

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

September 8, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MIGUEL HERNANDEZ-QUINTERO,

Defendant - Appellant.

No. 22-8074
(D.C. No. 1:21-CR-00137-NDF-1)
(D. Wyo.)

ORDER AND JUDGMENT*

Before **TYMKOVICH, EBEL**, and **EID**, Circuit Judges.

Miguel Hernandez Quintero¹ appeals the denial of his motion to suppress evidence following his conditional guilty plea. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm. The use of a drug-sniffing dog during a routine traffic stop that does not prolong the stop does not violate the Fourth Amendment.

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

¹ Although the case caption spells Mr. Hernandez Quintero’s name with a hyphen, Mr. Hernandez Quintero spells his name with a space instead of a hyphen, so we honor his spelling.

I. Background

A. *Traffic Stop*²

On May 20, 2021, Wyoming Highway Patrol Troopers Luis Tapia Vera and Brandon Deckert were parked in a median on Interstate 80 in Uinta County, Wyoming. Trooper Deckert was the lead instructor for the criminal interdiction portion of the Wyoming Highway Patrol Trooper Academy, and he and his police dog, K-9 Jager, were riding with Trooper Tapia Vera to provide on-the-job training. The troopers saw a Cadillac Escalade SUV drive by at six miles above the speed limit.

Trooper Tapia Vera activated his emergency lights, and Mr. Hernandez Quintero, who was driving the SUV, immediately began to slow down. He came to a stop within 38 seconds, on the crest of a wide hill just past the guard rail after an exit, such that the passenger side of his vehicle was not in any traffic. The stop occurred at 2:43:18 p.m. The troopers can be heard on the dash-cam footage commenting that the car was taking a long time to pull over as Mr. Hernandez Quintero opted to pull over after passing a guard rail instead of using a highway exit.

Seconds later both troopers approached the passenger side of Mr. Hernandez Quintero's vehicle and asked him to roll down his passenger windows, as they were heavily tinted. Mr. Hernandez Quintero complied and Trooper Tapia Vera began conversing with him in Spanish, asking for his driver's license, insurance, and

² These facts are taken from the district court's order denying the motion to suppress and the police cruiser's dash-cam footage.

registration. Trooper Tapia Vera notified Mr. Hernandez Quintero that his insurance had expired and told him that he intended to issue a warning for speeding. He ended that part of their conversation by asking Mr. Hernandez Quintero to exit his vehicle and walk back toward the patrol car.

At 2:46:47 p.m., Mr. Hernandez Quintero and Trooper Tapia Vera are behind the Escalade. At this point Trooper Tapia Vera asks if he can search Mr. Hernandez Quintero for weapons before he entered the patrol car, and then conducts a pat down search, finding nothing. Trooper Tapia Vera and Mr. Hernandez Quintero entered the patrol car at 2:47:35 p.m.

During Trooper Tapia Vera's conversation with Mr. Hernandez Quintero, Trooper Deckert, who was not following their conversation because he does not speak Spanish, began looking through the open back passenger window as well as through the back window and underneath the vehicle. While Mr. Hernandez Quintero was exiting his vehicle, Trooper Deckert informed Trooper Tapia Vera that he observed a pry bar and a wire cutter on the back seat floor behind the center console, and that he would be running a dog sniff. The district court found that Trooper Deckert also told Trooper Tapia Vera that he observed "green flecks of plant material he suspected to be raw marijuana." R., Vol. I at 80. The court noted that photos of Mr. Hernandez Quintero's vehicle revealed a "messy car that was filled with tools, clothes, garbage, food wrappers, dirt and receipts." *Id.*

Trooper Tapia Vera and Mr. Hernandez Quintero sat together in the patrol car while Trooper Deckert ran the dog sniff. The district court credited Trooper Tapia

Vera's testimony that he was conducting routine database checks to confirm Mr. Hernandez Quintero's license and other information during that time. K-9 Jager alerted at 2:49:00 p.m. while Trooper Tapia Vera was still working on his routine queries needed to issue a warning. Because Trooper Tapia Vera was working on his standard computer checks, he did not observe Jager's alert. Trooper Deckert informed Trooper Tapia Vera of the alert at 2:49:25 p.m.

After telling Trooper Tapia Vera of the positive alert, Trooper Deckert returned to the Escalade and began looking at the rear underbody/chassis and the right side of the SUV, and inspected the gas cap on the left side. At 2:54:00 p.m., both troopers began searching the inside of the vehicle. The troopers found a straw with methamphetamine residue on it in the center console, a credit card skimmer along with credit cards, and card writing machines. The green flecks that Trooper Deckert saw were not tested, because the troopers credited Mr. Hernandez Quintero's post-search explanation that they were pistachio crumbs.

