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United States Court of Appeals
Tenth Circuit

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Christopher M. Wolpert
Clerk of Court

PUBLISH

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

RONDELL YOKENYA BAKER,

Defendant - Appellant.

No. 23-8042

Appeal from the United States District Court
for the District of Wyoming
(D.C. No. 1:22-CR-00058-ABJ-1)

Leah D. Yaffe, Assistant Federal Public Defender (and Virginia L. Grady, Federal Public Defender, on the brief), Denver, Colorado, for Defendant - Appellant

Christyne M. Martens, Assistant United States Attorney (and Nicholas Vassallo, United States Attorney, District of Wyoming, on the brief), Casper, Wyoming, for Plaintiff - Appellee.

Before **PHILLIPS**, **KELLY**, and **FEDERICO**, Circuit Judges.

KELLY, Circuit Judge.

Defendant-Appellant Rondell Yokenya Baker appeals from the district court's denial of his motion to suppress evidence obtained from a search of his vehicle. Mr. Baker was charged with one count of possession with intent to distribute

methamphetamine and fentanyl under 21 U.S.C. § 841(a)(1), (b)(1)(A), and (b)(1)(B). He entered a conditional guilty plea pursuant to a plea agreement, reserving his right to appeal from the denial of his motion to suppress. He was sentenced to 44 months' imprisonment and three years' supervised release. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Background

A. Factual background

On the evening of March 2, 2022, Deputy Lloyd stopped Mr. Baker and his passenger twice, as they traveled through Wyoming in a gray Dodge Journey with Kentucky plates. Deputy Lloyd first stopped Mr. Baker for driving 82 mph in a 70 mph zone. The officer asked Mr. Baker for his license, registration, and insurance, and Mr. Baker produced only his license at first. Exh. 2 at 01:30–02:08 (Deputy Lloyd's body-camera footage from stop one). The officer asked Mr. Baker and his passenger where they were coming from, and Mr. Baker said "Wyoming." I R. 207. When the officer asked if they knew they were still in Wyoming, Mr. Baker said yes and commented on the dry landscape. Id. After receiving Mr. Baker's California license, Deputy Lloyd asked if the car was a rental and whether Mr. Baker had the rental agreement. Mr. Baker could not produce a physical or electronic copy of the rental agreement but gave the officer a self-insurance card; he also clarified that his cousin had rented the car "the other day" and that he thought the rental was due in a "day or so." Id.; Exh. 2 at 02:48–03:04. Deputy Lloyd accepted Mr. Baker's

documents.

With Mr. Baker's license and self-insurance document in hand, Deputy Lloyd walked back to his vehicle. Deputy Lloyd reviewed Mr. Baker's documents in his vehicle and issued a written warning for speeding. The officer told Mr. Baker the traffic stop was over but asked if he would chat a little further. Mr. Baker agreed, and the officer asked more questions about their itinerary. Mr. Baker and his passenger clarified that they started in Las Vegas and were headed to North Dakota to visit family. Deputy Lloyd wished them a good night and they drove away.

Deputy Lloyd testified that he suspected Mr. Baker and his passenger were involved in drug trafficking from this interaction but that he let them go because the K-9 handler on shift (Deputy Coxbill) was an hour and a half away. I R. 262–63. Deputy Lloyd then followed Mr. Baker for approximately 50 miles, while calling Deputy Coxbill and providing details about the car and the previous stop. Deputy Lloyd then stopped Mr. Baker a second time for driving 57 mph in a 45 mph zone. Deputy Coxbill arrived on the scene with the K-9, Champ, just behind Deputy Lloyd. Deputy Lloyd approached the car from the passenger side and again asked for license, registration, and proof of insurance, and Mr. Baker again handed the officer his license. Meanwhile, Deputy Coxbill removed Champ from his vehicle, and the officer and K-9 were standing at the ready to perform the dog sniff. Exh. 3 at 01:00–01:30 (Deputy Coxbill's body-camera footage). Deputy Lloyd took Mr. Baker's license and said that if everything checked out, he would give him another warning for speeding. Exh. 4a at 01:30–01:49 (Deputy Lloyd's body-camera footage from

stop two).

As Deputy Lloyd walked back towards his vehicle and passed Deputy Coxbill and Champ, he turned back and asked Deputy Coxbill, "Do you want me to pull them out?" Id. at 01:48–02:00. Deputy Coxbill responded, "Yeah, and have them roll the window up too." Exh. 3 at 01:30–01:43. Deputy Lloyd then asked Mr. Baker if he would mind exiting the car and directed him and his passenger to roll up the windows. I R. 209; Ex. 4a at 02:02–02:25. Deputy Lloyd then asked if Mr. Baker had any weapons and reminded him to shut his car door so it would not be taken off by the traffic. Exh. 4a at 02:35–02:51. As Deputy Lloyd led Mr. Baker back to his police vehicle, Champ alerted to the presence of drugs near the rear of Mr. Baker's car. I R. 209; Exh. 4 at 02:35–03:10 (Deputy Lloyd's dash-camera footage from stop two). Deputy Lloyd told Mr. Baker the dog alerted to the presence of drugs and that they had probable cause under Wyoming law to search the vehicle because of the dog's alert. The search of Mr. Baker's vehicle uncovered approximately eight pounds of methamphetamine, 1,093 fentanyl pills, and 2.3 ounces of cocaine.

