

No. 115,285

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,  
*Appellee,*

v.

KEVIN D. LEWIS,  
*Appellant.*

SYLLABUS BY THE COURT

1.

Appellate courts use a bifurcated standard when reviewing the trial court's decision on a motion to suppress evidence, reviewing the trial court's factual findings for substantial competent evidence and the trial court's legal conclusions de novo.

2.

The Fourth Amendment to the United States Constitution and § 15 of the Kansas Constitution Bill of Rights demand that reasonable suspicion exists to stop a person.

3.

Without probable cause to believe some other illegal activity has or is taking place, when law enforcement stops a person for a traffic infraction, the stop cannot last longer than the time reasonably required to conduct the stop. Incidences that constitute routine measures of a traffic stop include requesting a person's license and registration, running a computer check, and issuing a ticket.

4.

When law enforcement uses a drug sniffing dog during a routine traffic stop, law enforcement officers must conduct the dog sniff in a manner that does not prolong the traffic stop.

5.

Absent a reason to extend a routine traffic stop, when law enforcement officers have completed the traffic investigation, law enforcement officers must issue a ticket and let the person stopped go on his or her way. Otherwise, law enforcement officers unreasonably prolong a traffic stop.

6.

Unless simultaneously engaging in activities related to the completion of the routine traffic stop, law enforcement officers cannot engage in activities that focus solely on preparing for a dog sniff during the stop. Such actions unreasonably prolong a traffic stop.

7.

Under the circumstances where the traffic investigation had just been completed as the drug sniffing dog arrived, the law enforcement officers' actions of forcing the defendant to exit his car so the dog sniff could be conducted unreasonably prolonged the stop.

Appeal from Sedgwick District Court; DAVID J. KAUFMAN, judge. Opinion filed June 16, 2017. Reversed, vacated sentence, and remanded with directions.

*Clayton J. Perkins*, of Kansas Appellate Defender Office, for appellant.

*Julie A. Koon*, assistant district attorney, *Marc Bennett*, district attorney, and *Derek Schmidt*, attorney general, for appellee.

Before SCHROEDER, P.J., GREEN, J., and BURGESS, S.J.

GREEN, J.: Following a traffic stop, the police conducted a dog sniff of Kevin D. Lewis' car. The dog indicated that drugs were in Lewis' car, and the ensuing search resulted in the police finding a baggie of cocaine inside Lewis' center console. Lewis moved to suppress the evidence seized from his car. The trial court, however, denied his motion and then convicted him of possessing cocaine. Lewis now appeals, arguing that the trial court erred by denying his motion to suppress evidence for two reasons: (1) he contends that the police unreasonably prolonged his traffic stop to obtain a dog sniff; and (2) he contends that the search of his car after the dog sniff lacked probable cause. Of these two issues, we determine only the first to be meritorious. As a result, we reverse Lewis' conviction, vacate Lewis' sentence, and remand to the trial court with directions to grant Lewis' motion to suppress evidence.

In the early morning hours of June 30, 2011, Officer Brock Kampling saw a pink Cadillac cross the center line of Broadway Street, Wichita, Kansas. Based on this traffic infraction, Officer Kampling pulled the pink Cadillac over. Officer Kampling approached the driver's side door and spoke to the driver. The driver identified himself as Lewis. Lieutenant Kevin Mears, who was driving behind Officer Kampling, joined Officer Kampling who was issuing the traffic ticket. As soon as Lieutenant Mears arrived, he called for a K-9 unit because he believed that Lewis was a drug dealer. Eventually, Deputy Lucas Powell and Police Service Dog (PSD) Riggs arrived at the scene. Once Deputy Powell and PSD Riggs arrived, Lieutenant Mears made Lewis, who was very upset, get out of his car. A short while later, Deputy Powell led PSD Riggs around the car. PSD Riggs indicated that narcotics were inside the trunk of Lewis' car. A later search of the cabin of Lewis' car revealed a plastic baggie containing 4.3 grams of cocaine.

Accordingly, Lewis was arrested and charged with one count of possession of cocaine, a severity level 4 nonperson felony in violation of K.S.A. 21-36a06(a)(c)(1), and one count of no drug tax stamp, a severity level 10 nonperson felony in violation of K.S.A. 79-5208.

On June 23, 2014, Lewis moved to suppress all the evidence obtained during the search of his car for two reasons. First, Lewis argued that the police were prohibited from searching the cabin of his car because PSD Riggs indicated that drugs were inside the trunk. Second, Lewis argued that there was insufficient grounds to search the cabin of his car without a warrant because the police lacked probable cause to believe that he had drugs in his car. The State responded that the stop of Lewis was supported by reasonable suspicion and the search of Lewis' car was supported by probable cause.

On June 26, 2015, nearly 4 years after the police had stopped Lewis, the trial court held a hearing on Lewis' motion to suppress evidence. At the hearing, Lieutenant Mears, Officer Kampling, and Deputy Powell testified on behalf of the State. Lewis testified on his own behalf.

