IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED
March 12, 2020

Lyle W. Cayce
Clerk

No. 19-60340

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

COREY DELMAR SMITH,

Defendant - Appellant

Appeal from the United States District Court
for the Northern District of Mississippi
USDC No. 3:18-CR-77-1

Before BARKSDALE, HIGGINSON, and DUNCAN, Circuit Judges.

STUART KYLE DUNCAN, Circuit Judge:

This case raises a recurring question: did law enforcement officers conduct an "unreasonable" seizure under the Fourth Amendment by extending what began as a routine traffic stop? *See*, *e.g.*, *Rodriguez v. United States*, 575 U.S. 348 (2015); *United States v. Brigham*, 382 F.3d 500 (5th Cir. 2004) (en banc). Agreeing with the district court that the traffic stop here was not unreasonable under the Fourth Amendment, we AFFIRM.

I.

Just before 6:00 one evening in October 2017, Officer Hunter Solomon of the Hernando Police Department pulled a black Chevy Suburban over on

northbound Interstate 55 in Hernando, Mississippi, because it had an improperly displayed license plate. As Solomon walked to the vehicle, he saw that the vehicle actually had a temporary license displayed in its tinted rear windshield. Solomon approached the vehicle, and defendant Corey Smith, the driver, produced his license. At Solomon's invitation, Smith got out and walked to the rear of the Suburban so Solomon could show Smith why he had been pulled over.

During this conversation, Solomon asked Smith about his itinerary and passengers. Smith said he had found a good deal on a small icemaker[1] for his Fort Worth, Texas, restaurant on Craigslist and was headed to Indiana to pick it up. Solomon asked about the machine's size (it was apparently a small one) and then asked why it made sense to drive all the way from Texas to Indiana to pick up a small icemaker rather than just having the machine shipped to Texas. Smith did not have a good answer.

Smith also told Solomon that his two passengers used to work for him and were helping him pick up the icemaker. (Curiously, Smith only knew the name of one passenger.) He told Solomon that he had picked up the men in Jackson, Mississippi. The plan was for the men to spend the night in nearby Memphis, Tennessee, and then continue to Indiana the following day. Having heard this story, and finding it somewhat implausible, Solomon decided to verify it with the two passengers, Willie Carroll and Gregory Carter. He left Smith at the rear of the vehicle with another officer, Davis, who had just arrived as backup. Solomon first got Carroll's and Carter's names and asked dispatch to run a background check. While that was being taken care of, he asked Carroll and Carter about their itinerary.

[1] A daiquiri machine may also have been involved.

Their stories diverged from Smith's. Carroll told Solomon that he did not really know Smith. He said that the three men were headed to Memphis for a party and that they would return to Jackson the next day. Carroll had no idea about a trip to Indiana for an icemaker. Carter's story was similar. He said the men were headed to Memphis for a party but was unsure when they would be returning to Jackson. Carter also had no idea about any trip to Indiana. Solomon viewed the men's divergent stories, combined with the fact that they were travelling on the interstate (a route frequently used for transporting contraband), as "red flags." Solomon believed the men were hiding narcotics.

By 6:09 p.m., both Carroll's and Carter's IDs had been verified. But at 6:10 p.m., the background check returned an outstanding warrant on Carroll. So Solomon arrested Carroll at approximately 6:12 p.m. and placed him in Davis' patrol unit. He then asked Smith for consent to search the Suburban. Smith became "a little defensive," and raised his voice. Smith said he did not want his vehicle searched because he did not know what the passengers might have placed in the car. Around the same time, Solomon requested a more detailed background check (a "CQH") on all three men. The CQH took at least six minutes. At some point after that, likely around 6:18 p.m. (Solomon's report and testimony are unclear on the exact time), the CQH on Carter revealed that he had four prior drug arrests, including two for possession with intent to sell.

Because of all this, and despite Smith's refusal to consent to a vehicle search, Solomon decided to deploy his K-9 unit, Krash, for a drug sniff. The search began at 6:20 or 6:21 p.m. Less than a minute later, as Krash approached the rear door on the passenger's side, he jerked his head back and began to sniff the car door intensely. Krash then sat down, indicating that he smelled narcotics. Solomon determined that Krash's alert gave him probable cause to search the Suburban.

Solomon then put Krash back into his patrol unit and began searching. In the front part of the car, Solomon found an envelope addressed to Smith. Inside was a stack of "blank metal social security cards" and "a hand[-]written list of finical [sic] companies with addresses and email addresses that appeared to be made up." The items were located sometime before 6:40 p.m.[2] Solomon then paused the search and contacted a detective to help him search the rest of the vehicle. They eventually uncovered fake IDs, authentic IDs with matching social security cards, a printer, blank check stubs, and other items. Smith and Carter were arrested. No narcotics were found.