At a suppression hearing, both deputies testified about pulling Mr. Baker out of the car during the second stop. Deputy Lloyd testified as follows:

> Q: And you asked on your way back to — with Mr. Baker's ID, you asked Deputy Coxbill if . . . he'd like you to pull Mr. Baker from the car; correct?
>
> A: Yes.
>
> Q: And . . . he told you he did want you to do that; correct?
>
> A: Yep.

> Q: And that was in order to help facilitate the free air sniff he was about to perform?
>
> A: For his safety, yeah.

I R. 287–88. Deputy Lloyd also testified that he did not need to pull Mr. Baker from the car merely to issue the speeding warning, and that he did not do so during the first stop. Id. at 288–89.

Deputy Coxbill was also asked whether he directed Deputy Lloyd to pull Mr. Baker out of the car "in order to facilitate the free air sniff?" Id. at 323. Deputy Coxbill responded, "Yeah" and explained that when a driver is removed and sits in the front seat of the police vehicle, it is easier to get information. Id. at 324. He also responded affirmatively when asked whether he had Mr. Baker exit the vehicle "to be able to safely run the dog[.]" Id. Finally, when asked why he directed Deputy Lloyd to have the passengers roll the windows up, Deputy Coxbill explained that he does so "for [the passengers'] safety" in case the dog sticks his head in the window and scares or accidentally bites someone. Id. at 324–25.

B. Procedural history

Mr. Baker moved to suppress all evidence from the search, arguing in part that under Rodriguez v. United States, 575 U.S. 348 (2015), officers unreasonably extended the length of the traffic stop to conduct a dog sniff.[1] In Rodriguez, the

[1] Mr. Baker calculates that the stop was prolonged by one minute and 10 seconds. Aplt. Br. at 6, 23 (the time between when Deputy Lloyd asked Deputy Coxbill if he should pull Mr. Baker out of the car and when Deputy Lloyd walked Mr. Baker back to his police vehicle). The government calculates that any potential

Supreme Court held that an officer cannot prolong a traffic stop to investigate other criminal wrongdoing without separate reasonable suspicion, and even de minimis delays can unreasonably prolong a traffic stop. United States v. Mayville, 955 F.3d 825, 830 (10th Cir. 2020) (citing Rodriguez, 575 U.S. at 354–57).

Following the suppression hearing, the district court initially granted Mr. Baker's motion to suppress. The district court set aside whether the second traffic stop was unreasonably prolonged under Rodriguez because the court interpreted the government's stipulation (that the true purpose of the second stop was to investigate drugs) to mean that the second stop's purpose was never for speeding but only to conduct a drug investigation. Thus, the district court only analyzed whether the second stop was justified by reasonable suspicion developed during the first stop, which the officers testified was based on Mr. Baker's (1) inconsistent travel plans, (2) use of a rental car and inability to produce a rental-car agreement, and (3) nervousness. Considering the totality of the circumstances, the district court found there was not reasonable suspicion of drug trafficking to justify the second stop.

The government filed a motion to reconsider based on the district court's misunderstanding of its stipulation. The government explained that when it stipulated that the true purpose of the second stop was to investigate drugs, it meant

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delay was approximately 20 seconds. Aplee. Br. at 6, 21 (the time between when Deputy Lloyd first started walking back to his police vehicle and when he returned to ask Mr. Baker to step out of the vehicle). Because Deputy Lloyd would have had to walk the full length back to his vehicle regardless of whether he asked Mr. Baker to exit, the government's calculation appears more realistic, but we need not reach the issue given our disposition.

that the officer made a valid pretextual traffic stop under Whren v. United States, 517 U.S. 806 (1996), not that the stop was never justified by a traffic violation (here, Mr. Baker's speeding).

The district court granted the government's motion to reconsider and denied Mr. Baker's motion to suppress. First, the district court found that the stop was a valid pretextual stop under Whren. I R. 466–67. Second, the district court found that Deputy Lloyd did not unreasonably delay the stop — it found that asking Mr. Baker for his ID again instead of using the computer was reasonable; that requesting Mr. Baker exit his vehicle was a routine and permissible safety measure during the traffic stop; and that the dog sniff was contemporaneous with Deputy Lloyd's pursuit of the traffic-based mission of the stop. Id. at 469–70.

Discussion

A. Standard of review

"When reviewing the denial of a motion to suppress, we view the evidence in the light most favorable to the government, accept the district court's findings of fact unless they are clearly erroneous, and review de novo the ultimate question of reasonableness under the Fourth Amendment." Mayville, 955 F.3d at 829 (citation omitted). "A finding of fact is not clearly erroneous unless it is without factual support in the record, or unless the court after reviewing all the evidence, is left with a definite and firm conviction that the district court erred." United States v. Chavez,

734 F.3d 1247, 1250 (10th Cir. 2013) (citation omitted).

B. Rodriguez and traffic-stop case law

The Fourth Amendment protects individuals from "unreasonable searches and seizures[.]" A traffic stop constitutes a seizure under the Fourth Amendment, and to be reasonable, the stop must be "justified at its inception and . . . the officer's actions during the stop must be reasonably related in scope to 'the mission of the stop itself.'" Mayville, 955 F.3d at 829 (citations omitted). Here, Mr. Baker does not challenge the initial justification for the traffic stop, only whether Deputy Lloyd unreasonably prolonged the stop when he requested Mr. Baker exit the vehicle and that the windows be rolled up.[2] Aplt. Br. at 21–22. During a traffic stop, an officer's mission is to "address the traffic violation that warranted the stop . . . and attend to related safety concerns," and the "[a]uthority for the seizure thus ends when tasks tied to the traffic infraction are — or reasonably should have been — completed." Rodriguez, 575 U.S. at 354. In Rodriguez, the Supreme Court considered whether a dog sniff conducted after a completed traffic stop was unreasonable (adding seven to eight minutes) and held that a traffic stop "becomes unlawful if it is prolonged beyond the time reasonably required to complete" the stop. 575 U.S. at 350–51, 353