Lieutenant Mears testified that around 1:15 a.m., on June 30, 2011, he was speaking to a manager of a motel located on Broadway Street when Officer Kampling approached him. Lieutenant Mears testified that Officer Kampling told him that a confidential informant had told him that other people "were talking about a black male who was driving a pink Cadillac [and] was doing some cocaine selling out of it." Lieutenant Mears explained that as Officer Kampling was telling him about the man selling cocaine out of a pink Cadillac, a pink Cadillac appeared on Broadway Street. Lieutenant Mears stated that he and Officer Kampling then ran to their respective patrol cars and began following the Cadillac. Lieutenant Mears stated that Officer Kampling was ahead of him and told him that he saw the Cadillac commit a traffic violation.

Lieutenant Mears explained that Officer Kampling then turned on his patrol lights and pulled the Cadillac over; the Cadillac was being driven by Lewis.

Lieutenant Mears testified that during the traffic stop, Lewis seemed somewhat nervous and jumpy. Lieutenant Mears testified that based on the information that he had received from Officer Kampling, the area of town where they were located, and that Lewis only partially lowered his driver's side window, he "automatically" called for a drug dog. Lieutenant Mears explained that when he called for a drug dog, he thought there was "a little bit of suspicion" but stated they "couldn't detain [Lewis] longer than what [they] were doing so [they] needed to get the dog there." Lieutenant Mears explained that while Officer Kampling was talking to Lewis, the police database indicated that Lewis was on federal parole. Lieutenant Mears stated that he called "the on-call person" to follow up on the nature of Lewis' federal parole, but the person never called back. Lieutenant Mears stated "within the time" Deputy Powell arrived with PSD Riggs, he had searched Lewis' name in the police database and "Officer Kampling [had] completed his citation and was going to contact [] Lewis in the vehicle."

Lieutenant Mears testified that when Deputy Powell arrived, Deputy Powell was trying to get "the dog out to use the bathroom." Lieutenant Mears testified that while Deputy Powell attempted to get PSD Riggs to "use the bathroom," he told Officer Kampling to get Lewis out of his car because he believed it would be unsafe for the dog sniff to occur while Lewis was in the car. Lieutenant Mears also explained that he "need[ed] for [Lewis] to sign his tickets anyway." Lieutenant Mears testified about Lewis initially refusing to get out of his car when he was asked. Lieutenant Mears explained that once Lewis exited his car, Officer Kampling was "doing the tickets" while Deputy Powell and PSD Riggs conducted the dog sniff.

On cross-examination, Lieutenant Mears admitted that the only reason he and Officer Kampling stopped the pink Cadillac was based on the information that Officer

Kampling had received from the confidential informant. Lieutenant Mears also admitted that the stop of Lewis for the traffic violation "was a pretextual stop."

Officer Kampling confirmed Lieutenant Mears' testimony about seeing the pink Cadillac drive by as they were discussing a man selling cocaine out of a pink Cadillac. Officer Kampling testified that after he pulled Lewis over, Lewis rolled down his window only about 1 or 2 inches, and he was agitated. Officer Kampling stated that Lewis provided him with his license, and he went back to his patrol car to run Lewis' name through the police database. Officer Kampling testified that when Deputy Powell and PSD Riggs arrived, he had already prepared the traffic ticket but was still checking to see if Lewis had any outstanding warrants. Officer Kampling explained that after he had completed Lewis' ticket and determined that Lewis had no outstanding warrants, he asked Lewis to get out of his car "so [he] [could] explain his ticket and also let the deputy run his canine around the vehicle." Officer Kampling testified it took a "couple minutes" to explain the ticket to Lewis. Officer Kampling also testified that after PSD Riggs indicated there were drugs in the trunk, he conducted the search of Lewis' car, finding the baggie of cocaine in Lewis' center console.

On cross-examination, Officer Kampling admitted that he never issued a ticket to Lewis. When asked why he did not issue the ticket, Officer Kampling stated: "After it becomes a felony we no longer issue the citation. It would have been ripped up." Officer Kampling explained that he had thrown it away because he believed the ticket was no longer valid because "[i]t's double jeopardy or whatever." Officer Kampling testified that the stop of the pink Cadillac began at 1:24 a.m., but he was unsure when Deputy Powell and PSD Riggs arrived or when the stop ended. When asked about the confidential informant who told him about a person selling cocaine out of a pink Cadillac, Officer Kampling testified that he could not recall who the confidential informant was and then stated that it was "actually multiple people" who told him about the pink Cadillac.

Deputy Powell testified that PSD Riggs was trained and certified to detect cocaine odors. Deputy Powell testified that when he deployed PSD Riggs, PSD Riggs was trained to move counterclockwise around the car being sniffed. PSD Riggs would give an "alert indicator" when he "ha[d] detected the odor he'[d] been trained to detect [but] he ha[d]n't located the source." PSD Riggs would give an "aggressive indicator" when he had found the source of the smell. Deputy Powell testified that wind plays an important role in the dog sniffing process because when the dog is downwind, the dog has a better chance at picking up an odor.

In regards to Lewis' case, Deputy Powell testified that he was requested by dispatch at about 1:36 a.m. and arrived on scene at 1:45 a.m. Deputy Powell testified that he started the drug sniff about 5 minutes after he arrived on scene. Deputy Powell explained that when he conducts a dog sniff, he first does a "pre-search check" of the car, where he checks for hazards around the car and in the environment. Deputy Powell testified that once he had completed the pre-search check of Lewis' car, he deployed PSD Riggs, who started the dog sniff at the left rear corner of the car. Deputy Powell testified that as PSD Riggs came around the front of the car, he saw PSD Riggs "intensely sniffing near the rear driver's side door," which he recognized as an alert indicator. Deputy Powell, however, testified that PSD Riggs made "a total of three or four passes around the car trying to work out the source of the odor" before he eventually made an aggressive indicator by scratching next to the left rear area of Lewis' trunk. Deputy Powell testified that the wind likely resulted in PSD Riggs making an aggressive indicator at the trunk even though no drugs were found inside the trunk.