B. Motion to Suppress

Mr. Hernandez Quintero moved to suppress the evidence found as a result of the search of his vehicle, claiming that the troopers unlawfully extended the stop to conduct the dog sniff and, further, that the troopers did not have reasonable suspicion to conduct the dog sniff because it was unreasonable "to suspect that the flecks were marijuana and not simply tracked in grass or any other type of plant a person may have on their shoes." R., Vol. II at 72.

At the suppression hearing, both troopers testified as to the details of the stop. Trooper Tapia Vera testified that he believed Mr. Hernandez Quintero delayed in pulling over, but he admitted that Mr. Hernandez Quintero had immediately slowed down when he turned on his lights, and that he pulled over in a fairly safe location on the crest of the hill. *R.*, Vol. III at 22, 49. Trooper Tapia Vera explained that after stopping Mr. Hernandez Quintero, he spoke with him through the front passenger window of his vehicle and asked him for his license, registration, and insurance. *Id.* at 24. He waited for a bit while Mr. Hernandez Quintero found them and then informed Mr. Hernandez Quintero that his insurance was expired. *Id.* at 24, 29. Mr. Hernandez Quintero responded that it was current. *Id.* at 29. Trooper Tapia Vera testified that he eventually would have asked for some kind of proof of updated insurance had the dog not alerted. *Id.* at 46–47. Nevertheless, during his initial conversation with Mr. Hernandez Quintero, Trooper Tapia Vera told him that he would only be issuing him a warning for speeding. *Id.* at 29.

Trooper Tapia Vera testified that he asked Mr. Hernandez Quintero back to the patrol car. *Id.* at 29–30. He admitted that he does not always ask people back to the patrol car and that “on some occasions” he allows people to stay in their vehicles. *Id.* at 49. When the district court asked him why only some drivers are asked to exit their vehicles, he explained:

It is the totality of the circumstances, number one. When I’m missing information, when I’m missing current information, when the vehicle doesn’t belong to you—this is not my first interdiction stop. If Trooper Deckert was not

here with me, I would have brought Mr. Quintero back with me as well. It can truly just depend up to the officer there.

R., Vol. III at 74–75.

Trooper Tapia Vera also explained a situation when the driver of a vehicle would be allowed to remain in the vehicle:

The perfect stop—I will give the example, someone speeding 90 miles an hour in a posted 75-mile-an-hour zone. I pull them over. They pull over immediately—or not—don't take as long a time as Mr. Quintero. They readily, you know, can give me the registration; the vehicle belongs to them; insurance is up to date; all their information on the driver's license is current; if their travel plans aren't out of the ordinary—within that instance, I would say it could be done there, but it is—it's—every traffic stop is different, Your Honor.

Id. at 75–76.

Trooper Deckert testified that part of the reason he was riding with Trooper Tapia Vera that day was to provide him with on-the-job criminal interdiction training and because his vehicle was receiving services so he was “essentially vehicleless.” *Id.* at 90. Normally, when training, he waits in the patrol car during the initial part of a traffic stop. *Id.* at 95–96. In this case, however, he testified that he immediately got out of the patrol car and approached with Trooper Tapia Vera because Mr. Hernandez Quintero had delayed in pulling over. *Id.* Trooper Deckert explained that he did not listen to Trooper Tapia Vera's conversation with Mr. Hernandez Quintero, which was in Spanish, and that he instead “scanned the vehicle with [his] eyes.” *Id.* at 96. Trooper Deckert also testified that “[e]very traffic stop is essentially a crime

scene, and it is our job to uncover all crimes being committed” such that “the act of criminal interdiction is not a separate undertaking than our normal job.” *Id.* at 110

The district court denied the motion, finding Mr. Hernandez Quintero’s position unpersuasive that Trooper Tapia Vera’s request for him to exit his vehicle prolonged the traffic stop because “police officers may order the driver to get out of the vehicle without violating the Fourth Amendment’s proscription of unreasonable searches and seizures.” *R.*, Vol. I at 86 (quoting *Pennsylvania v. Mimms*, 434 U.S. 106, 111 n.6 (1977)). “Because the mission of the traffic stop did not finish prior to the canine alert,” and “Trooper Tapia Vera was reasonably diligent in his pursuit of ordinary tasks related to the traffic stop,” the district court concluded the stop was not unreasonably extended. *Id.* at 88.