[2] The dissent criticizes pretextual stops in general, and the "absurdity" of stopping Mr. Baker for speeding a second time. But as the dissent acknowledges, Mr. Baker does not challenge the legality of being stopped for driving 12 mph over the speed limit twice, and the Supreme Court has long held that the subjective motivations of an officer do not dictate the constitutionality of an otherwise-valid traffic stop under the Fourth Amendment. Whren, 517 U.S. at 813. As a policy matter, it does not seem absurd to deter speeding in either of these stops.

(quoting Illinois v. Caballes, 543 U.S. 405, 407 (2005)).

In analyzing whether a delay to a traffic stop becomes unlawful, the Rodriguez Court considered (1) the action taken by the officer and (2) whether the action added time to the stop. First, the Court considered actions officers can reasonably take that do not detour from the traffic stop, including those related and unrelated to the stop's traffic-based mission. Id. at 355–57. Under the Fourth Amendment, "certain unrelated investigations that d[o] not lengthen the roadside detention" such as unrelated questions or a dog sniff are reasonable. Id. at 354 (citing Arizona v. Johnson, 555 U.S. 323, 327–28, 333–34 (2009) (questions about weapons and gang affiliation); Caballes, 543 U.S. at 406, 408–09 (dog sniff)). Furthermore, inquiries and safety precautions related to the traffic mission can always extend the stop, including: (1) inspecting the driver's license, registration, and proof of insurance, and searching for outstanding warrants; and (2) "negligibly burdensome precautions" taken for officer safety, such as ordering the occupants to exit the vehicle during the stop. Id. at 355–56.

Regarding safety precautions, Rodriguez emphasized that traffic stops present certain dangers to officers, and because safety relates to the traffic mission, officers can routinely remove occupants from the vehicle to ensure officer safety. Id. at 356; see also Maryland v. Wilson, 519 U.S. 408, 413–15 (1997); Pennsylvania v. Mimms, 434 U.S. 106, 109–11 & n.6 (1977) (describing the intrusion of removing occupants from the vehicle as "de minimis"). On the other hand, the Court noted that "safety precautions taken in order to facilitate" investigation of other crimes detour from the

traffic mission. Rodriguez, 575 U.S. at 356. As we have stated, "officers may not undertake safety precautions for the purpose of lengthening the stop to allow for investigation of unrelated criminal activity." Mayville, 955 F.3d at 831.

Second, the Court considered when a delay adds time to a traffic stop, and the time "reasonably required" for an officer to complete the traffic mission under the Fourth Amendment. Rodriguez, 575 U.S. at 350. The Court emphasized that "[t]he reasonableness of a seizure . . . depends on what the police in fact do." Id. at 357. If an officer can complete the traffic stop quickly, then that is the time reasonably required to complete the mission. Id. In other words, by completing a traffic stop quickly, an officer cannot "earn bonus time to pursue an unrelated criminal investigation." Id. The Court clarified that the relevant inquiry is not "whether [a] 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. Consistent with this reasoning, we have reiterated that stops may not be prolonged "for the purpose of detecting evidence of ordinary criminal wrongdoing" absent reasonable suspicion of that wrongdoing. Mayville, 955 F.3d at 830. "Even de minimis delays caused by unrelated inquiries violate the Fourth Amendment." Id.

That said, this court has recognized that neither the Fourth Amendment nor Supreme Court precedent "require[s] officers to use the least intrusive or most efficient means conceivable to effectuate a traffic stop." Id. at 832. And when a dog sniff is conducted contemporaneously with an officer's "reasonably diligent pursuit" of the traffic stop's mission — i.e., while traffic-related tasks are ongoing — the

search does not add time to the traffic stop. Id. at 833.

This court has distilled Rodriguez into a three-part test: "an unlawful seizure occurs when an officer (1) diverts from the traffic-based mission of the stop to investigate ordinary criminal conduct, (2) in a way that 'prolongs' (i.e., adds time to) the stop, and (3) the investigative detour is unsupported by any independent reasonable suspicion." United States v. Frazier, 30 F.4th 1165, 1173 (10th Cir. 2022). Therefore, the government prevails if the officers' actions did not divert from the traffic mission, the search was not prolonged, or reasonable suspicion existed.

Under factor three, there was no separate reasonable suspicion here.[3] So under factors one and two, we consider whether Deputy Lloyd diverted from the mission of the traffic stop and prolonged it, based on his colloquy with Deputy Coxbill and by requesting Mr. Baker exit the car and directing the occupants to roll up the windows. Because the district court's findings regarding officer safety are supported by the record, and because the dog sniff occurred contemporaneously with a valid safety precaution, we hold that Deputy Lloyd did not divert from the traffic mission and affirm.

[3] An officer can always prolong a traffic stop with reasonable suspicion of criminal wrongdoing. See Mayville, 955 F.3d at 830. But here, when the district court initially granted the motion to suppress, it found that officers lacked reasonable suspicion of drug trafficking to prolong the stop. Because the district court later denied the motion to suppress upon a motion to reconsider, the government concedes it cannot appeal from the district court's finding on reasonable suspicion. Aplee. Br. at 9 n.3 (citing 18 U.S.C. § 3731 (allowing the government to appeal only orders "suppressing or excluding evidence")). So we do not revisit the district court's finding on the lack of reasonable suspicion.