Next, Lewis testified on his own behalf. Lewis testified that he did not swerve across the center line onto oncoming traffic as Officer Kampling had testified. Lewis explained: "I'm in a pink Cadillac. [An] Officer is behind me. No way in the world I'm going to swerve a line when I know an officer is behind me." Lewis testified that he was sitting in his car during the stop for about 30 to 35 minutes. Lewis further testified that

none of the police officers went over a traffic ticket with him, gave him a traffic ticket, or asked him to sign a traffic ticket.

After Lewis' testimony, Lewis argued that the police made a pretextual stop that was purposefully extended so Deputy Powell and PSD Riggs could conduct the dog sniff. The State countered by providing three reasons why the trial court should deny Lewis' motion: (1) that the police had reasonable suspicion to pull Lewis over based on the traffic violation; (2) that PSD Riggs arrived during the normal duration of the stop; and (3) that PSD Riggs gave an aggressive indicator, which allowed the police to search the entirety of Lewis' car.

At the end of the hearing, the trial court took the matter under advisement. Later, the trial court denied Lewis' motion to suppress evidence. In the order denying Lewis' motion, the trial court found the following: (1) that Lewis had committed a traffic infraction as Officer Kampling had testified; (2) that the stop had begun at 1:24 a.m. and ended at 1:45 a.m.; (3) that "Officer Kampling had just completed his traffic investigation, when the K-9 unit arrived"; (4) that Lewis had been ordered out of his car for "safety reasons, so the dog could perform a sniff search"; and (5) that Lewis had delayed the stop by being argumentative. Then, the trial court concluded that "under the circumstances of [Lewis'] case, a stop of 21 minutes (1:24 a.m. to 1:45 a.m.) was not excessive," and that PSD Riggs' aggressive indicator "was sufficient to provide probable cause for the vehicle search." Regarding the scope of the stop, the trial court further concluded that "there was also reasonable suspicion that [Lewis] might be involved in criminal activity based on Officer Kampling's information."

Later, Lewis and the State filed a joint motion of stipulated facts that included the fact that 4.3 grams of cocaine were found in Lewis' car. The trial court held a bench trial on the stipulated facts, finding Lewis guilty of possession of cocaine. Yet, the trial court dismissed the no drug stamp charge. For the single count of possession of cocaine, the



trial court sentenced Lewis to 12 months' probation with an underlying sentence of 18 months' imprisonment followed by 12 months' postrelease supervision.

*Did the Trial Court Err by Denying Lewis' Motion to Suppress Evidence?*

On appeal, Lewis makes two arguments why the trial court erred in denying his motion to suppress evidence. First, Lewis argues that his traffic stop was unreasonably prolonged by Officer Kampling and by Lieutenant Mears to conduct the dog sniff. Second, Lewis argues that once no drugs were found in the trunk of his car, any probable cause that existed from PSD Riggs' aggressive indicator at the trunk dissipated. Thus, Lewis contends that the search of the cabin of his car was conducted without probable cause. The State responds that the trial court correctly denied Lewis' motion to suppress evidence because Lewis' traffic stop was not prolonged to conduct the dog sniff. The State further responds that Lewis' second argument has not been preserved for appeal. Moreover, the State argues that even if Lewis' second argument has been preserved for appeal, his underlying arguments are unpersuasive.

*Standard of Review*

Appellate courts use a bifurcated standard when reviewing the trial court's decision on a motion to suppress evidence. Appellate courts must review the trial court's factual findings to determine if those findings are supported by substantial competent evidence. *State v. Morlock*, 289 Kan. 980, 985, 218 P.3d 801 (2009). Then, appellate courts must review the trial court's ultimate legal conclusion based on those facts de novo. *Morlock*, 289 Kan. at 985. "Substantial competent evidence is that which possesses both relevance and substance and which furnishes a substantial basis in fact from which the issues can reasonably be resolved." *State v. Sharp*, 289 Kan. 72, 88, 210 P.3d 590 (2009). Moreover, while engaging in this review, appellate courts must refrain from reweighing evidence. *State v. Jones*, 300 Kan. 630, 638, 333 P.3d 886 (2014).

### *Applicable Law*

"[W]hen a law enforcement officer displays authority and restrains an individual's liberty by stopping a vehicle on a public roadway, constitutional issues arise because a seizure occurs within the meaning of the Fourth Amendment to the United States Constitution and § 15 of the Kansas Constitution Bill of Rights, both of which protect individuals against unreasonable searches and seizures." *Jones*, 300 Kan. at 637. To stop an individual, an "officer must know of specific and articulable facts that create a reasonable suspicion the seized individual is committing, has committed, or is about to commit a crime or traffic infraction." *Jones*, 300 Kan. at 637. The State carries the burden of establishing that a seizure was reasonable. *Morlock*, 289 Kan. at 985.

