

**Affirmed and Majority and Concurring Opinions filed November 4, 2010.**



**In The**

**Fourteenth Court of Appeals**

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**NO. 14-09-00620-CR**

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**EDGAR JOSIAS VASQUEZ, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 337th District Court  
Harris County, Texas  
Trial Court Cause No. 1145289**

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**CONCURRING OPINION**

The main issue in this appeal is whether a traffic-stop detention was unreasonable because the officer did not ask the driver for consent to search the vehicle until two minutes after receiving confirmation that the driver had a valid license and no outstanding warrants, and that the vehicle was not stolen. The majority concludes that the detention was reasonable because by this time the officer had reasonable suspicion to believe that another offense had been or was being committed. Instead, this court should conclude that continuing the detention for two more minutes was reasonable under the circumstances, even presuming that the officer had no reasonable suspicion of another offense.

Fourth Amendment “reasonableness” is measured “in objective terms by examining the totality of the circumstances”; it “eschew[s] bright-line rules, instead emphasizing the fact-specific nature of the . . . inquiry.” *Kothe v. State*, 152 S.W.3d 54, 63 (Tex. Crim. App. 2004) (quoting *Ohio v. Robinette*, 519 U.S. 33, 39, 117 S. Ct. 417, 136 L.Ed.2d 347 (1996)). It requires a balance between the public interest served and the individual’s right to be free from arbitrary detentions and intrusions. *Id.*

In the case under review, Trooper Kibble’s initial detention of appellant was reasonable based on suspicion of two traffic violations. Trooper Kibble promptly initiated a license and warrants check. He asked appellant various questions and prepared warning citations. By 11:21 a.m., Trooper Kibble had received confirmation that appellant had a valid license and no outstanding warrants and that the vehicle was not stolen. Two minutes later, appellant validly consented to a search of his vehicle, which resulted in the discovery of sixty-eight kilograms of cocaine. The main issue is whether Trooper Kibble’s continued detention of appellant for these two minutes was reasonable.

In deciding whether the duration of a detention is “reasonable,” the general rule is that an investigative stop can last no longer than necessary to effect the purpose of the stop. *See id.* But, during a traffic stop, police officers may request information from the driver, such as a driver’s license and vehicle registration, and may conduct a computer check on that information. *See id.* After this computer check is completed, and the officer learns that the driver has a valid license and no outstanding warrants, and that the vehicle is not stolen, the traffic-stop investigation is fully resolved. *See id.* at 63–64. The officer may continue the detention if another reasonable basis for detaining the driver arises. *See id.* at 63–67. If not, the Court of Criminal Appeals has indicated that the officer should release the driver shortly after this computer check is completed. *See id.* at 63–64 (stating that driver must be permitted to leave after computer check is completed and there is no new valid basis for detaining the driver, indicating that detention for a brief period after this point can be reasonable, and holding that detention for very short

period of time after this point was reasonable). But there are no rigid time limitations on these detentions. *See id.* at 64. In determining whether the detention of a driver was reasonable, the issue is whether the officer diligently pursued a means of investigation that was likely to confirm or dispel his suspicions quickly, during the time necessary to detain the driver. *Id.*

Further, an officer making a traffic stop need not investigate the situation in a particular order; however, the detention becomes unreasonable under the circumstances if the officer “unduly prolongs” the detention. *See id.* at 65. The order of events during a traffic stop, though relevant to the determination of “reasonableness,” is not determinative. *See id.* at 66. Fourth Amendment “reasonableness” does not require a “single, formulaic approach” to a traffic-stop investigation, and it does not mandate rigid adherence to “the least intrusive means” of investigation defined by reviewing courts using hindsight. *Id.* at 66 (quoting *United States v. Brigham*, 382 F.3d 500, 511 (5th Cir. 2004) (en banc)).

As in *Kothe*, in the case under review, there was a brief interval between completion of the computer check and the next event allowing further detention. In *Kothe*, the interval was very short because the next event occurred almost immediately after the completion of the computer check. *See id.* at 66–67. Nonetheless, the *Kothe* court stated that there was a period of time between these two events and the court held that continued detention of the driver during this interval was reasonable. *See id.* at 66–67. In the case under review, the time period was two minutes. The record shows that Trooper Kibble diligently pursued his investigation, and there was no evidence that he engaged in a “fishing expedition” or unduly prolonged the detention. *See id.* at 65–67. Viewing the totality of the circumstances, the continued detention of appellant during the two-minute period between the completion of the computer check and appellant’s consent to a search of the vehicle was “reasonable” as a matter of substantive Fourth Amendment law. *See id.*; *Caraway v. State*, 255 S.W.3d 302, 308 (Tex. App.—Eastland

2008, no pet.) (involving an officer who received consent to search a vehicle less than one minute after receiving information about the driver's criminal history). For the foregoing reasons, the trial court did not abuse its discretion in denying appellant's motion to suppress. Accordingly, I respectfully concur in the court's judgment.

/s/     Kem Thompson Frost  
          Justice

Panel consists of Justices Anderson, Frost, and Seymore. (Anderson, J., majority).

Publish — TEX. R. APP. P. 47.2(b).