C. Deputy Lloyd did not divert from the ordinary mission of the traffic stop when he asked Mr. Baker to exit the car.

Mr. Baker argues the district court erred by finding that Deputy Lloyd asked Mr. Baker to exit his car for safety reasons during the traffic stop. Aplt. Br. at 23; I R. 469–70. Mr. Baker argues that the record instead shows that Deputy Lloyd asked Mr. Baker to exit his car and that the windows be rolled up "to facilitate the drug dog sniff — a clear diversion from the stop's traffic-based mission." Aplt. Br. at 23. The dissent echoes this, arguing that these actions were not concurrent with the traffic stop and constituted a "Rodriguez moment."

We do not think the matter is that simple. Deputy Lloyd was pursuing his traffic-based mission of issuing a speeding warning when returning to his vehicle with Mr. Baker's license. Deputy Coxbill was concurrently staging Champ (the K-9) to conduct an open-air sniff. Along the way, Deputy Lloyd asked Deputy Coxbill for direction about the occupants and acted upon Deputy Coxbill's request for assistance, as any reasonable officer would do. Deputy Lloyd's actions were completely reasonable given his responsibility to remain in control of the traffic stop.

As a threshold matter, Mr. Baker's argument asks us to inquire into Deputy Lloyd's subjective intent when asking Mr. Baker to exit the car and directing that the windows be rolled up. While subjective intent is generally irrelevant to our inquiry into reasonableness under the Fourth Amendment, see Whren, 517 U.S. at 812–13; United States v. Hernandez-Quintero, No. 22-8074, 2023 WL 5815640, at *4–5 (10th Cir. Sept. 8, 2023) (unpublished), Mr. Baker argues that Rodriguez requires this court

to assess an officer's subjective intent. Reply Br. at 9–12. Rodriguez clarifies that while ordinary precautions taken for officer safety during a traffic stop are permissible, precautions "taken in order to facilitate" "investigation into other crimes" impermissibly detour from the traffic mission, suggesting that intent is dispositive. 575 U.S. at 354, 356–57.

Assuming without deciding that Rodriguez requires us to examine officers' intent when carrying out routine safety precautions, the record supports the district court's finding that Mr. Baker was asked to exit the vehicle as a safety precaution during the traffic stop. Deputy Lloyd testified that he requested Mr. Baker exit the car for Deputy Coxbill's safety. I R. 288. Deputy Coxbill testified among other things that this precaution allowed him to safely run the dog sniff, and that having the windows rolled up was for passenger safety. Id. at 323–25. From an objectively reasonable point of view, officer and passenger safety are paramount concerns here given that the stop occurred late at night, the officers' suspicion that the car's occupants were involved in drug trafficking, and the potential for increased tension given that this was the second traffic stop, by the same officer, of the same car. This case is easily distinguishable from Frazier, where the officer's action — there, spending three minutes in his car attempting to contact the K-9 handler before starting other traffic tasks — objectively had nothing to do with the traffic mission or safety during the stop. 30 F.4th at 1171, 1173.

Mr. Baker argues the district court incorrectly assumed that Deputy Lloyd's testimony was referring to safety precautions related to the traffic stop as opposed to

the dog sniff and reminds us that Deputy Coxbill testified how his directions facilitated the dog sniff. Aplt. Br. at 32–33. Mr. Baker would like us to make the opposite assumption — that asking Mr. Baker to exit the car had nothing to do with officer safety while completing the traffic stop and everything to do with the dog sniff. The district court did not make this finding and understandably so.

The circumstances here involved a traffic stop on the side of a highway in darkness, with cars speeding by; multiple officers (one controlling an active dog on the pavement) and multiple passengers; and the officers' suspicion of drug trafficking together with a potentially charged interaction given the second traffic stop.[4] Viewing the record most favorably to the government, the facts and circumstances support that Deputy Lloyd's action was taken to maintain officer and passenger safety during the traffic stop. To the extent Deputy Lloyd's action also made for a safer drug interdiction, that fact alone does not somehow negate the importance of overall safety in these circumstances.[5] To hold otherwise, we would penalize Deputy Lloyd for taking every precaution to keep all officers and passengers safe.

Deputy Lloyd's action also was not taken "for the purpose of lengthening the stop[,]" because the stop did not need to be lengthened for the dog sniff to occur. Mayville, 955 F.3d at 831. Neither Deputy Lloyd nor Deputy Coxbill testified that

[4] Not surprisingly, the occupants of the vehicle expressed concern and frustration about being stopped twice.

[5] We think that a safety precaution need only be related to the traffic mission, not that the traffic mission be the sole and independent reason for it. Here we have an open-air dog sniff occurring in the middle of a traffic stop.

pulling Mr. Baker out of the car was necessary to facilitate the dog sniff. Deputy Coxbill only testified that he "prefer[s]" the driver exit the car during a dog sniff "if it's possible[.]" I R. 324. The dog sniff could have been completed with both passengers in the car, supporting that Deputy Lloyd's action was taken for safety, not as a necessary prerequisite for the dog sniff. Furthermore, Deputy Coxbill arrived on the scene seconds after Deputy Lloyd and was ready and waiting with Champ while Deputy Lloyd was requesting documents from Mr. Baker. Unlike the stop in Rodriguez, where an officer deliberately delayed the traffic stop until a K-9 could arrive on scene, 575 U.S. at 351–52, this was not a safety precaution taken as a pretext to prolong the stop.