An officer's stop of an individual is not invalid simply because it was a pretext for a drug search so long as a traffic violation actually occurred. *Jones*, 300 Kan. at 638. Nevertheless, "[w]hile a traffic infraction is a legitimate basis for law enforcement to initiate a vehicle stop, the United States Supreme Court has emphasized that the seizure must be of short duration if it occurs 'in situations where' . . . the stop is justified by suspicion (reasonably grounded, but short of probable cause) that criminal activity is afoot." *Jones*, 300 Kan. at 639 (quoting *Arizona v. Johnson*, 555 U.S. 323, 330, 129 S. Ct. 781, 172 L. Ed. 2d 694 [2009]). In the context of a traffic violation, this means it is unlawful to prolong an individual beyond the time reasonably required to issue the ticket. *Jones*, 300 Kan. at 639-40. Our Supreme Court has held that for routine traffic stops, an officer may request an individual's license and registration, run a computer check, and issue the ticket. *Morlock*, 289 Kan. at 986.

Employing a drug sniffing dog is constitutionally permissible during a traffic stop "as long as [the dog sniff] did not prolong the stop beyond the time necessary to accomplish the original purpose of issuing a traffic citation." *Jones*, 300 Kan. at 641. This is because a dog sniff is not a routine measure that is "an ordinary incident of a traffic

stop." *Rodriguez v. United States*, 575 U.S. \_\_\_, 135 S. Ct. 1609, 1615, 191 L. Ed. 2d 492 (2015). In analyzing the lawfulness of a dog sniff during a traffic stop, the United States Supreme Court has held: "The critical question . . . is not whether the dog sniff occurs before or after the officer issues a ticket, . . . but whether conducting the sniff 'prolongs'—*i.e.*, adds time to—the stop." *Rodriguez*, 135 S. Ct. at 1616. Also, the United States Supreme Court has held that although officers may take safety precautions during a traffic stop, such as requiring individuals to exit their cars, "safety precautions" solely taken to facilitate an "investigation into other crimes" constitute detours from the mission of the traffic stop. *Rodriguez*, 135 S. Ct. at 1616.

To extend a stop beyond the traffic violation, officers must have objectively reasonable and articulable suspicion that some other criminal activity had taken or is taking place. *Jones*, 300 Kan. at 641. Our Supreme Court has held that this objectively reasonable and articulable suspicion must be more than "a hunch." *Jones*, 300 Kan. at 641. In other words, officers "must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *Jones*, 300 Kan. at 644 (quoting *Terry v. Ohio*, 392 U.S. 1, 21, 88 S. Ct. 1868, 20 L. Ed. 2d 889 [1968]).

To conduct a search of a car, officers must have probable cause, which means that the facts available to the officers would make a reasonably prudent person believe that there is fair probability contraband or evidence of a crime is within the car. *Florida v. Harris*, 568 U.S. 237, 243, 133 S. Ct. 1050, 185 L. Ed. 2d 61 (2013); *State v. Stevenson*, 299 Kan. 53, 64, 321 P.3d 754 (2014). Whether probable cause exists to conduct a search can be determined by reviewing the totality of the circumstances. *Florida*, 568 U.S. at 244; *Stevenson*, 299 Kan. at 64. Whether probable cause exists to conduct a search following a positive drug sniff follows the same rules. *Florida*, 568 U.S. at 247. That is, courts must consider all the evidence under the totality of the circumstances to determine whether a reasonably prudent person would think that a search would reveal evidence of

criminal activity based on the dog's indicators. *Florida*, 568 U.S. at 247-48. The United States Supreme Court has declared "[a] sniff is up to snuff when it meets [this] test." *Florida*, 568 U.S. at 248.

*Confidential Informant Did Not Provide Reasonable Suspicion*

Before addressing whether the traffic stop was unreasonably prolonged, the State argues that even if Officer Kampling and Lieutenant Mears prolonged the stop beyond the traffic investigation purposes, Officer Kampling and Lieutenant Mears had reasonable suspicion to *extend* the traffic stop beyond its original purpose to conduct the dog sniff. The crux of the State's argument rests on Lewis' jumpy behavior plus the confidential informant's tip. The State contends that this furnished Officer Kampling and Lieutenant Mears with the legally recognized reasonable suspicion to extend the traffic stop.

As to Lewis' jumpy behavior, the State did not argue to the trial court Lewis' alleged jumpiness as a basis for extending the traffic stop. Moreover, the trial court never determined that Officer Kampling and Lieutenant Mears had reasonable suspicion to extend the traffic stop based on Lewis' jumpiness. In fact, Lewis' alleged jumpy behavior was not addressed by the trial court in its order denying the motion to suppress evidence, and the trial court made no findings about whether *an extension* of the traffic stop was valid. Hence, the State's argument that reasonable suspicion to extend the traffic stop existed based on Lewis' jumpiness lacks support in the record.

In regards to the confidential informant's tip, the trial court did address the tip in its order. As stated earlier, the trial court ruled that reasonable suspicion to make the stop existed based on the traffic violation *and* the tip that Officer Kampling had received about a black male driving a pink Cadillac selling cocaine. Specifically, the trial court ruled that "[i]n this case there was a traffic stop, and there was also reasonable suspicion that the Defendant might be involved in criminal activity based upon Officer Kampling's

information." Although not explicitly stated, the trial court obviously reached its alternative reasonable suspicion conclusion based on the following: (1) that the tip provided the officers with reasonable suspicion to conduct the stop; and (2) that because of the tip, the officers could detain Lewis to investigate potential criminal activity until the dog sniff had been completed.

