.3d at 786 (quoting Terry, 392 U.S. at 20).

1.

Whether an officer's traffic stop was justified at its inception "requires the officer to possess a particularized and objective basis for thinking unlawful activity is afoot." United States v. Esquivel-Rios, 725 F.3d 1231, 1236 (10th Cir. 2013) (citation and internal quotation marks omitted). "But it requires considerably less than a preponderance of the evidence and obviously less than that required for probable cause to effect an arrest." Id. (citation and internal quotation marks omitted). "To satisfy the reasonable suspicion standard, an officer need not rule out the possibility of innocent conduct, or even have evidence suggesting a fair probability of criminal activity." Id. (citation and internal quotation marks omitted).

"Equally important, reasonable suspicion can be shown by evidence that is inherently less reliable in kind than the sort of evidence needed to establish probable cause." Id.

Utah law requires a person to signal continuously for at least the last two seconds preceding the beginning of the movement into another lane. Utah Code § 41-6a-804(1)(b). Trooper Gibbs started following Defendant after he observed him tailgating a semi-truck and lawfully change lanes. The dashcam recording shows Defendant changed lanes again without signaling for two full seconds. Trooper Gibbs then initiated the stop and activated his lights. Defendant asserts he did signal for the full two seconds based on the time stamps that corresponded with the signal blinks.

Even if Trooper Gibbs were wrong about the two-second rule violation, Defendant's contention that no reasonable suspicion supported the stop would still fail.[2] The test for reasonable suspicion does not call for Defendant to have actually violated the law, but rather, the government need only demonstrate Trooper Gibbs reasonably believed that Defendant signaled improperly. See United States v. Elkins, 70 F.3d 81, 83 (10th Cir. 1995) ("It is well settled that an investigative stop is justified where police officers have a reasonable, articulable suspicion that the detainee has been, is, or is about to be engaged in criminal activity." (citation and internal quotation marks omitted)). Trooper Gibbs testified that as a rule of thumb,

[2] Although we assume for purposes of our analysis that Defendant is correct, our independent review of the dashcam recording aligns with that of Trooper Gibbs and the district court.

generally two signal cycles are less than two seconds. [Appellant App. at A29, A6]. The district court found based on the time stamp in the video evidence, that Defendant did not signal for two seconds. Appellant App. at A104. So, even if Defendant complied with the two-second rule by the barest of margins, the district court's finding and the video evidence confirm Trooper Gibbs's reasonable belief that Defendant violated the law—thus justifying the stop from its inception.

2.

We must next determine whether the traffic stop lasted longer than necessary. Generally, an investigative detention may last only so long as necessary to carry out the purpose of the stop. United States v. Patten, 183 F.3d 1190, 1193 (10th Cir. 1999). The tolerable duration of a traffic stop "is determined by the seizure's 'mission,'—to address the traffic violation that warranted the stop and attend to related safety concerns." Rodriguez, 575 U.S. at 354 (citations omitted). "Because addressing the infraction is the purpose of the stop, it may last no longer than is necessary to effectuate th[at] purpose." Id. (alteration in original) (citation and internal quotation marks omitted). "Authority for the seizure thus ends when tasks tied to the traffic infraction are—or reasonably should have been—completed." Id. But an officer's mission in a traffic stop also includes "ordinary inquiries incident to [the traffic] stop." Id. at 355 (alteration in original) (quoting Illinois v. Caballes, 543 U.S. 405, 408 (2005)). Ordinary inquiries consist of "checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance." Id. The mission also includes officer safety. Id. at 356. Traffic stops are especially

dangerous to law-enforcement officers, so an officer may need to take "negligibly burdensome precautions" to complete the mission safely. Rodriguez, 575 U.S. at 356; United States v. Holt, 264 F.3d 1215, 1221–22 (10th Cir. 2001) (en banc) overruled on other grounds as recognized in United States v. Stewart, 473 F.3d 1265, 1269 (10th Cir. 2007). Such a precaution includes requesting a driver's criminal-history report. Holt, 264 F.3d at 1221. But an officer may not take such a precaution for the sole purpose of lengthening the stop to allow for "investigation of unrelated criminal activity." United States v. Mayville, 955 F.3d 825, 831 (10th Cir. 2020) (citing Rodriguez, 575 U.S. at 356). Thus, our inquiry centers on whether Trooper Gibbs acted reasonably during the stop. Id. at 832.

