

NONPRECEDENTIAL DISPOSITION
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United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Argued July 12, 2023
Decided July 18, 2023

Before

DIANE S. SYKES, *Chief Judge*

ILANA DIAMOND ROVNER, *Circuit Judge*

DIANE P. WOOD, *Circuit Judge*

No. 22-2973

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

Appeal from the United States District
Court for the Southern District of Illinois.

v.

No. 19-cr-40006-JPG

ROBERT DAVIS,
Defendant-Appellant.

J. Phil Gilbert,
Judge.

ORDER

Late one winter afternoon, Robert Davis was driving a car that had tinted windows and brake lights. Based on an Illinois law prohibiting these features, police officers pulled him over for a traffic stop. In response to the standard inquiry for his license, registration, and proof of insurance, Davis produced documents that did not correspond to the car he was driving. The resulting confusion prolonged the stop to about 10 minutes. Although the officers asked him not to conceal his hands, he tried to cover his right hand. The officers feared that he might be hiding a gun, and so they frisked him. What they found in his waistband, however, was not a gun, but instead a packet of drugs. Davis unsuccessfully moved to suppress the drugs, arguing that the stop and its length were unjustified. The district court denied the motion. Because reasonable suspicion justified the stop, its length, and the frisk, we affirm.

I

Around 4:15 pm on December 18, 2018, two Marion, Illinois, police officers saw a man, later identified as Nagib Karim, outside a restaurant. Detective Jessie Thompson and Sergeant Justin Dwyer thought Karim was acting suspiciously, and so they watched him. After 15 minutes, a black Pontiac arrived; Karim hopped in and the car drove off. From the officers' viewpoint of about 200 to 250 feet from the Pontiac, its windows appeared over-tinted. See 625 ILCS 5/12-503(a-5) (2018) (specifying lawful window-tint levels).

While the officers trailed the car, they called dispatch and checked on the Pontiac's registration. They learned that the car was registered to Travis Marshall, whose license was suspended and who had a history of drug dealing. They thought that Marshall might be driving the car, both for the obvious reason that he was the owner and because he recently had been stopped for driving on a suspended license.

The officers followed the car to an apartment building. They saw that the car's taillights were also tinted black and believed that the tinting (like the tinted windows) violated Illinois law. 625 ILCS 5/12-208(a) (2018). When the Pontiac parked, the officers pulled directly behind it. The driver began to get out, but the officers told him to stay in the car. (A witness for Davis testified that he thought Davis left the car, but that witness admitted that he did not pay close attention.) The officers saw that Marshall was not the driver; it was Robert Davis.

Detective Thompson spoke to Davis. He told Davis that his windows and brake lights were unlawfully tinted and asked for Davis's driver's license and proof of insurance. Davis produced some documents, and Sergeant Dwyer began to run the information through a database. Meanwhile, Detective Thompson noticed that Davis was concealing his right hand near the right side of his waist. Fearing that Davis was concealing a weapon, he asked Davis to keep his hands visible. Davis complied but refused a request to search the car. Detective Thompson then asked Sergeant Dwyer—who was still trying to verify Davis's car and insurance information—to call for a trained drug-sniffing dog. (No dog ever came, in the end.)

Sergeant Dwyer encountered discrepancies with Davis's car information. The insurance corresponded to a blue Buick, and the car's registration described it as silver, not black. After Sergeant Dwyer verified the Pontiac's vehicle identification number several times, he told Davis that the insurance information he had furnished was not for a black Pontiac but a blue Buick. (Marshall later testified that he had the Pontiac painted black after he bought it but did not update the registration.)

The officers noticed that Davis was becoming increasingly furtive. After Davis learned that the officers were trying to bring the dog to the scene, Davis began glancing around the car, revved its engine, and—while reaching his hand behind him—told Detective Thompson that he was cold and wanted to get his jacket from the backseat. Detective Thompson told him again to keep his hands in view and retrieved the jacket for him. Instead of putting the jacket on, Davis used it to cover his right hand and waist. Suspicious of Davis for revving the engine and fearing that Davis was hiding a gun under the jacket, Detective Thompson drew his own firearm and ordered Davis to keep his hands in sight. Davis ignored the order.

Fearing that Davis was concealing a gun, Detective Thompson, along with another newly arrived officer, escalated the interaction at that point. They unbuckled Davis's seatbelt, removed him from the car, and handcuffed him. As he resisted, they forced him to the ground and frisked him. The frisk yielded a wallet with thousands of dollars in cash and a bag containing crack cocaine. The officers then arrested Davis for illegal drug possession and resisting arrest. Based on a recording of the police dispatch and Sergeant Dwyer's testimony, we know that the traffic stop lasted less than ten minutes.

