MODIFIED: MAY 3, 2011

In the Missouri Court of Appeals

WESTERN DISTRICT

STATE OF MISSOURI,	)	
Respondent,	)	
	)	**WD70594**
v.	)	
	)	**OPINION FILED:**
MELVIN STOVER, JR.,	)	**December 14, 2010**
Appellant.	)	

APPEAL FROM THE CIRCUIT COURT OF CLAY COUNTY
The Honorable Larry Dale Harman, Judge

Before Division Three: James M. Smart, Jr., P.J., Joseph M. Ellis, and Gary D. Witt, JJ.

Per Curiam:

Melvin Stover, Jr. appeals his conviction for first-degree drug trafficking. Stover contends, *inter alia*, that the trial court erred in overruling his motion to suppress and in admitting evidence that he says was obtained through an unlawful search and seizure. We vacate the conviction.

Factual Background

On the morning of Tuesday, November 25, 2003, Corporal Brian Hagerty, a veteran officer with the Missouri State Highway Patrol, was on duty on Interstate 70 in Lafayette County. Corporal Hagerty is the supervisor of his troop's "Criminal

Interdiction Unit." He has been the supervisor of the unit since 2001. He has also had formal training as a canine handler. The zone office for the criminal interdiction unit is located in Lafayette County. By November 2003, Corporal Hagerty had made "hundreds, if not thousands, of drug interdiction arrests" on the highway. Most of the significant drug seizures, he says, have been on eastbound I-70.

On the day in question, Corporal Hagerty was conducting "traffic enforcement." He was accompanied by another officer. He was traveling eastbound on I-70 when he observed a new 2004 Grand Marquis in front of him, also eastbound. The Marquis was initially in the left lane, and it then moved into the right lane between two tractor-trailers. Corporal Hagerty noticed that the Marquis, which was occupied by two men, squeezed in between the two tractor-trailers and maintained a distance of "approximately less than 40 feet" behind the front tractor-trailer in a seventy-mile-per-hour zone. Corporal Hagerty decided to stop the vehicle and issue a warning for following too closely. The Marquis stopped near the exit ramp to a rest area in Lafayette County. The stop occurred shortly after 10:54 a.m.

Corporal Hagerty and his fellow officer exited the patrol car and approached the vehicle and contacted the occupants. Officer Hagerty said that as he approached, he thought the vehicle might be a rented vehicle. He noted that the car had California registration. Upon looking in the vehicle, he observed in the passenger compartment several "gift bags, some art work, some appeared to be newly purchased items with tags or price tags on them." He also noted that "there was no evidence of any luggage or

toiletries or something that might indicate vacation travels." He explained to the driver why he stopped him and asked for his driver's license.

The driver provided a Washington, D.C., driver's license. The driver's name was Melvin Stover. Officer Hagerty took the driver's license and asked Mr. Stover to come back to the patrol car. He stated that he "normally" does that to take the drivers "out of their environment" and to place them into his environment "where we can talk and hear each other and have a conversation." The officer engaged Mr. Stover in conversation. The officer had a "laptop on a stand," where he would enter driver information and ticket or warning information. "So while I spoke with him," the officer said, "I prepared the document to my computer screen, so that I could properly fill that out." Officer Hagerty said that while writing a ticket or giving a warning, "we have to incorporate racial profiling information, which is all on our warning screen." He explained:

> Our warnings are not handwritten, [but are] something generated on a computer and monitored electronically by Jefferson City headquarters. The information that is entered includes troop, number of zone, badge number, time, date, the interstate, the county, the driver and passengers, nature of contact (traffic stop or otherwise), subject's name, date of birth, registration and state, and categories for warnings or summons.

The officer continued to question Stover, asking him where he was coming from, his destination, the purpose of the trip, his relationship to the passenger, where he grew up, and what they had been doing on the trip.

Stover said he was coming from Las Vegas, Nevada, to return to his home in Washington, D.C. Stover told the officer that he and the passenger had each purchased a one-way ticket to fly to Las Vegas for gambling. He said they had won some money but

that they did not have enough to fly back, so they decided to rent a car to come back. Stover said they flew out to Las Vegas on Saturday, the 22nd, three days before the stop. He said the passenger was a friend named Oris Butler. The officer asked Stover if he and Butler had been arrested in the past for any drug offenses. Stover said he had not, and he said Oris Butler had not been arrested "in the last four to five years." The officer asked how they did in their gambling efforts. Stover said they had won $2,100 but had ended up with only $600. The officer kindly suggested that next time Stover should quit while he was ahead.