Lewis argues that the trial court's alternative reasonable suspicion ruling was erroneous for two reasons. First, Lewis emphasizes that the trial court made the finding *sua sponte*. Second, Lewis emphasizes that the evidence presented to the trial court did not support that the tip provided Officer Kampling and Lieutenant Mears with reasonable suspicion.

Indeed, the trial court made the ruling *sua sponte* because neither the State, Officer Kampling, nor Lieutenant Mears attempted to argue or even suggest that they had reasonable suspicion to detain Lewis based on the confidential informant's tip. Because this argument was not made to the trial court, the trial court's decision to *sua sponte* make this ruling is a subtlety not warranted by the facts. Moreover, the State carries the burden of establishing that a seizure was reasonable. See *Morlock*, 289 Kan. at 985. Since the State neither argued that Officer Kampling nor Lieutenant Mears had reasonable suspension to detain Lewis based on the tip, the record suggests no reasonable way from which the State could have carried its burden to establish reasonable suspicion existed for the stop based on the informant's tip.

Furthermore, Lewis has correctly pointed out that the evidence presented at the suppression hearing did not support the trial court's ruling that reasonable suspicion existed based on the confidential informant's tip. To review, the following information about the tip was presented to the trial court at the suppression hearing: (1) Lieutenant Mears testified that Officer Kampling gave him "information from a CI that people in the department were talking about a black male who was driving a pink Cadillac [and] was

doing some cocaine selling out of it"; (2) Officer Kampling testified that he did not recall who had told him about the black male driving the pink Cadillac selling drugs and it was "[a]ctually multiple people"; (3) Officer Kampling testified that he did not document the tip because it came from a confidential informant; and (4) Officer Kampling stated that he had previously seen a pink Cadillac in the area, although he had not documented this.

When determining whether there is reasonable suspicion to detain a person based on tips from a confidential informant, "courts focus on three factors: (1) the type of tip or informant involved; (2) the detail given about the observed criminal activity; and (3) whether the police officer's personal observations corroborate the information supplied in the tip." *State v. Slater*, 267 Kan. 694, 700, 986 P.2d 1038 (1999). Of note, the trial court never discussed these factors while making its ruling that there was reasonable suspicion to detain Lewis "based upon Officer Kampling's information." Instead, it made the ruling without explaining why it ruled this way.

One need only consider the three-factor tip test in *Slater* to arrive at the unavoidable conclusion that the informant's tip in this case would not have allowed the officers to infer a reasonable suspicion that illegal conduct was afoot. For example, in *Slater*, our Supreme Court explained the three-factor test as follows:

"[T]he most favored of the tips are those which are in fact not really anonymous at all. These tips occur when the person giving the tip gives the police his or her name and address or identifies himself or herself in such a way that he or she can be held accountable for the tip. Courts have consistently held that such a tip may support a traffic stop. . . .

"Second on the scale of reliability are those tips in which, although the informant does not identify himself or herself, the informant gives enough information that his or her identity may be ascertained. This occurs where the informant states that he or she is

calling from his or her place of business, or where the informant in person makes contact with the police officer. In such cases courts generally find such a tip to be reliable. . . .

"Less reliable is an anonymous tip that is truly anonymous . . . . Nonetheless, even where the tip is truly anonymous and the veracity of the informant cannot be determined, courts have upheld traffic stops where the information given by the informant is detailed and corroborated by the officer's subsequent observation with regard to the details in the tip." 267 Kan. at 700-02.

Here, Officer Kampling and Lieutenant Mears provided the trial court with absolutely no facts on which to judge the reliability of the information obtained from the confidential informant. Lieutenant Mears simply testified that Officer Kampling had told him that the confidential informant had learned from other people that a black male was selling cocaine out of his pink Cadillac. Lieutenant Mears gave no facts pertaining to the identity of the confidential informant or the persons who provided this information to the confidential informant. All Officer Kampling remembered was that he received this information from multiple people. Thus, Officer Kampling also provided no facts pertaining to the people who had provided this information. Furthermore, he testified that he never documented receiving this information.

Based on Officer Kampling's and Lieutenant Mears' testimony, only two things are evident. First, Officer Kampling's testimony and Lieutenant Mears' testimony conflicted. Officer Kampling suggested that he had multiple confidential informants telling him the same information, while Lieutenant Mears' testified that Officer Kampling had one confidential informant who was providing information by multiple people. Second, the State provided no information to the trial court about the identity of the confidential informant or informants. Indeed, outside of the tip itself, there were no facts about who the informant or the informants were who provided Officer Kampling with this information, how the informant or the informants acquired this information, when the informant or the informants acquired this information, and when the informant or the

informants provided this information to Officer Kampling. As a result, this tip falls under the third and least reliable type of tip outlined in *Slater*. This is because the tip was truly anonymous, meaning there was no way the trial court, or any court, could have determined the veracity of the tip. Here, for reasonable suspicion to exist, the State was required to establish the reliability of the tip under the second and third factors of the test.