Defendant contends Trooper Gibbs completed the stop eight minutes into the encounter when he finished writing the citation. Defendant insists that Trooper Gibbs intentionally delayed contacting dispatch to obtain the necessary information because he testified about several factors that made him suspicious before requesting the records. We do not ignore that Trooper Gibbs completed the citation before requesting the criminal-history records. But the timing of the two events does not end the inquiry. And despite Defendant's contention that Trooper Gibbs did not reasonably conduct the stop, we conclude that the totality of the circumstances supports the conclusion that he did. After approaching Defendant and asking for a current rental agreement (which Defendant could not provide), Trooper Gibbs completed the citation and inquired about a K-9 unit's availability to come to the scene. Dispatch told Trooper Gibbs none appeared to be available. Immediately following dispatch's response, Trooper Gibbs requested the

criminal-history report based on the circumstances presented—which included Defendant driving a rental car with an expired rental agreement, Defendant's apparent urge to quickly end the stop, and Defendant's implausible description of his travel plans. He then requested that dispatch help find him a K-9 unit. Trooper Gibbs's suspicions prompted these actions—actions we have previously held relate to officer safety.

As noted above, traffic stops present significant danger to law enforcement and established case law permitted Trooper Gibbs to ask dispatch for Defendant's criminal history. See Rodriguez, 575 U.S. at 356. Trooper Gibbs's criminal-history check asked dispatch to obtain Defendant's license and warrant information *and* his criminal-history report to better understand whether Defendant might engage in violent activity during the stop. See Holt, 264 F.3d at 1221–22. So Trooper Gibbs acted reasonably by requesting Defendant's criminal history under the circumstances presented. And dispatch's failure to obtain this information in a more expedient manner was beyond Trooper Gibbs's control.

Defendant appears to argue that Trooper Gibbs could have conducted his stop in a less intrusive or more efficient manner. But the Fourth Amendment does not require law enforcement to engage in the least intrusive search practicable. See Mayville, 955 F.3d at 832–33 (concluding "the Fourth amendment does not require officers to use the least intrusive or most efficient means to effectuate a traffic stop"). And the circumstances presented led Trooper Gibbs to reasonably believe something else was involved. So Defendant is wrong that, under the facts present here, the Fourth Amendment required Trooper Gibbs to call dispatch and request a criminal-history report before he finished

writing the citation and before he called for a K-9 unit. See id. This is especially true given that the majority of Trooper Gibbs's activities (i.e., writing a citation, asking for a K-9, interacting with Defendant over the expired rental-car agreement, and requesting a criminal-history report) occurred simultaneously or within minutes of each other.

And Defendant's argument that a criminal-history request must precede a request for a K-9 suggests a mandatory order for such requests that our precedents do not require. See Mayville, 955 F.3d at 832–33. Indeed, at the heart of Defendant's argument is the latent assumption that an officer is in more danger at the beginning of a stop than toward the conclusion of a stop. That assumption finds no support in our caselaw. The question we must ask in cases of this nature is whether the officer acted reasonably under the circumstances. Here, all things considered, Trooper Gibbs's request for Defendant's criminal history falls within the government's strong interest in officer safety outweighing Defendant's interest in a shorter detention. So we conclude Trooper Gibbs acted reasonably, and the district court did not err in finding that the traffic stop lasted no longer than necessary.

3.