Hagerty asked Stover whether he had brought any luggage with him. Stover stated that they did not have any luggage. Stover said they did not bring luggage because they were planning to be in Las Vegas only one day. Officer Hagerty regarded it as a highly doubtful proposition that the men would fly out to Las Vegas for a one-day trip (with no same day return flight booked) and not take any luggage or bag of any sort with them. They were wearing (on Tuesday) the same clothes, including underwear, they started the trip with several days before, yet were driving a brand new Mercury Marquis.

At this point, about five minutes had elapsed since the stop. Hagerty, with his special experience and training in drug interdiction, would reasonably have been suspicious that the men were transporting contraband. Indeed, the trial court concluded that Hagerty had reasonable suspicion to detain the travelers for investigative purposes. Officer Hagerty, nevertheless, did not confront the travelers with his suspicion, and did not ask for permission to search the vehicle, nor call for a drug dog to sniff the vehicle. Instead, Hagerty continued discussing various matters with Stover, including matters

related to Stover's employment, who he works for as a truck driver, whether he drives on local trips, whether they knew anyone in Las Vegas or visited anyone, whether Butler ended up personally losing any money, where they have the rental agreement for the car, whether Stover and Butler work together, the backgrounds of Stover and Butler, whether there was anything illegal in the vehicle, whether Stover used marijuana, where they gambled in Las Vegas, where they stayed, how they originally met one another, and so on.

Corporal Hagerty returned to the Marquis and retrieved the rental agreement. The rental agreement showed that the car had been rented in Las Vegas on Friday, November 21, 2003, and was due in Washington, D.C., on Monday, November 24, 2003. The car, thus, was actually one day overdue on November 25, the day of the stop. The officer extensively questioned the passenger with many of the same questions just asked of Stover. Officer Hagerty testified as to the passenger's responses, indicating that the passenger said they had left D.C. on Friday, whereas Stover, in contrast, had said they flew out on Saturday. The passenger's responses were inaudible on the audio portion of Officer Hagerty's videotape recording, but we accept as true the officer's testimony in view of the fact that, due to the trial court's judgment, the trial court must be regarded as having believed the officer.

The officer returned to the patrol car. The questioning went on and on. Many things were discussed, some of which seemed to be like the officer was giving the impression of simply making conversation, such as, "How far is Maryland from D.C.?" The officer then asked whether they had anything illegal in the vehicle, when was the last

time Stover used any marijuana, and similar items. The officer explained why he asked so many questions: he rattled off something about "illegal purposes, illegal drugs, bodies, money, illegal immigrants, hodge podge." He then went back over the itinerary questions, and again asked about why the "one way ticket," and continued with various inquiries.

At approximately 11:14, twenty minutes after the stop began, with no indication that the interrogation was beginning to wind up, the officer asked for permission to search the vehicle. Stover firmly refused. Stover asserted that the officer was harassing him and expressed some frustration, saying that his mother was in the hospital and that he needed to get home. The officer said that he would call a canine unit to sniff the car for drugs. Stover again asked the officer why he wanted to search the vehicle. The back-and-forth discussion continued for several minutes. Then, the officer completed his call to request the canine unit at 11:20, some twenty-six minutes after the stop began. There was thus about twenty minutes of discussion between the development of probable cause and the officer's call arranging for the drug dog.

The officer then left the patrol car and returned to the Marquis again, purportedly to talk with the passenger further. The officer asked the passenger more questions, such as how much they paid for their plane tickets to Las Vegas, why they did not fly back, and whether either one had a sick family member.

At approximately thirty-three minutes after the stop began, Officer Hagerty returned to the patrol car and mentioned to Stover minor contradictions between Stover's

statements and the passenger's statements, such as the fact that the passenger seemed unaware that Stover's mother was sick. The officer again requested to search the vehicle.

Stover suggested to the officer that everything he had told the officer made sense, and the officer in return stated his disagreement with Stover's points. At 11:33, approximately forty minutes after the stop, the officer called in to check on the status of the canine car.