II. Discussion

A. Legal Standards and Background

“When reviewing the denial of a motion to suppress, [we view] the evidence in the light most favorable to the government, accept the district court’s findings of fact unless they are clearly erroneous, and review de novo the ultimate question of reasonableness under the Fourth Amendment.” *United States v. Cortez*, 965 F.3d 827, 833 (10th Cir. 2020) (internal quotation marks omitted). We also “defer to all reasonable inferences made by law enforcement officers in light of their knowledge and professional experience distinguishing between innocent and suspicious actions.” *United States v. Pettit*, 785 F.3d 1374, 1379 (10th Cir. 2015).

Permissible actions related to a traffic stop’s “mission” include those steps necessary to issue a ticket or warning, as well as “ordinary inquiries incident to [the traffic] stop,” such as “checking the driver’s license, determining whether there are outstanding warrants against the driver, and inspecting the automobile’s registration and proof of insurance.” *Rodriguez v. United States*, 575 U.S. 348, 355 (2015) (internal quotation marks omitted). Diversions from the mission, on the other hand, include arranging for or conducting a “dog sniff” and “[o]n-scene investigation[s] into other crimes.” *Id.* at 356.

Importantly, diversions also include actions that might *sometimes* be incidental to the traffic mission—like a safety precaution, or a common inquiry—when those actions are taken to facilitate investigation of unrelated criminal activity. The Supreme Court explained in *Rodriguez* that “safety precautions *taken in order to facilitate*” the “[o]n-scene investigation into other crimes” are impermissible detours, even though it is okay to take safety precautions “related” to the traffic stop. 575 U.S. at 354, 356–357 (emphasis added).

We have recognized the same in our decisions. *See United States v. Mayville*, 955 F.3d 825, 831 (10th Cir. 2020) (explaining that “officers may not undertake safety precautions for the purpose of lengthening the stop to allow for investigation of unrelated criminal activity”); *United States v. Cortez*, 965 F.3d 827, 840 (10th Cir. 2020) (analyzing whether officer’s questions during a traffic stop “were posed as a pretext to ‘facilitate’ a detour into investigating other crimes”).

B. Reasonableness of the Traffic Stop

Mr. Hernandez Quintero argues that the district court committed legal error under *Rodriguez* when it determined that Trooper Tapia Vera did not divert from the mission of the traffic stop while Trooper Deckert prepared for the dog sniff. Mr. Hernandez Quintero contends that Trooper Tapia Vera's request for him to get out of his car and walk to the patrol car was for the purpose of facilitating Trooper Deckert's criminal-interdiction efforts.

In support of his position, Mr. Hernandez Quintero relies on (1) testimony that the troopers had a hunch from the get-go that Mr. Hernandez Quintero was engaged in criminal activity; (2) Trooper Tapia Vera's testimony that he considered criminal interdiction part of his job during the stop; and (3) Trooper Tapia Vera's explanation for why he brought Mr. Hernandez Quintero back to his police car. Mr. Hernandez Quintero argues that the district court specifically erred when it rejected his argument based entirely on the general rule from *Pennsylvania v. Mimms*, 434 U.S. 106, that it is not unreasonable to order a driver to get out of his vehicle during a traffic stop. Mr. Hernandez Quintero argues that the district court erred by not considering the purpose of Trooper Tapia Vera's request, and that a safety precaution taken to facilitate a general criminal investigation is unlawful without reasonable suspicion.

Contrary to Mr. Hernandez Quintero's assertions, the record supports the inference that Trooper Tapia Vera would have asked Mr. Hernandez Quintero to join him in his patrol car regardless of the presence of Trooper Deckert and his K-9 officer Jager. R., Vol. III at 62. The dash-cam footage confirms that Trooper Tapia

Vera had already asked Mr. Hernandez Quintero out of his vehicle and was headed back to his patrol car when Trooper Deckert told him of his observations and intent to deploy Jager.

Moreover, the troopers' subjective intent—*i.e.*, their belief from the get-go that Mr. Hernandez Quintero was engaged in criminal activity—is not relevant here to the Fourth Amendment-reasonableness inquiry because their actions were objectively justifiable. *See Whren v. United States*, 517 U.S. 806, 814 (1996) (“Not only have we never held, outside the context of inventory search or administrative inspection . . . that an officer’s motive invalidates objectively justifiable behavior under the Fourth Amendment; but we have repeatedly held and asserted the contrary.”).