Finally, Mr. Baker compares the first and second stops to argue that Deputy Lloyd asked Mr. Baker to exit the car for the dog sniff, not as a safety precaution during the traffic mission. Aplt. Br. at 31. Specifically, Mr. Baker points to Deputy Lloyd's testimony that he did not ask Mr. Baker to exit his car during the first stop, and that he would not have done so. Id.; I R. 288–89. Mr. Baker again urges us to assume from these facts that the only difference between stops one and two was the dog sniff, and nothing else.

But the district court's failure to draw such a conclusion was completely understandable. First, Rodriguez instructs that "[t]he reasonableness of a seizure . . . depends on what the police in fact do[,]" not what another hypothetical officer could or should have done. 575 U.S. at 357. Therefore, in assessing the reasonableness of the second stop, we do not consider the facts of the first stop to the

extent that they should limit Deputy Lloyd's choice of permissible actions, just as we would not compare this stop against a log of all Deputy Lloyd's previous traffic stops. Second, even if we do consider the changed circumstances between stops, the presence of the drug-sniffing dog is not the only changed circumstance — there is another officer present (common during traffic stops) and the driver and passenger have now been pulled over a second time, potentially increasing their frustration with the officer. We cannot overlook the inherent danger in these circumstances, and we find no error.

The dissent maintains that "an objective observer of this stop would conclude the exit order was about facilitating the drug sniff, not safety in attending to the speeding violation." First, this court does not review factual findings de novo. We review the district court's factual findings for clear error, view the evidence favorably to the government when reviewing a denial of a suppression motion, and review de novo the ultimate determination of reasonableness under the Fourth Amendment. Mayville, 955 F.3d at 829. The district court found that the exit order was for "safety reasons" — this finding is supported by the record, does not leave us with a "definite and firm conviction that the district court erred[,]" and is reasonable under the Fourth Amendment. Chavez, 734 F.3d at 1250 (citation omitted). Second, in viewing the evidence most favorably to the government, we think an officer's underlying suspicions of criminal activity, even if not rising to the legal standard of reasonable suspicion, can certainly contribute to his or her need to take all reasonable safety precautions while on the job. Third, that the exit order was not necessary for

the dog sniff to occur is based on the officers' testimony regarding "what [they] in fact [did]" and distinguishes these facts from cases like Rodriguez and Frazier where officers prolonged the search so that a drug-sniffing dog could arrive on the scene.

D. The dog sniff was contemporaneous with Deputy Lloyd's completion of the traffic stop and therefore did not prolong the stop.

Because we find that Deputy Lloyd's request for Mr. Baker to exit his vehicle did not detour from the traffic stop's mission, under Rodriguez we need not consider whether the safety precaution added time to the stop.[6] We do find, however, that the district court did not clearly err when it found that the dog sniff was contemporaneous with Deputy Lloyd's diligent pursuit of the traffic stop.[7]

When a dog sniff and alert occur contemporaneously with an officer's pursuit of the traffic-based mission of the stop, the stop is not prolonged. Mayville, 955 F.3d at 833; United States v. Cates, 73 F.4th 795, 807 (10th Cir. 2023); Hoskins v. Withers, 92 F.4th 1279, 1288 (10th Cir. 2024); see also United States v. Dawson, 90

[6] The dissent maintains that Deputy Lloyd prolonged the stop by pausing on his initial walk back from Mr. Baker's vehicle to his own vehicle and speaking briefly with Deputy Coxbill. To reiterate, because we find that Deputy Lloyd took a valid safety precaution, we need not consider whether it added time to the stop. But we note that the Fourth Amendment and Rodriguez speak in terms of reasonableness. See Rodriguez, 575 U.S. at 350–51; Mayville, 955 F.3d at 832–33. We see nothing unreasonable about an officer pausing briefly and consulting with a fellow officer to contemplate the safest and most effective way to proceed. And we reject the notion that appellate courts should be in the business of micromanaging reasonable actions of law enforcement officers designed to promote safety for all concerned.

[7] We also reject Mr. Baker's argument, and the dissent's contention, that Deputy Lloyd's instruction for the occupants to roll up their windows, and the time taken to do so, prolonged the stop. This occurred contemporaneously with the valid safety precaution of asking Mr. Baker to exit his vehicle and before Mr. Baker walked back to Deputy Lloyd's vehicle.

F.4th 1286, 1291–92 (10th Cir. 2024). And the traffic-based mission of the stop includes both issuing a ticket or warning and attending to ordinary incidents of the stop, including safety concerns. Dawson, 90 F.4th at 1292; Rodriguez, 575 U.S. at 354. Here, Deputy Coxbill arrived on the scene with Champ seconds after Deputy Lloyd first exited his vehicle. Then, when Deputy Lloyd first started walking back from Mr. Baker's car holding Mr. Baker's license, Deputy Coxbill and Champ were outside ready to begin the dog sniff. Finally, Champ alerted to the presence of drugs at the rear of Mr. Baker's car before Deputy Lloyd successfully placed Mr. Baker in the police car and before he could begin processing the traffic information. The dog sniff and alert were contemporaneous with Deputy Lloyd asking Mr. Baker to exit the car and bringing him back to the police vehicle, a valid safety measure. Therefore, the stop was not prolonged under Rodriguez.