Nineteen minutes after the canine unit was summoned, but over forty-five minutes after the stop, the canine car arrived. At approximately fifty minutes after the stop began, after the dog had acclimated and sniffed around the vehicle, the dog alerted on the trunk. Officer Hagerty announced he was going to conduct a search. The trunk was opened. A suitcase in the trunk was opened, revealing numerous bottles containing a suspicious looking liquid that later was determined to be a very large quantity of PCP, a dangerous controlled substance. A newly purchased watch was also found in the trunk near the suitcase. Stover was arrested and advised of his *Miranda* warnings. He denied all knowledge of what was in the trunk.

At the hearing on the motion to suppress before Stover's trial, the officer provided testimony as to the foregoing. The officer also acknowledged that Stover was not free to leave at any time throughout the detention. After hearing the evidence on the motion to suppress, the court denied the motion. At trial, Stover's attorney renewed the motion to suppress, objecting to the evidence found in the trunk of the vehicle. After deliberations, the jury found Stover guilty of the felony of trafficking drugs in the first degree in violation of section 195.222.5, RSMo 2001 Supp.

Discussion

In his points on appeal, Stover challenges the sufficiency of the evidence to convict, the admission of evidence he contends was seized as a result of a violation of his Fourth Amendment rights, and evidentiary rulings. Because we find Stover's second point dispositive, we need not address the other points. In his second point, Stover contends that the evidence found in the trunk was seized in violation of his Fourth Amendment rights, because his detention for a traffic violation was unreasonably prolonged beyond the time required to investigate the traffic violation.

Generally, we review a trial court's ruling on a motion to suppress "in a light most favorable to the ruling." *State v. Oliver*, 293 S.W.3d 437, 442 (Mo. banc 2009). We defer to the trial court on factual determinations, and we reverse only if the trial court ruling was clearly erroneous. *See id.* Thus, our standard of review requires us to accept the facts as related by the officer, including his testimony regarding his special training, expertise, and experience in drug interdiction, as true for purposes of this appeal.[1] The essential facts of this case, however, have been extensively captured on the audio portion of the patrol car's video camera. There is no dispute as to the operative facts.[2] Accordingly, the question of whether the seizure of Stover or of Stover's contraband

[1] Put another way, had the trial court's ruling been in favor of Stover on his motion to suppress, and the State brought an interlocutory appeal of that ruling, our standard of review would require that we disregard most if not all of the officer's testimony except for that which is consistent with the audio recording of the incident, which has been provided to us in this appeal. Thus, our standard of review dictates that the non-corroborated evidentiary facts on which we rely in deciding this appeal cannot be treated as factual truths in future cases, or be relied upon to preclude contrary evidence or cross-examination regarding such matters in future cases.

[2] The trial court found that the officer had reasonable suspicion to detain Stover. We will assume for purposes of the appeal that Officer Hagerty's testimony was believed by the trial court to the extent that the testimony did not conflict with the facts clearly captured on the audio portion of the videotape. Therefore, pursuant to our previously stated standard of review, we accept as true the facts as related by the officer, except to the extent that the audiotape clearly indicates otherwise.

without probable cause violated Stover's rights to be free of unreasonable search and seizure is purely an issue of law that we review *de novo*. *See State v. Sund*, 215 S.W.3d 719, 723 (Mo. banc 2007); *State v. Rousan*, 961 S.W.2d 831, 845 (Mo. banc 1998).

"The Fourth Amendment to the United States Constitution guarantees that individuals will not be subject to unreasonable searches or seizures." *Sund*, 215 S.W.3d at 723. The Missouri Constitution offers the same level of protection; the same analysis applies to cases under the Missouri Constitution as under the United States Constitution. *State v. Pike*, 162 S.W.3d 464, 472 (Mo. banc 2005).

Stover contends specifically, based primarily on the decision of this court in *State v. Maginnis*, 150 S.W.3d 117 (Mo. App. 2004), that he was improperly detained for an excessive period of time in connection with a traffic stop, without there being reasonable suspicion or probable cause to believe that a crime (apart from the traffic violation itself) was being committed.

a. Investigative Detention Related to the Traffic Stop

Maginnis involved a traffic stop that was extended beyond the time reasonably necessary to deal with the traffic issue itself without reasonable suspicion or probable cause. *Id.* at 122. In *Maginnis*, the officer diverted immediately from enforcement of the traffic laws and undertook to separate the travelers and to question them with "fishing expedition" questions based on speculative suspicion rather than reasonable suspicion. *Id*. The officer questioned the driver, Mr. Maginnis, and his passenger extensively about the facts related to the trip for a "little over ten minutes" before asking for consent to

search and then deciding to use the drug dog. *Id*. at 119. At that point, although the officer had suspicion, he did not have reasonable suspicion. *Id*. at 122.