Regarding factor two, the information within the tip was somewhat detailed given that pink Cadillacs are uncommon. Moreover, Lewis is a black male. Nevertheless, once again, neither Officer Kampling's nor Lieutenant Mears' testimony explained how nor when the information about the black male selling cocaine in the pink Cadillac was acquired. As explained in *Slater*, under the second factor, "[a] tip is more reliable if it is apparent that the informant observed the details personally instead of simply relying on information from a third party." 267 Kan. at 702. Undoubtedly, the absence of evidence establishing when and how the informant or the informants acquired this information greatly undermines the exactitude and reliability of the tip.

Regarding factor three, while Officer Kampling and Lieutenant Mears observed a black male driving a pink Cadillac in the area, they never testified that they observed Lewis selling cocaine or committing any other crime inside his pink Cadillac. Instead, they quickly followed Lewis to see if he would commit a traffic violation so they could make a pretextual traffic stop. Thus, although Lewis matched the description in the tip, Officer Kampling's and Lieutenant Mears' observations did not corroborate that Lewis was engaging in any illegal activity.

Finally, and most importantly, Lieutenant Mears explicitly stated that he did not have reasonable suspicion to detain Lewis based on the information from the confidential informant or informants. Lieutenant Mears testified that he and Officer Kampling were "under a time crunch" because they "had the time of the car stop unless [they] got more information[.]" Lieutenant Mears further testified that he only "had a little bit of



suspicion," but he believed that "[they] couldn't detain [Lewis] longer than what [they] were doing so [they] needed to get a dog there." Clearly, Lieutenant Mears had determined that the tip had not given him the specific and articulable facts required to have reasonable suspicion to stop Lewis on this basis.

Moreover, although Officer Kampling did not testify as to whether he thought he had reasonable suspicion to stop Lewis based on the tip, Officer Kampling did testify about waiting until Lewis committed a traffic violation before stopping him as well as attempting to obtain a dog sniff while he was conducting the traffic investigation. This testimony clearly supports that Officer Kampling did not believe he had reasonable suspicion to stop Lewis based on the tip information. As a result, both Lieutenant Mears and Officer Kampling indicated that they did not have reasonable suspicion to stop Lewis based on the tip. Thus, there was no reasonable way from which Officer Kampling and Lieutenant Mears could have inferred a particularized and an objective basis for suspecting Lewis of criminal conduct based on the tip information. Additionally, as emphasized by Lewis in his brief, courts should give some deference to an officer's training and experience on a reasonable suspicion finding. *Jones*, 300 Kan. at 647. Nevertheless, reasonable suspicion should not rest on the hunch of an experienced officer. With this in mind, the trial court's ruling that Officer Kampling and Lieutenant Mears had reasonable suspicion based on the tip was devoid of any recitation of essential facts. As a result, there was no factual ground to support what the law recognizes as reasonable suspicion or to substantiate the trial court's alternative reasonable suspicion conclusion.

*The Traffic Stop was Unreasonably Prolonged.*

In making his first argument, Lewis does not contest that Officer Kampling had a legitimate basis for stopping him based on the traffic violation. Instead, Lewis' argument turns on his belief that the stop was unreasonably prolonged when "the officers deviated

from the purpose of the stop by making [him] get out of his car in order to allow the dog sniff." Lewis emphasizes that his traffic ticket had been completed and the police database had been checked when Officer Kampling and Lieutenant Mears made him get out of his car so Deputy Powell and PSD Riggs could conduct the dog sniff. Lewis concludes that the only thing either Officer Kampling or Lieutenant Mears could have legally done at that point was to give him his ticket and let him go on his way.

The State counters that the traffic investigation had not been completed when Deputy Powell arrived with PSD Riggs. The State contends that both Lieutenant Mears and Officer Kampling "testified that Kampling was in his car doing the warrant check when Deputy Powell arrived with PSD Riggs, during the regular course of the traffic stop." The State contends that PSD Riggs was deployed "simultaneously with Officer Kampling completing his traffic investigation by explaining the citation to [Lewis]." The State further contends that because Officer Kampling and Lieutenant Mears never heard back from the person they had called about Lewis' federal parole status, the traffic investigation was incomplete when Deputy Powell and PSD Riggs arrived.

#### *The Trial Court's Relevant Factual Findings*

Whether knowingly or not, the State's arguments regarding the timing of the traffic investigation actually contradict one of the primary findings made by the trial court in its order. Once more, the trial court found that "Officer Kampling *had just completed* his traffic investigation, when the K-9 unit arrived." (Emphasis added.) As noted earlier, our Supreme Court has held that traffic stops include a request for an individual's license and registration, running a computer check, and issuing a ticket. *Morlock*, 289 Kan. at 986. Accordingly, when the trial court determined that the traffic investigation had just been completed when the K-9 unit arrived, it necessarily found that when Deputy Powell and PSD Riggs arrived, Officer Kampling had already requested Lewis' license and

registration, had already ran the computer check, which would have included the warrant check, and had already written the traffic ticket.

Based on the trial court's finding that the traffic investigation had just been completed when Deputy Powell and PSD Riggs arrived, the trial court implicitly found that the traffic investigation had been completed *before* Deputy Powell and PSD Riggs started their dog sniff. Moreover, by finding that the traffic investigation had just been completed when the K-9 unit arrived, the trial court implicitly determined that a traffic stop had been made and that it had been completed when Deputy Powell and PSD Riggs had arrived to conduct the dog sniff. Thus, all that remained for Officer Kampling and Lieutenant Mears to complete the traffic stop was to give Lewis his traffic ticket.