AFFIRMED.

No. 23-8042, *United States v. Baker*
FEDERICO, Circuit Judge, dissenting

Fourth Amendment challenges to traffic stops are ubiquitous in the federal judicial system and, commonly, they require courts to ignore the obvious. After a first traffic stop resulted in a warning for speeding, Deputy Lloyd then followed Defendant/Appellant Rondell Baker for fifty miles, waiting for the dog handler, Deputy Coxbill, to be available to assist with a premeditated, second traffic stop. Then, to initiate the second stop, Deputy Lloyd waited until Deputy Coxbill was in the area and was ready to assist before he caught Baker speeding once again. The second stop had very little to do with speeding, which the Government conceded, and Deputy Lloyd freely admitted during his testimony before the district court. Rather, the purpose of the second stop from the outset was to conduct a drug investigation, albeit under the façade of another routine stop for speeding.

To decide this case, we must ignore the obvious, pretextual reason for the stop because the officer's subjective intent is irrelevant to our determination. *Whren v. United States*, 517 U.S. 806, 813 (1996). However, because the deputies' actions, viewed objectively, both diverted from the traffic mission and prolonged the length of the second traffic stop to investigate criminal conduct, I would reverse the district court's denial of Baker's motion to suppress and remand for further proceedings.

I

Our court has expressed the "confused state of Supreme Court and Tenth Circuit precedent on the question of when a traffic stop is unreasonably prolonged in violation of the Fourth Amendment." *United States v. Hayes*, 62 F.4th 1271, 1273 (10th Cir. 2023) (Baldock, J., concurring). Although police traffic stops are routine, the nuances of the participants' interactions and the timing of each unique stop make all the difference in a Fourth Amendment analysis. And, new fact patterns and circumstances can make *Rodriguez v. United States*, 575 U.S. 348 (2015) difficult to apply. However, as our common law process employs incrementalism to render the doctrine supple, post-*Rodriguez* rules have emerged within our Circuit that dictate a different outcome than the one reached by the majority.

A

I agree with the majority opinion on several points of law related to traffic stops. First, a traffic stop is seizure, and as such, "is subject to the Fourth Amendment's reasonableness standard." *United States v. Frazier*, 30 F.4th 1165, 1172–73 (10th Cir. 2022). "To be reasonable, a traffic stop must be justified at its inception and the officer's actions must be 'reasonably related in scope' to the 'mission of the stop.'" *Id.* at 1173 (quoting *United States v. Cortez*, 965 F.3d 827, 833 (10th Cir. 2020)). Baker does not challenge the reason for the stop (speeding), so we assume the seizure was lawful from its inception.

Second, the scope of a traffic stop's mission includes addressing both "the traffic violation that warranted the stop" and "related safety concerns." *Rodriguez*, 575 U.S. at 354. Typically, traffic "inquiries involve 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.* at 355. Related safety measures must not be "too intrusive," and the government's "interest in officer safety" must "outweigh[] the motorist's interests." *United States v. Dennison*, 410 F.3d 1203, 1211 (10th Cir. 2005) (quoting *United States v. Holt*, 264 F.3d 1215, 1221 (10th Cir. 2001), holding modified by *United States v. Stewart*, 473 F.3d 1265, 1269 (10th Cir. 2007)).

During the stop, "[a]n officer may conduct certain unrelated inquiries . . . , but [the officer] may not do so in a way that prolongs [the stop] absent the reasonable suspicion ordinarily required to detain an individual." *Frazier*, 30 F.4th at 1173. "Under *Rodriguez*, therefore, an unlawful seizure occurs when an officer (1) diverts from the traffic-based mission of the stop to investigate ordinary criminal conduct, (2) in a way that 'prolongs' (i.e., adds time to) the stop, and (3) the investigative detour is unsupported by any independent reasonable suspicion." *Id.* (quoting *Rodriguez*, 575 U.S. at 357). The parties, and hence this court, all agree there was no reasonable suspicion of drug

trafficking here, so the inquiry turns upon prongs one and two: whether there was a diversion from the traffic-based mission of the stop that prolonged it.

Third, as to the timing of any diversion that lengthens the stop, "[e]ven *de minimis* delays caused by unrelated inquiries violate the Fourth Amendment in the absence of reasonable suspicion." *Id.* (citing *United States v. Mayville*, 955 F.3d 825, 830 (10th Cir. 2020) (itself citing *Rodriguez*, 575 U.S. at 355–37)). If the officer extends the time and lacks reasonable suspicion, such a "*Rodriguez* moment" makes the "seizure of the individual . . . illegal from that point forward." *Id.* at 1179 (quoting *Rodriguez*, 575 U.S. at 357).

Fourth, a dog sniff[1] "is a measure aimed at "detect[ing] evidence of ordinary criminal wrongdoing." *Rodriguez*, 575 U.S. at 355 (alteration in original) (quoting *Indianapolis v. Edmond*, 531 U.S. 32, 40–41 (2000)). Measures meant to "detect crime in general or drug trafficking in particular" are "interests different in kind from" "[h]ighway and officer safety." *Id.* at 357.