"For purposes of constitutional analysis, a traffic stop is characterized as an investigative detention, rather than a custodial arrest." *United States v. Jones*, 269 F.3d 919, 924 (8th Cir. 2001). As such, a traffic stop is governed by the principles of *Terry v. Ohio*, 392 U.S. 1 (1968). Under the principles of *Terry*, an officer may detain a traveler for a reasonable period of time to deal with a traffic infraction, and in the course of that temporary detention, the officer may inquire about the itinerary of the travelers while making observation of pertinent circumstances which might suggest criminal activity. *See State v. King*, 157 S.W.3d 656, 663 (Mo. App. 2004).

In initiating a traffic stop, the officer also has authority to "check the driver's license and registration, ask the driver about his destination and purpose, and request that the driver sit inside the patrol car." *United States v. Brown*, 345 F.3d 574, 578 (8th Cir. 2003). "[Q]uestions relating to a driver's travel plans ordinarily fall within the scope of a traffic stop." *United States v. Williams*, 271 F.3d 1262, 1267 (10th Cir. 2001). Once the investigation of the traffic stop is completed, the person detained must be permitted to leave unless the law enforcement officer has objectively reasonable suspicion, based on specific, articulable facts, that the person is involved in criminal activity. *King*, 157 S.W.3d at 662-63.

The officer's observations of specific, articulable facts indicating suspicious behavior or highly improbable responses to inquiries during the traffic stop may provide reasonable suspicion of criminal activity, warranting further detention to expand the

scope of the stop, to ask for permission to search; and if permission is denied, the officer may involve a drug detection dog. *See United States v. Allegree*, 175 F.3d 648, 650 (8th Cir. 1999). A drug dog's positive indication may by itself establish probable cause as to the presence of a controlled substance, justifying a search. *See United States v. Olvera-Mendez*, 484 F.3d 505, 512 (8th Cir. 2007). The exposure of the vehicle to the sniff of a drug dog is a *de minimus* intrusion and does not constitute a search. *City of Indianapolis v. Edmond*, 531 U.S. 32, 40 (2000); *see also United States v. Lyons*, 486 F.3d 367, 372-73 (8th Cir. 2007).

An unduly protracted "investigative detention" is also an unduly protracted "seizure of a person." *See Sund*, 215 S.W.3d at 723-24. In *Sund*, an officer stopped a vehicle containing two women on Interstate 44 for a lane violation. The driver gave the officer her driver's license and car rental agreement. The officer first questioned her to detect whether her sobriety was impaired. He returned to the patrol car and ran a license check and noticed that the rental agreement was in a different name. Returning to the traveler's vehicle, he learned that the passenger was the person who had executed the rental agreement. *Id*. at 721. The passenger provided her license. The officer then asked the driver to join him in his patrol car. In the patrol car, he informed the driver he would issue her a warning ticket. While he filled out the warning ticket and the "requisite racial-profiling form," and while waiting for some computer results on the passenger's license, he asked the driver some questions about herself and the details of the trip. The driver informed the officer that they were traveling east to assist a friend to prepare for a wedding.

After the computer checks were completed, the officer left the patrol car to return the passenger's license. The driver remained in the patrol car, evidently at the officer's direction. The officer then questioned the passenger about the details of the trip and received answers consistent with those of the driver. *Id*. The officer then motioned for the driver to exit the patrol car. At that point, fifteen to twenty minutes had elapsed since the stop began. *Id*. The officer completed the traffic stop by telling the driver to "be careful," and by returning her license and giving her the warning ticket. *Id*. at 721-22.

While the driver was walking back to her vehicle, the officer asked if he could search the vehicle. *Id*. at 722. The driver first replied "sure," but then when he asked her to open the trunk, she changed her mind. Neither of the women was willing at that point to give him consent. The officer then told them that they could either consent to a search of the trunk or they could wait for about forty minutes until a canine unit arrived to conduct a sniff search. *Id*. At that point, the passenger/renter agreed to open the trunk, where the officer found about seventy pounds of marijuana. The driver was convicted of second-degree drug trafficking, and she appealed the denial of her Fourth Amendment objection to the introduction of the evidence seized. *Id.*