The State has attempted to alter the trial court's finding that the traffic investigation had been completed when Deputy Powell and PSD Riggs arrived. The State contends that Officer Kampling and Lieutenant Mears were still waiting to hear back from "the on-call person" about the nature of Lewis' federal parole status when Deputy Powell and PSD Riggs arrived. It is true that in its order, the trial court found that Officer Kampling had called "the on-call person" to understand the nature of Lewis' federal parole, but Officer Kampling never heard back from the on-call person. Despite making this finding, however, the trial court still concluded that Officer Kampling had completed the traffic investigation when Deputy Powell and PSD Riggs arrived. This clearly means that the trial court did not deem a response from the on-call person about Lewis' federal parole status necessary to complete the traffic investigation. Additionally, this conclusion is grounded in law as the elements of a routine traffic stop include only a request for an individual's license and registration, running a computer check, and issuing the citation. See *Rodriguez*, 135 S. Ct. at 1615; *Morlock*, 289 Kan. at 986.

To repeat, it is clear that the trial court determined that Officer Kampling's traffic investigation had been completed when the K-9 unit arrived. Next, this court must

consider whether the trial court's finding was supported by substantial competent evidence. Regarding the timing of Deputy Powell and PSD Riggs' arrival, Lieutenant Mears testified: "According to my report I remember [Deputy Powell arriving within] 10 to 15 minutes. *Within the time Deputy Powell showed up* the check came back and Officer Kampling completed his citation and was going to contact Mr. Lewis in the vehicle."

It is noteworthy that Officer Kampling testified that he was still in the process of doing a warrants check when Deputy Powell and PSD arrived, and Deputy Powell testified that someone told him that an officer was still writing a ticket shortly after he arrived. All the same, Lieutenant Mears' testimony may be interpreted as Officer Kampling's traffic investigation had just been completed during the time Deputy Powell and PSD Riggs arrived at the scene. Again, this court is required to defer to the trial court's findings and refrain from reweighing conflicting evidence. See *Jones*, 300 Kan. at 638. Because Lieutenant Mears testified that Officer Kampling had completed the warrants check and the traffic ticket within the time Deputy Lewis and PSD Riggs arrived, the trial court's finding that the traffic investigation had just been completed when the K-9 unit arrived was supported by substantial competent evidence.

More importantly, one cannot emphasize enough that "[t]he critical question . . . is not whether the dog sniff occurs before or after the officer issues a ticket, . . . but whether conducting the sniff 'prolongs'—*i.e.*, adds time to—the stop." *Rodriguez*, 135 S. Ct. at 1616. Although the State has emphasized the timing of Deputy Powell and PSD Riggs' arrival and Lewis has emphasized the trial court's calculation of the duration of the stop, the key question is whether the dog sniff added time to the traffic stop. This means that the trial court's implicit findings (1) that the traffic investigation had been completed before Deputy Powell and PSD Riggs conducted the dog sniff and (2) that all that was left for Officer Kampling and Lieutenant Mears to do during the traffic stop was to issue

Lewis' traffic ticket are critical because these implicit findings speak to whether Lewis' stop was prolonged to conduct the dog sniff.

Substantial competent evidence supports that the dog sniff improperly extended the time of the traffic stop. Lieutenant Mears testified that after Officer Kampling had completed the computer check and the ticket, he and Officer Kampling made Lewis get out of his car so Deputy Powell and PSD Riggs could run the dog sniff and because they "need[ed] for [Lewis] to sign his tickets anyway." Officer Kampling testified that after completing the warrants check and ticket, he "ask[ed] [Lewis] to step out of the vehicle so [he] [could] explain [Lewis'] ticket and also let the deputy run his canine around the vehicle." Therefore, the dog sniff undoubtedly occurred following the completion of the traffic investigation. Moreover, because both Lieutenant Mears and Officer Kampling testified that the warrant check and the traffic ticket had been completed before returning to Lewis' car, Officer Kampling and Lieutenant Mears' testimony establishes that when they returned to Lewis' car, all that they needed to do to complete the traffic stop was to hand Lewis his traffic ticket.

Last, although the trial court made no mention of the delay in its order, both parties agree that Deputy Powell did not deploy PSD Riggs for the dog sniff until 5 minutes after they had arrived at the scene. This is based on Deputy Powell's testimony that he and PSD Riggs did not start conducting the dog sniff until 5 minutes after arriving at the scene. The only explanation for this delay came from Lieutenant Mears, who testified that Deputy Powell was attempting to get PSD Riggs to "use the bathroom" before beginning the dog sniff. Regardless, the important fact is that it is undisputed that there was a 5-minute delay between the time Deputy Powell and PSD Riggs arrived at the scene and the start of the dog sniff. To harmonize this fact with the trial court's findings, this means that there was a 5 minute delay between the completion of the traffic investigation and the start of the dog sniff.