[1] "[A]ny interest in possessing contraband cannot be deemed 'legitimate,' and thus, governmental conduct that *only* reveals the possession of contraband 'compromises no legitimate privacy interest.'" *Illinois v. Caballes*, 543 U.S. 405, 408 (2005) (quoting *United States v. Jacobsen*, 466 U.S. 109, 123 (1984)). "Accordingly, the use of a well-trained narcotics-detection dog—one that 'does not expose noncontraband items that otherwise would remain hidden from public view' during a lawful traffic stop, generally does not implicate legitimate privacy interests." *Id.* at 409 (quoting *United States v. Place*, 462 U.S. 696, 707 (1983)). The issue before this court, however, is not whether a dog sniff is a search subject to the Fourth Amendment, but whether the officers' preparation for and performance of the dog sniff unlawfully prolonged Baker's seizure.

When reviewing such measures to detect crime, the critical "question is whether the stop would have ended sooner had the officer continued to work diligently on the traffic-related tasks rather than pursue an unrelated investigation." *Frazier*, 30 F.4th at 1180. "Under *Rodriguez*, it makes no difference whether an investigative detour occurs before or after the completion of the stop's traffic-based mission." *Id.*

Finally, "once a motor vehicle has been lawfully detained for a traffic violation, the police officers may order the driver to get out of the vehicle without violating the Fourth Amendment's proscription of unreasonable searches and seizures." *Pennsylvania v. Mimms*, 434 U.S. 106, 111 n.6 (1977); *United States v. Rice*, 483 F.3d 1079, 1084 (10th Cir. 2007). The justification for vehicle exit orders is officer safety. *United States v. Ladeaux*, 454 F.3d 1107, 1110 (10th Cir. 2006).

B

In applying this law to the unique facts and circumstances in this case, the majority concludes that Deputy Lloyd did not divert from the ordinary mission of the traffic stop by asking Baker to exit the car; I respectfully disagree.

Again, the mission of this traffic stop was not to enforce the speed limit; it was, from the outset, a drug investigation that was not based upon reasonable suspicion. Indeed, the events of the second stop unfolded with slight

absurdity. Deputy Lloyd had already pulled over the rental car driven by Baker and issued him a warning for speeding. He then followed Baker for 50 miles to give time for Deputy Coxbill and the narcotics-detection dog to be in the area to assist him with a second stop of the same vehicle, with the same driver and passenger, and, again, for speeding. Deputy Lloyd then pretended that the first stop did not happen — he again took Baker's driver's license and told him, "if everything checks out," he would give Baker another warning for speeding. Ex. 4a at 1:30—1:49. But, of course, Deputy Lloyd already knew everything checked out because nothing about the driver, the passenger, or the vehicle had changed from when he first pulled Baker over.[2]

Not so fast though, as *Whren* commands that we must disregard Deputy Lloyd's actual and obvious mission of the stop (pretextual drug investigation) and only consider what actions Deputy Lloyd was legally entitled to take to investigate speeding. *See Whren*, 517 U.S. at 813. And here is where the case law establishes rules of reasonableness about what officers can do after a lawful seizure, including drug-dog sniffs and exit orders.

The question is whether the exit order and dog sniff *diverted* from the mission of investigating and processing a speeding violation. The majority says

[2] We also must disregard the absurdity of issuing a warning for speeding, observing Baker speed again, stopping him again for speeding, and then declaring that a second warning will be given for the same infraction, within the same hour.

it did not because these were concurrent actions: Deputy Lloyd was investigating speeding while Deputy Coxbill was staging his K-9 for an open-air sniff. But these actions were not concurrent. Rather, Deputy Lloyd walked back towards his patrol vehicle with Baker's driver's license and then stopped to talk with Deputy Coxbill about setting the conditions for the dog sniff. And at that precise time, the "*Rodriguez* moment" occurred. *Frazier*, 30 F.4th at 1179 (quoting *United States v. Green*, 897 F.3d 173, 179–83 (3d Cir. 2018)).

In the diversion analysis, the majority focuses solely on the exit order. We agree that, generally, Deputy Lloyd may attend to officer safety concerns by asking vehicle occupants to exit the vehicle during a traffic stop. However, an objective observer of *this* stop would conclude the exit order was about facilitating the drug sniff, not safety in attending to the speeding violation. The "[o]n-scene investigation into other crimes . . . detour[ed] from [the] mission" of the stop, i.e., the speeding infraction. *See Rodriguez*, 575 U.S. at 356.

And what about the separate order to Baker and the passenger to roll up the windows? Deputy Coxbill requested that Deputy Lloyd order Baker and the passenger to roll up the windows on Baker's vehicle. Deputy Lloyd directed Baker to do so, and Baker and his passenger complied. In total, this "window order" added less than a minute to the second traffic stop but add time it did.

The Government provides no response to the question of why, exactly, the window order was objectively justified by the traffic stop or traffic-related

safety concerns, and neither does the majority. The majority's position is that "a safety precaution need only be related to the traffic mission, not that the traffic mission be the sole and independent reason for it." Majority Op. at 14 n.5. However, Deputy Coxbill testified at the suppression hearing that when preparing for a dog sniff of a vehicle, he "prefer[s] to have the windows rolled up . . . for [the occupants'] safety. I would hate if my dog stuck his big, fat head in the window and scared somebody." Aplt. App'x I at 324. The window order solely related to investigation of criminal conduct because there was no traffic or traffic-related safety reason for it and because, viewed objectively, its purpose was to prepare for the dog sniff. *See Rodriguez*, 575 U.S. at 355 (quoting *Indianapolis*, 531 U.S. at 40–41) (determining that a dog sniff "is a measure aimed at 'detect[ing] evidence of ordinary criminal wrongdoing'"). And "a dog sniff, unlike the routine measures [of a traffic stop], is not an ordinary incident of a traffic stop." *Id.* at 356.