We next consider whether Trooper Gibbs's decision to engage a dog sniff unconstitutionally extended the stop's duration and scope. It did not. Defendant insists Trooper Gibbs intentionally delayed the stop with no legal or factual support to do so. Timing is central to this determination. As discussed before, Trooper Gibbs properly requested and awaited dispatch's report on Defendant's criminal history to ensure officer safety. See Rodriguez, 575 U.S. at 356; Holt, 264 F.3d at 1221–22. Officer Moore and

the K-9 unit arrived at around 12:09 a.m., and Trooper Gibbs testified he radioed in to dispatch to see what returned. At that time, dispatch told Trooper Gibbs they still were awaiting Defendant's criminal-history report from the F.B.I. while Officer Moore conducted the free-air sniff. The dog sniff occurred *before* Trooper Gibbs received Defendant's criminal-history report from dispatch. So the dog sniff did not unconstitutionally extend the stop's duration and scope because it occurred while Trooper Gibbs properly awaited Defendant's criminal-history report from dispatch—a task related to Trooper Gibbs's traffic stop. See Stewart, 473 F.3d at 1270 (concluding that "a warrantless sniff on 'the exterior of a vehicle during a lawful traffic stop'. . . do[es] not implicate the Fourth Amendment" (citation omitted)).

B.

Finally, we must address, given our conclusion that Trooper Gibbs did not unreasonably extend the stop, whether Trooper Gibbs and other officers ultimately had probable cause to arrest Defendant and search his vehicle under the automobile exception. "An officer has probable cause to arrest if, under the totality of the circumstances, he learned of facts and circumstances through reasonably trustworthy information that would lead a reasonable person to believe that an offense has been or is being committed by the person arrested." United States v. Brooks, 438 F.3d 1231, 1241 (10th Cir. 2006) (quoting United States v. Dozal, 173 F.3d 787, 792 (10th Cir. 1999)). And if officers possess probable cause that an arrestee's vehicle contains contraband, they may search the vehicle under the automobile exception. Id. "This Court has repeatedly recognized that a reliable narcotics-detection dog's alert to a

vehicle suffices to establish this fair probability." United States v. Kitchell, 653 F.3d 1206, 1223 (10th Cir. 2011) (citation and internal quotation marks omitted). "Once probable cause to search is established, the officer may search the entire vehicle, including the trunk and all containers therein that might contain contraband." United States v. Parker, 72 F.3d 1444, 1450 (10th Cir. 1995).

The totality of the circumstances here establishes that Trooper Gibbs had probable cause to believe Defendant's vehicle contained contraband. Trooper Gibbs testified the dog alerted to the presence of drugs in the trunk of the vehicle. And he received Defendant's criminal-history report that revealed a history of drug charges. When Trooper Gibbs informed Defendant he had probable cause to search the vehicle, Defendant fled the scene causing the officers to engage in an extended high-speed chase.

When Defendant fled, he violated Utah law.[3] So the high-speed chase added to the totality of the circumstances, giving Trooper Gibbs probable cause to arrest Defendant. See Atwater v. City of Lago Vista, 532 U.S. 318, 354 (2001) ("If an officer has probable cause to believe that an individual has committed even a very minor criminal offense in his presence, he may, without violating the Fourth Amendment, arrest the offender."). And under the automobile exception, officers

[3] Utah law criminalizes operating a "vehicle in willful or wanton disregard of [a law enforcement officer's] signal [to stop the vehicle] so as to interfere with or endanger the operation of any vehicle or person." Utah Code § 41-6a-210(1)(a)(i). Utah also criminalizes an "attempt to flee or elude a law enforcement officer by vehicle or other means." § 41-6a-210(1)(a)(ii).

having probable cause to believe a car contains contraband may search it without a warrant. See United States v. Oliver, 363 F.3d 1061, 1068–69 (10th Cir. 2004). Defendant's flight, the dog alert, and prior criminal history provided probable cause to search the vehicle for contraband under the automobile exception. See Brooks, 438 F.3d at 1241. For these reasons, we conclude Trooper Gibbs had probable cause to arrest Defendant and search his vehicle.

AFFIRMED.

Entered for the Court

Joel M. Carson III
Circuit Judge

LUCERO, Senior Judge, dissenting.

I join the majority panel in all respects save my disagreement on the resolution of the facts. I would hold that the delay in the process of procurement and arrival of the canine unit was impermissible as a matter of fact under the standards articulated in Rodriguez v. United States. 575 U.S. 348 (2015). I would reverse solely on that basis and thus dissent.