Davis was later charged with possessing crack cocaine with the intent to sell it. He moved to suppress the evidence obtained during the stop, arguing that the search producing the evidence violated his Fourth Amendment rights because the officers did not have reasonable suspicion for the stop, and if they did, they unlawfully prolonged it. After a hearing at which the judge personally inspected the Pontiac's windows, the court denied the motion. It ruled that the initial stop was proper because the officers had reasonable suspicion that the Pontiac's windows were unlawfully tinted and that Marshall may have been driving unlawfully. The judge added that, based on his own observation of the Pontiac, the window's over-tinting would have been noticeable even in the late afternoon. Next, the judge ruled that the stop was not unlawfully long. Davis caused the stop's length by producing information for the wrong car, and his furtive glances and nervousness, engine revving, and refusal to show his right hand created reasonable fear for officer safety. Because the stop was not unlawfully prolonged and Davis did not challenge the safety justification for the frisk, the court ruled that the evidence was admissible.

Davis later pleaded guilty to the charge and was sentenced to 90 months' imprisonment. The plea agreement preserved Davis's right to challenge the suppression ruling. See Fed. R. Crim. P. 11(a)(2).

II

On appeal, Davis repeats his contention that the officers violated his Fourth Amendment rights because they lacked reasonable suspicion for the stop and they unduly extended it. Under the Fourth Amendment, a police officer may lawfully stop a car when the officer reasonably suspects that the car is involved in a traffic offense. See *Rodriguez v. United States*, 575 U.S. 348, 354 (2015). The length of the stop becomes unlawful under the Fourth Amendment only if it is longer than reasonably necessary to address the potential traffic violations, check the driver's license, look for outstanding warrants, and inspect the registration and proof of insurance. See *id.* at 354–55. We review de novo the district court's legal conclusions about the lawfulness of the stop and its length; we review any factual findings underlying those conclusions for clear error. See *United States v. Wilson*, 963 F.3d 701, 703 (7th Cir. 2020).

Davis first contends that the officers lacked reasonable suspicion for the traffic stop because the window-tint problem would not have been obvious at sunset. Further, he points out, the officers did not measure the windows' tint levels before stopping him (though he does not explain how this would be possible and offers no authority for such a requirement) and they never cited him for this violation. The violation, he concludes, was merely a post-hoc rationalization for an unlawful search.

The judge did not clearly err in crediting the officers' testimony that they recognized the window-tint violation immediately. First, nothing in their testimony was inconsistent or improbable on its face; as a result, we have no reason to reject the judge's credibility assessment. *United States v. Terry*, 572 F.3d 430, 434–35 (7th Cir. 2009). Second, the judge's personal inspection of the car reinforced their testimony. After viewing the car, the judge found that its windows were so dark that the tinting problem would have been obvious to the officers even in waning daylight. Davis furnishes no reason to doubt that judgment. Third, Davis argues that stopping him because of the tint violation was unlawful because it was a "fishing expedition for illegal drugs." It must have been pretextual, he says, because the officers never ticketed him for that violation. But the officers' purpose for stopping the car does not undermine the judge's finding that reasonable suspicion justified the stop. The pertinent question is whether the traffic stop was objectively justified by facts known to the officers before stopping the car; nothing turns on their subjective motivation. *Whren v. United States*, 517 U.S. 806, 813 (1996).

Davis raises two other challenges to the initial stop, but neither justifies reversal. First, he contests the judge's alternative ground for upholding the lawfulness of the stop—that Marshall was unlawfully driving the car. In his view, because the officers

could not see the driver until they stopped the car (at which point they saw that the driver was not Marshall), this alternative justification is unavailable. But *Kansas v. Glover*, 140 S. Ct. 1183, 1186 (2020), holds that officers have reasonable suspicion to stop a moving car when its registered owner has a suspended license and the officers have no reason to believe that the driver is not the owner. Moreover, the officers here had reason to believe that Marshall was the driver because they knew that he had recently been driving the Pontiac on a suspended license. Second, Davis contests the officers' surveillance of Karim and their decision to trail the Pontiac. But Davis cannot assert Karim's Fourth Amendment rights. See *Alderman v United States*, 394 U.S. 165, 174 (1969). Besides, surveilling a person on the street, without more, does not violate the Fourth Amendment. See *Florida v. Bostick*, 501 U.S. 429, 434 (1991).

Next, Davis argues that, even if the initial traffic stop was lawful, the officers unlawfully prolonged it. But for two reasons the judge correctly concluded that the length of the stop, which was only 10 minutes, was reasonable. First, the officers credibly testified that the "ordinary inquiries" in a traffic stop took longer to resolve than they normally would because the insurance information and registration were incorrect and thus required more time to investigate. *Rodriguez*, 575 U.S. at 355. As we noted, the insurance corresponded to a blue Buick, not a black Pontiac, and the registration recorded a different color for the car. The officers were entitled to prolong the stop to investigate these discrepancies.

Second, Davis's behavior justified extending the stop. Davis does not dispute that, while Dwyer explored the discrepant car information, he "became visibly nervous and revved the engine," and he refused to show his right hand after he draped it with a jacket. These facts support the officers' testimony that they reasonably feared Davis might have a weapon that he could use against them, giving them ample reason to handcuff and frisk him. That frisk (the validity of which Davis does not challenge) permissibly yielded evidence that led to the drug charge and, later, Davis's guilty plea. See *United States v. Vaccaro*, 915 F.3d 431, 436 (7th Cir. 2019). The district court therefore rightly denied the motion to suppress.

The judgment of the district court is AFFIRMED.