Smith was indicted on various charges related to fraud and identity theft. He moved to suppress the evidence obtained from the vehicle search, arguing that the Fourth Amendment prohibited the extension of the initial traffic stop. The district court held an evidentiary hearing and then denied Smith's motion. Smith entered a conditional guilty plea preserving his right to appeal the denial of his motion to suppress. The court sentenced him to 36 months in prison and three years of supervised release. Smith timely appealed.

II.

When reviewing the denial of a motion to suppress, we review factual findings for clear error and conclusions of law *de novo*. *United States v. Pack*, 612 F.3d 341, 347, *modified on denial of reh'g*, 622 F.3d 383 (5th Cir. 2010). "We view the evidence in the light most favorable to the party that prevailed below. We may affirm the district court's decision on any basis established by the record." *Id.* (citation omitted). We will uphold the district court's ruling "if there is any reasonable view of the evidence to support it." *United States v.*

[2] Solomon testified that he generally does not log when he *begins* searching, but that the initial items were located before 6:40 p.m.

Massi, 761 F.3d 512, 520 (5th Cir. 2014) (quoting *United States v. Michelletti*, 13 F.3d 838, 841 (5th Cir. 1994) (en banc)).

III.

On appeal, Smith makes three primary arguments.[3] First, he argues that Officer Solomon unreasonably extended the traffic stop by continuing to question Smith and his passengers beyond 6:04 p.m., the point at which Smith believes the stop reasonably should have been completed. Second, Smith contends that, even if the stop could reasonably have been extended beyond 6:04 p.m., by 6:12 p.m. it is clear that Solomon had no further reasonable suspicion that could support a further extension of the stop and the ensuing narcotics investigation. Finally, Smith believes that Solomon unreasonably extended the stop by waiting approximately ten minutes to deploy Krash after he began the narcotics investigation. For the reasons we discuss below, none of these arguments is persuasive. We set forth the applicable Fourth Amendment principles before addressing each of Smith's arguments in turn.

A.

A Fourth Amendment "seizure" occurs when an officer stops a vehicle and detains its occupants. *Brigham*, 382 F.3d at 506. "We analyze the legality of traffic stops for Fourth Amendment purposes under the standard articulated by the Supreme Court in *Terry v. Ohio*, 392 U.S. 1 (1968)." *Pack*, 612 F.3d at 349–50. This involves two steps. First, we determine whether the stop was justified at its inception. *Id.* at 350. "For a traffic stop to be justified at its inception, an officer must have an objectively reasonable suspicion that some sort of illegal activity, such as a traffic violation, occurred, or is about to occur, before stopping the vehicle." *United States v. Lopez-Moreno*, 420 F.3d 420, 430 (5th Cir. 2005).

[3] Smith does not appear to challenge any of the district court's factual findings.

Second, if the stop was justified, we ask whether "the officer's subsequent actions were reasonably related in scope to the circumstances that caused him to stop the vehicle in the first place." *Pack*, 612 F.3d at 350. "A seizure for a traffic violation justifies a police investigation of that violation." *Rodriguez*, 575 U.S. at 354. As part of that investigation, "an officer may examine driver's licenses and vehicle registrations and run computer checks." *Pack*, 612 F.3d at 350. "He may also ask about the purpose and itinerary of the occupants' trip . . . ." *Id.* And he may ask "similar question[s] of the vehicle's occupants to verify the information provided by the driver." *Brigham*, 382 F.3d at 508 (quoting *United States v. Linkous*, 285 F.3d 716, 719 (8th Cir. 2002)).

There is no hard-and-fast time limit for "reasonable" traffic stops. Rather, the stop "must be temporary and last no longer than is necessary to effectuate the purpose of the stop." *Id.* at 507. "[T]he tolerable duration of police inquiries in the traffic-stop context is determined by the seizure's 'mission'—to address the traffic violation that warranted the stop and attend to related safety concerns." *Rodriguez*, 575 U.S. at 354 (citation omitted). "Authority for the seizure . . . ends when tasks tied to the traffic infraction are—or reasonably should have been—completed." *Id.* "If the officer develops reasonable suspicion of additional criminal activity during his investigation of the circumstances that originally caused the stop, he may further detain its occupants for a reasonable time while appropriately attempting to dispel this reasonable suspicion." *Pack*, 612 F.3d at 350.

"[R]easonable suspicion exists when the officer can point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the search and seizure." *Lopez-Moreno*, 420 F.3d at 430. "Reasonable suspicion is a low threshold" and requires only "some minimal level of objective justification." *United States v. Castillo*, 804 F.3d 361, 367 (5th Cir. 2015) (quoting *United States v. Sokolow*, 490 U.S. 1, 7 (1989)).