In the Missouri Supreme Court, the Court recognized that generally a traffic stop is a "reasonable seizure" under the Fourth Amendment. The Court stated, though, that such a stop does not justify an "indefinite detention." *Id*. at 723 (*citing State v. Barks*, 128 S.W.3d 513, 516 (Mo. banc 2004)). Because the traffic stop was complete when the officer gave the driver her warning ticket, returned her license, and told her to "be careful," the officer was required to allow the travelers "to proceed without further

questioning unless specific, articulable facts created an objectively reasonable suspicion" that they were involved in criminal activity. *Id.* In that case, the traffic stop was completed. The continued detention thereafter and the permission to search was obtained by the threat of making them wait forty minutes for the canine unit and, therefore, was not consensual. The detention was a violation of their Fourth Amendment rights. *Id*. at 724-25. The Court held that, accordingly, the evidence found in the trunk must be suppressed. *Id*. at 725.

When an officer proceeds efficiently to investigate the traffic offense, including asking about the itinerary, sometimes the officer can develop reasonable suspicion. *See, e.g., United States v. McCarty*, 612 F.3d 1020 (8th Cir. 2010). In that case, while processing the license and registration data after a traffic stop, the officer engaged in a discussion about the driver's travel itinerary. The officer learned of particularized objective facts creating reasonable suspicion, including, among other things, that the driver had a "compressed travel schedule" and that the driver had rented "a car for a one-way trip at substantial expense." *Id.* at 1025. While waiting for verification of the driver's documents, the officer asked the driver if he had any drugs in the car. *Id*. at 1023. The driver admitted that there was the butt of a marijuana cigarette in the center console. Ultimately, officers found fourteen packages of "ecstasy" hidden.

The Eighth Circuit of the United States Court of Appeals, in its analysis, noted that the officer, as part of the traffic stop, asked questions about the itinerary. The court said that

> [b]ased on a number of factors and in light of his experience, [the officer] became suspicious that McCarty was transporting contraband. [The officer] was aware of particularized objective facts that gave rise to his suspicion that a crime was being committed.... Considered in the light of [the officer's] experience, the totality of the circumstances suggested that McCarty was committing a crime.

Id. at 1025. The court held that the officer was justified in expanding the traffic stop to ask about the presence of drugs in the car. *Id*.

Similarly, in *United States v. Lyons*, 486 F.3d 367 (8th Cir. 2007), the court noted that by the time the officer had issued the warning ticket, she already had reasonable suspicion of illegal activity. The officer promptly asked for permission to search and, when permission was denied, acted diligently to summon the drug dog. Although there was a thirty-one minute delay awaiting the arrival of the drug dog, the court held that the overall detention was not unreasonable in that the officer acted promptly once she had reasonable suspicion. *Id*. at 372.

In the case before us, Officer Hagerty, in taking the time necessary to enter the data into the computer while discussing the facts of the trip with Mr. Stover, learned that Stover's description of the trip itinerary was unusual. The comments by Stover indicated that the two men had flown to Las Vegas to gamble for a day without having a plan for their return trip and, therefore, did not have any luggage with them. The officer had learned that one of the men had prior arrests related to controlled substances, though "not in the last four or five years." The circumstances, as they would have appeared to someone of Officer Hagerty's training and experience, were such as would tend to create

reasonable suspicion.[3] Thus, we disagree with Stover's assertion that the officer lacked reasonable suspicion. We agree with the trial court's determination that there was reasonable suspicion. Officer Hagerty, however, did not promptly pursue his suspicions by asking for permission to search at that time, nor did he promptly summon the drug dog. Instead, Officer Hagerty continued efforts to interrogate Stover and the passenger as though he and the travelers had nothing better to do than to discuss many things unrelated to the traffic stop.

In *Maginnis*, the officer, acting on a hunch that he had stopped some people carrying contraband, separated the two travelers and engaged in "fishing expedition" questions of the two travelers that went way beyond enforcement of the traffic laws. He put the driver in the patrol car and questioned him, and then went back and forth between the passenger and the driver to compare statements to try to find contradictions. The officer in that case did not even ask for registration or run a computer check of license or vehicle until after the unrelated questioning. 150 S.W.3d at 122. The officer had a drug dog with him at the time, which he could easily have employed promptly, but instead he insisted on extensive questioning of the two travelers until he could confront them with some contradictions in their statements. Although the court's opinion in that case does not state the amount of time that the travelers were detained for the extensive