In the diversion analysis, the majority thrice mentions the officers' suspicions that the car's occupants were involved in drug trafficking. Setting aside that we cannot consider the officers' subjective suspicions, here the Government concedes that it is bound by the district court's determination there was no *reasonable* suspicion of drug trafficking in this case, so the suspicions about drug trafficking cannot justify the officers' actions. Also, the majority says the stop did not need to be lengthened for the dog sniff, which

could have been completed with both passengers in the car. It was not, and we should focus on "what the police in fact do," not what they could have done. *See Rodriguez*, 575 U.S. at 357. Because these events were not fully concurrent, I conclude Deputy Lloyd diverted from the mission of the speeding violation.

C

Having concluded that the deputies diverted from speeding enforcement, the traffic stop's mission, to investigate criminal conduct, I now turn to whether the detours prolonged the stop. The majority determined that: (1) "Deputy Lloyd's action also was not taken 'for the purpose of lengthening the stop[,]' because the stop did not need to be lengthened for the dog sniff to occur," and (2) the window order "occurred contemporaneously with the valid safety precaution of asking Mr. Baker to exit his vehicle," Majority Op. at 14, 17 n.7 (quoting *Mayville*, 955 F.3d at 831).

Again, the dog sniff and speeding investigations did not happen concurrently or contemporaneously. The investigation into speeding was halted to set the conditions for the dog sniff, first while the officers removed Baker from the vehicle and required him to roll up the windows, and second while Deputy Lloyd observed Deputy Coxbill run the dog around the car. "[I]t makes no difference whether an investigative detour occurs before or after the completion of the stop's traffic-based mission." *Frazier*, 30 F.4th at 1180. And

once that detour occurred and any time was added to the stop, the seizure became unreasonable and unlawful from that *Rodriguez* moment forward.

The majority's analysis sounds very similar to the argument the Government made, and lost, in *Rodriguez*. There, the Government argued that "an officer may 'incremental[ly]' prolong a stop to conduct a dog sniff so long as the officer is reasonably diligent in pursuing the traffic-related purpose of the stop, and the overall duration of the stop remains reasonable in relation to the duration of other traffic stops involving similar circumstances." *Rodriguez*, 575 U.S. at 357 (alteration in original). Again, this argument has already been disposed of by binding precedent. *Id.*

Although the exit and window orders added less than a minute of time to the traffic stop, "[e]ven *de minimis* delays caused by unrelated inquiries violate the Fourth Amendment in the absence of reasonable suspicion."[3] *Frazier*, 30 F.4th at 1173; *accord Mayville*, 955 F.3d at 830; *United States v. Whitley*, 34 F.4th 522, 529 (6th Cir. 2022) ("*Rodriguez* expressly rejected the view that a 'de minimis' intrusion or delay is permissible."); *United States v.*

[3] In a concurring opinion in *Hayes*, Judge Baldock concluded that the "de minimis" delays statement in *Mayville* was obiter dictum. 62 F.4th at 1276. However, the "de minimis" delays language regarding prolonging traffic stops arose from *Rodriguez* and was central to the holding in *Frazier*, which examined whether a *Rodriguez* moment occurred (in that case it did) and then concluded the "seizure of the individual remains illegal *from that point forward*." *Frazier*, 30 F.4th at 1179 (emphasis added).

Campbell, 970 F.3d 1342, 1354 (11th Cir. 2020) (applying *Rodriguez* to conclude that regarding a prolonged traffic stop, "the Supreme Court was clear that the length of time is immaterial"); *United States v. Clark*, 902 F.3d 404, 410 n.4 (3d Cir. 2018) ("The Government's argument that the brevity (20 seconds) of the criminal history questioning does not support it being off-mission also fails given the Supreme Court's explicit rejection of a *de minimis* exception in *Rodriguez*."). The district court improperly concluded that the investigation of criminal conduct did not lengthen the stop, which leaves a "definite and firm conviction that a mistake has been made." *United States v. Phillips*, 71 F.4th 817, 821–22 (10th Cir. 2023).

II

In Fourth Amendment inquiries, reasonableness "depends 'on a balance between the public interest and the individual's right to personal security free from arbitrary interference by law officers.'" *Mimms*, 434 U.S. at 109 (quoting *United States v. Brignoni-Ponce,* 422 U.S. 873, 878 (1975)). We permit officers to make pretextual traffic stops so long as there is an objectively reasonable

basis for the stop.[4] We permit officers to make ordinary inquiries incident to the stop and to take measures to address safety concerns. Officer safety is, and should be, paramount as an important public interest. But even in an objective inquiry, we cannot ignore the obvious facts and circumstances to render strained judgments solely in the name of officer safety. In the reasonableness balance, the individual's right to personal security, secured by the Fourth Amendment, demands more. Here, when the *Rodriguez* moment occurred, I find the officers violated Baker's Fourth Amendment rights. I respectfully dissent.

[4] This Court must faithfully apply *Whren*, which has been the law since 1996. However, I think it is also imperative to acknowledge that studies have "found that drivers of color are more likely to be subjected to pretextual stops than [w]hite drivers." *United States v. Hunter*, 88 F.4th 221, 228 (3d Cir. 2023) (McKee, J., concurring) (citing Stephen Rushin & Griffin Edwards, *An Empirical Assessment of Pretextual Stops and Racial Profiling*, 73 Stan. L. Rev. 637, 637–38 (2021)).