### *The Trial Court's Legal Conclusion*

To begin with, after the traffic investigation had been completed, all that Officer Kampling and Lieutenant Mears needed to do was to give Lewis his traffic ticket and let him go on his way. Yet, instead of letting Lewis go on his way, Officer Kampling and Lieutenant Mears spent time trying to get a reluctant Lewis to exit his car *so Deputy Powell and PSD Riggs could conduct the dog sniff safely*. Lieutenant Mears, who told Officer Kampling to make Lewis get out of his car, testified about how he wanted Lewis out of the car so Deputy Powell and PSD Riggs could safely conduct the dog sniff. Officer Kampling also testified that he asked Lewis to exit his car because K-9 units prefer all people to be out of the car for safety reasons. Both also stated that they were going to explain the ticket to Lewis while he was outside of the car, but their reason for actually asking Lewis out of his car was "for officer safety reasons." Indeed, the trial court explicitly found that the reason the officers made Lewis get out of the car was "for safety reasons," never referencing Officer Kampling's and Lieutenant Mears' testimony about explaining the ticket to Lewis. In short, it seems clear that when Officer Kampling and Lieutenant Mears went back to Lewis' car, they had already made the decision that they were not going to simply give Lewis his ticket and let him go on his way.

Accordingly, by requiring Lewis get out of his car after the traffic investigation had been completed, three things are clear. First, all that was left for Officer Kampling and Lieutenant Mears to do to complete the traffic stop was to give Lewis his ticket and let him go on his way. The evidence, however, supports that the dog sniff did not start until 5 minutes after the traffic investigation had been completed and Lewis was never even given his traffic ticket. If all that was required to complete the traffic stop was to give Lewis his traffic ticket, how could the officers have possibly been doing things solely related to the traffic stop during the 5 minutes that passed between the completion of the traffic investigation and the start of the dog sniff? Indeed, the 5-minute delay following the completion of the traffic investigation strongly indicates that Officer

Kampling and Lieutenant Mears unreasonably prolonged the traffic stop to conduct the dog sniff.

Second, the time Officer Kampling and Lieutenant Mears spent making Lewis get out of his car was time Officer Kampling and Lieutenant Mears were not engaged in any activities related to completing Lewis' routine traffic stop. In fact, Officer Kampling and Lieutenant Mears were engaged in an activity solely related to conducting the dog sniff as they were making Lewis exit his car so Deputy Powell and PSD Riggs could safely conduct the dog sniff. As a result, when Officer Kampling and Lieutenant Mears made Lewis exit his car so the dog sniff could occur, Officer Kampling and Lieutenant Mears added time to the traffic stop for the purpose of conducting the dog sniff.

Third, the United States Supreme Court in *Rodriguez* has held that safety precautions that are taken to facilitate on-scene investigations unrelated to the traffic stop, including the safety precaution of making individuals exit their cars for the purpose of a dog sniff, constitute detours from the mission of the traffic stop. 135 S. Ct. at 1616. The *Rodriguez* court explained that if the safety precaution "stems from the mission of the [traffic] stop itself," then this safety precaution is permissible. 135 S. Ct. at 1616. Nevertheless, the *Rodriguez* court held that a safety precaution stemming from "[o]n-scene investigation into other crimes . . . detours from [the traffic stop] mission." 135 S. Ct. at 1616. Thus, under the circumstances where the officer detoured from the traffic stop to make the defendant exit his car solely so the dog sniff could occur, the officer unreasonably prolonged the stop. *Rodriguez*, 135 S. Ct. at 1613, 1616.

Here, Officer Kampling and Lieutenant Mears testified that after completing the warrants check and the ticket, they made Lewis exit his car so Deputy Powell and PSD Riggs would be safe during the dog sniff. Seemingly, if Officer Kampling and Lieutenant Mears wanted to have Lewis exit his car so Deputy Powell and PSD Riggs would be safe during the dog sniff, to comply with *Rodriguez*, Officer Kampling and Lieutenant Mears

must have done so in a manner that did not add time to Lewis' traffic stop. For instance, Lieutenant Mears could have made Lewis exit his car while Officer Kampling was running a computer check and writing the ticket. Yet, this was not what happened. Therefore, under the United States Supreme Court's holding in *Rodriguez*, Officer Kampling and Lieutenant Mears' actions constituted a detour from the mission of the traffic stop that resulted in unreasonably prolonging the stop for the purpose of conducting the dog sniff.

Last, even if this court were to hold that Officer Kampling and Lieutenant Mears could make Lewis exit his car because of their testimony about explaining and signing the ticket, explaining and signing the ticket should not have taken the full 5 minutes that passed between the completion of the traffic investigation and the start of the dog sniff. Importantly, Officer Kampling testified that explaining the ticket to Lewis took only a "couple minutes." Moreover, it is unclear if Lewis was even asked to sign the ticket as he testified he never was and Officer Kampling testified that he ripped up the ticket and threw it away. Thus, even considering Officer Kampling's and Lieutenant Mears' testimony about explaining the ticket to Lewis and having Lewis sign the ticket after the completion of the traffic investigation, we note that the explaining of the ticket and signing of the ticket would not have exhausted the total 5 minutes between the completion of the traffic investigation and the start of the dog sniff.

### *Conclusion*

In summary, Officer Kampling and Lieutenant Mears unreasonably prolonged Lewis' traffic stop in violation of the rule outlined by the United States Supreme Court in *Rodriguez*, 135 S. Ct. at 1616. Therefore, Lewis' conviction is reversed, his sentence vacated, and the case remanded with directions to grant his motion to suppress evidence. Because we have reversed Lewis' conviction, it is not necessary for us to address Lewis' contention that the police lacked probable cause to search the cabin of his car.