[3] Here, we have two men with an itinerary that would exactly fit what someone like Officer Hagerty might expect of drug couriers: men from the east coast flying to a western state without a plan to fly back (to avoid airline searches); there were two of them so that they could drive straight through without having to stay in a motel (and risk having the car or the suitcase stolen) and, accordingly, would not have needed any luggage or changes of clothes. A key significance of the lack of a suitcase, of course, is the ability for the travelers to plausibly deny having even opened the trunk of the rental car and, therefore, being unaware of its contents. An officer with Hagerty's experience would be aware of this. Also, one traveler here, the passenger, had one or more previous law enforcement encounters over drugs, adding to the suspicion.

questioning, it is obvious that the officer detained them a significant period of time. This court held that the detention far exceeded the reasonable investigation of the traffic stop.

b. Investigative Detention Based on Reasonable Suspicion

Our courts and those of other jurisdictions have recognized that a detention for investigation of possible drug possession based on reasonable suspicion must be reasonably efficient. *See, e.g., State v. Woods*, 284 S.W.3d 630, 637-38 (Mo. App. 2009); *State v. Kovach*, 839 S.W.2d 303, 310 (Mo. App. 1992); *see also United States v. Lyons*, 486 F.3d at 372. It is not reasonable to detain people unnecessarily without taking reasonable steps to resolve suspicions quickly. What is necessary in connection with reasonable law enforcement activities is that an officer must act diligently in attempting to resolve his suspicions. If an officer does not "act [] diligently to verify his suspicions as quickly as possible," the detention may be unreasonable. *United States v. Bloomfield*, 40 F.3d 910, 917 (8th Cir. 1994). It has been said that more important than the duration of the delay is the "unnecessary nature of the delay." *United States v. Donnelly*, 475 F.3d 946, 953 (8th Cir. 2007). "[T]he proper inquiry is whether, during the detention, the police diligently pursued a means of investigation that was likely to confirm or dispel suspicion quickly." *State v. Simpson*, 968 S.W.2d 776, 783 (Tenn. 1998).

In *State v. Woods*, 284 S.W.3d 630 (Mo. App. 2009), this court noted that the officer proceeded diligently and efficiently after stopping a vehicle that had obviously sought to avoid contact with a police checkpoint by going way out of its way. Based on reasonable suspicion flowing mostly from the extreme evasive conduct of the vehicle's occupants, police detained the vehicle for a drug dog sniff. The officer there worked

efficiently, actively investigating and running routine computer checks; and there was no evidence that there was a burdensome period of inactivity waiting for the canine unit. The officer called for the canine unit eight minutes after the stop was initiated. The canine unit arrived in fifteen minutes, and the canine search was completed four minutes after the canine's arrival, for a total of twenty-seven minutes between the stop and the completion of the dog sniff. We held that the length of the detention was reasonable. *Id.* at 637-38. Here, in contrast, it was twenty minutes before there was a request to search or any attempt to secure the drug dog's presence, and then it was another twenty-five minutes after that before the dog arrived.

In the course of our analysis in *Woods*, we collected and noted cases relating to the reasonableness of the length and efficiency of a detention in similar circumstances: *State v. Peterson*, 964 S.W.2d 854, 857 (Mo. App. 1998) (driver detained for investigation of traffic stop about fifteen minutes; consented to search); *State v. Logan*, 914 S.W.2d 806, 809 (Mo. App. 1995) (length of detention reasonable where canine unit arrived thirty-two minutes after being summoned); *State v. Joyce*, 885 S.W.2d 751, 754-56 (Mo. App. 1994) (ten-minute period between request for canine unit and dog's arrival reasonable); *United States v. Payne*, 534 F.3d 948, 951-52 (8th Cir. 2008) (a traffic stop of thirty-nine minutes reasonable where the detaining officer did not exceed the proper scope of the traffic stop and conducted each step of the investigation without undue delay); *United States v. Lyons*, 486 F.3d 367, 372-73 (8th Cir. 2007) (finding a twenty-five minute wait for a canine unit and a thirty-one minute total detention reasonable where there was no evidence the officers were dilatory in their investigation or that there was any

unnecessary delay); *United States v. Donnelly*, 475 F.3d 946, 951, 954 (8th Cir. 2007) (holding that a fifty-nine minute detention to wait for a drug dog was reasonable where the officer requested the dog immediately after developing reasonable suspicion); *United States v. Sanchez*, 417 F.3d 971, 975 (8th Cir. 2005) (finding a forty-five minute detention reasonable where the officers acted diligently to minimize the detention period); *United States v. Foley*, 206 F.3d 802, 806 (8th Cir. 2000) (finding a stop of under thirty minutes reasonable); *United States v. White*, 42 F.3d 457, 460 (8th Cir. 1994) (determining that it was reasonable for an officer to detain a truck for eighty minutes while awaiting the arrival of a drug dog where the officer acted diligently to obtain the dog, and the delay was caused only by the remote location of the closest available dog); *United States v. Bloomfield*, 40 F.3d 910, 917 (8th Cir. 1994) (finding a detention of one hour reasonable where the detaining officer acted diligently to verify his suspicions as quickly as possible).