While Mr. Hernandez Quintero contends that the district court “did not try to interpret this testimony or judge its credibility, and it never made a factual finding as to Trooper Tapia Vera’s purpose in asking [Mr. Hernandez Quintero] to exit his vehicle,” Aplt. Br. at 19, the lower court enunciated the rationale for its decision. In its order denying Mr. Hernandez Quintero’s motion to suppress, the court explained that Trooper Tapia Vera “never departed from the traffic-based mission” and Mr. Hernandez Quintero “can identify no period of time beyond his exit from the vehicle to join Trooper Tapia Vera in his patrol car, that he believes amounted to any delay or detour in the traffic-based mission.” R., Vol. I at 87.

Furthermore, during the suppression hearing the district court explained its rationale for why it found there was no investigative detour, namely the actions of Trooper Tapia Vera were objectively reasonable in “pursuing the normal tasks of

checking the driver’s license status, the registration status during that entire period of time. Proof of valid insurance was never produced.” R., Vol. III at 213. The district court did not base its decision on the general rule from *Mimms* that safety precautions, such as asking Mr. Hernandez Quintero back to Trooper Tapia Vera’s vehicle, are always lawful but instead based its decision on the facts before it. *Id.* (“We’re dealing with just such a short time frame and unusual facts where we have, given the circumstances, a K-9 and his handler in the same vehicle and deployed.”).

Under the circumstances, the district court was not required to make a finding as to Trooper Tapia Vera’s *subjective* intent in asking Mr. Hernandez Quintero back to Trooper Tapia Vera’s vehicle. On this record, Trooper Tapia Vera’s actions were objectively reasonable for his traffic-based mission. The fact that Trooper Deckert contemporaneously conducted a dog-sniff while Trooper Tapia Vera completed the routine incidents of the stop is immaterial.

Our conclusion is further buttressed by this court’s recent decision in *United States v. Cates*, 73 F.4th 795 (10th Cir. 2023). In *Cates*, a trooper stopped a vehicle for speeding; the driver, Cates, stated that the vehicle was a rental but could not produce a physical copy of the rental agreement. *Id.* at 800. Cates said the rental agreement might be on his phone, at which point the trooper— “kn[owing] that locating rental agreements on a phone was often time consuming”—asked Cates to join him in his patrol car while Cates searched for the contract. *Id.* The trooper “also told Cates that he would just issue him a warning for speeding and that Cates could look for the rental agreement while [the trooper] completed the paperwork.” *Id.*

As the trooper moved back to his patrol car, he radioed a second trooper and asked that trooper, along with his K-9, to join him at his location. *Id.* After the trooper and Cates entered the patrol car, the trooper sent a text message to the second trooper to run a K-9 search on Cates's vehicle. *Id.* At this time, the trooper was running Cates's driver's license and talking to him about his travel plans and any previous arrests. *Id.* While the trooper was continuing his paperwork and Cates was continuing to search for his rental agreement, the second trooper walked up to Cates's vehicle and deployed his K-9. *Id.* The K-9 alerted to the presence of controlled substances twice, one on each side of the vehicle. *Id.* At that time, the first trooper had not completed the warning for Cates and Cates had not located his rental agreement. *Id.* at 801.

We held that the trooper did not impermissibly prolong the traffic stop to arrange for a dog sniff “because the dog sniff and alert were contemporaneous with the trooper’s reasonably diligent pursuit of the stop’s mission.” *Id.* at 807 (cleaned up). Germane to this decision was the short interval between the start of the traffic stop and the arrival of the second trooper and K-9—about three minutes— “[a]nd, critically, during this time, [the trooper] continued executing the tasks incident to a traffic stop, such as running Cates’s license and checking for any outstanding warrants.” *Id.* Mr. Hernandez Quintero argues that *Cates* is materially distinguishable because “*Cates* is about prolongation” while his case is about “whether the district court legally erred by concluding that Trooper Tapia Vera’s exit order was categorically permissible regardless of its purpose.” Aplt. Resp. to Suppl. Auth. at 1. We are not persuaded by Mr. Hernandez Quintero’s argument and instead find *Cates* helpful here.

Like *Cates*, the interval between the start of the traffic stop and the deployment of K-9 Jager was exceedingly short. Similarly, Trooper Tapia Vera—like the trooper in *Cates*—was still performing his routine queries incident to issuing a warning when Trooper Deckert informed him of Jager’s positive alert. We see no reason why the general rule announced in *Cates* should not also apply here.

Additionally, because we hold that Trooper Tapia Vera did not detour from the traffic-based mission, we do not reach the question of whether there was reasonable suspicion to extend the traffic stop for a criminal investigation, *i.e.*, in order to conduct an open-air dog sniff.

III. Conclusion

We affirm the district court.

Entered for the Court

Timothy M. Tymkovich
Circuit Judge