Although the foregoing cited cases discuss the length of the total *detention*, it can also be seen from review of these cases that the focus is often on the reasonableness of the *nature of the delay*. For instance, if the drug dog is in a remote location, but the officers act diligently in responding with the drug dog, the delay will not necessarily be unreasonable. *See, e.g.*, *White*, 42 F.3d at 460; *Donnelly*, 475 F.3d at 954. In all the cases where the expanded detention was upheld, the efficiency and diligence of the officer in resolving his or her suspicions was a significant factor.

Here, there was an unnecessarily and unreasonably protracted detention before the officer tried to resolve his suspicions by direct confrontation about the suspicion, and

summoning the drug dog. Our record suggests that this detention involved at least fifteen minutes of unnecessary compelled discussion that amounted to a "cat and mouse game," conducted as though the travelers had "all the time in the world" to talk to the officer. In *Maginnis*, the officer lacked reasonable suspicion but engaged in the same kind of prolonged discussion detention, hoping to develop reasonable suspicion.[4]

The length of the detention matters, even when there is reasonable suspicion, because reasonable suspicion does not equate to probable cause. There must be reasonable protection for innocent, but vaguely suspicious, people. It is obvious to this court that here the extended questioning and discussion was ***not*** designed to assist Officer Hagerty in expeditiously coming to a conclusion as to whether to let the travelers go, or detain them for a drug dog. Rather, the record strongly suggests that the officer knew very early in this stop that he was going to try to develop probable cause by an extended compelled discussion session. The problem with that strategy from the standpoint of the Fourth Amendment is that although the officers may temporarily detain people about whom they have reasonable suspicion for a reasonable investigation, they may not detain them indefinitely or for an unduly prolonged period. If the travelers in this case had (hypothetically) been innocent of criminal wrongdoing, they would have been detained for an investigation that started out efficiently for Officer Hagerty, but then dragged on unnecessarily and inefficiently. It was approximately twenty minutes or more after the investigation of the traffic stop and the development of reasonable suspicion before the drug dog was requested. Altogether, the detention was approximately an hour.

[4] We cannot tell from the record whether this Cpl. Hagerty is one and the same as the "Cpl. Haggerty" in *Maginnis.*

We submit that officers stopping drivers on traffic matters do not have to be scholars of the law of search and seizure, nor do they have to meet an impossible standard of efficiency. They must merely employ common sense, courtesy, and respect for the schedules and the privacy of the drivers they stop. They must focus on the purpose of the traffic stop, and must give a driver the benefit of the doubt as to any other suggestion or hunch of illegal activity until objective, specific, articulable factors demonstrate reason to believe otherwise, recognizing that they are interfering with a person's freedom to travel the highways.

An officer has the right to check license and registration, to check into criminal records, to ask about the destination and the circumstances of the trip, all the while dealing with the traffic issue itself. If those responses to inquiries raise reasonable suspicion, the officer may proceed to efficiently determine whether probable cause develops. If probable cause is not quickly developed, the officer may not continue the detention. If reasonable suspicion remains at that point, and if a drug dog is reasonably available, the officer may promptly arrange for a drug dog to sniff.

Conclusion

For the foregoing reasons, we conclude as a matter of law that the detention for following too closely was unreasonably extended here without probable cause in violation of rights under the Fourth Amendment. In view of the fact that the conviction was based entirely on the evidence seized as a result of the unreasonably extended seizure, and in view of our duty to suppress the evidence gained unlawfully thereby, there was insufficient evidence to convict Stover. Nevertheless, "[t]he erroneous admission of

evidence does not preclude retrial because the state may produce other evidence that cures the evidentiary insufficiency." *Granado*, 148 S.W.3d at 313. We, therefore, vacate Stover's conviction and sentence and remand the case to the circuit court.