Reasonable suspicion demands something more than a "mere 'hunch'" but "'considerably less than proof of wrongdoing by a preponderance of the evidence,' and 'obviously less' than is necessary for probable cause." *Navarette v. California*, 572 U.S. 393, 397 (2014) (quoting *Sokolow*, 490 U.S. at 7).

Our inquiry views "the totality of the circumstances and the collective knowledge and experience of the officer." *United States v. Estrada*, 459 F.3d 627, 631–32 (5th Cir. 2006). We give due weight to the officer's factual inferences because officers may "draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that 'might well elude an untrained person.'" *United States v. Arvizu*, 534 U.S. 266, 273 (2002) (quoting *United States v. Cortez*, 449 U.S. 411, 418 (1981)).

B.

Smith first argues that the stop should have ended at 6:04 p.m., because by that time Officer Solomon had seen that the vehicle had a temporary license plate and had confirmed that Smith's driver's license was valid.

We are unpersuaded. Smith concedes that Solomon had reasonable suspicion to pull him over. So, the initial traffic stop was legal and the first prong of the *Terry* inquiry is satisfied. *See Lopez-Moreno*, 420 F.3d at 430. As part of the traffic stop, Solomon could examine the driver's licenses of the vehicle's occupants and check for any outstanding warrants, *see Pack*, 612 F.3d at 350–51, ask Smith about the purpose and destination of their journey, *see id.*, and ask similar questions to Carroll and Carter to verify Smith's statements, *see Brigham*, 382 F.3d at 508. Thus, to the extent that Smith argues that any of those actions unreasonably prolonged the traffic stop beyond 6:04 p.m., his arguments fail. The computer checks on both Carroll's and Carter's licenses took until at least 6:09 or 6:10 p.m. Thus the initial traffic stop was reasonable at least until that time.

C.

Smith next argues that, even if the stop was reasonably extended beyond 6:04 p.m., it was unreasonable to extend the stop beyond 6:12 p.m. in order to conduct a narcotics investigation. The district court disagreed. So do we.

To justify extension of the initial traffic stop, Officer Solomon's reasonable suspicion must have arisen, at the latest, by 6:12 p.m. "[T]he tolerable duration of police inquiries in the traffic-stop context is determined by the seizure's 'mission'—to address the traffic violation that warranted the stop and attend to related safety concerns." *Rodriguez*, 575 U.S. at 354 (citation omitted). Officer Solomon admitted that, by 6:12 p.m., there was not "anything else to do regarding the investigation of the improperly displayed tag." Thus, any reasonable suspicion justifying an extension of the stop must have arisen before that point, or continuation of the stop would be unreasonable. *See id.*; *see also Pack*, 612 F.3d at 361.

Officer Solomon's interactions with the three men provided reasonable suspicion to conduct a narcotics investigation, thus justifying an extension of the stop. First, Officer Solomon noted the implausibility of elements of Smith's story. Smith stated that the icemaker he was going to pick up was not a large machine. But he had no explanation for why he needed three adult men to pick up a machine of that size. Nor could he explain why it made sense to drive all the way from Fort Worth, Texas to Indiana rather than just having the machine shipped.

Second, Smith, Carter, and Carroll gave contradictory stories about their destination, the purpose of their trip, and their relationships to each other. Smith claimed the men were headed to Indiana to pick up restaurant equipment; Carroll and Carter both asserted they were headed to a party in Memphis. Smith claimed Carroll and Carter were previous employees; Carroll informed Officer Solomon that he did not really know Smith. Smith did not

even know the name of one of the men. Further, the stories from Carter and Carroll did not match up with each other—one of the men stated they would be returning to Jackson the following day, while the other stated he was unsure when they would be returning. At oral argument, Smith conceded that these inconsistencies were "significant."

The district court and Smith are correct that these inconsistencies were significant, and we conclude they lean in favor of reasonable suspicion. *See Pack*, 612 F.3d at 360–61 (inconsistent stories about which major cities were visited supports reasonable suspicion).[4] This is particularly true where, as here, Officer Solomon "dr[ew] on [his] experience . . . to make inferences from and deductions about the cumulative information available to [him] that 'might well elude an untrained person.'" *See Arvizu*, 534 U.S. at 273 (quoting *Cortez*, 449 U.S. at 418).[5] Officer Solomon testified that, in his experience, when drivers are dishonest after being pulled over, it usually indicates that they are hiding contraband.

Third, Smith and his companions were traveling along an interstate known for transportation of contraband. While we agree with the Tenth Circuit that "the probativeness of a particular defendant's route is minimal," *United States v. White*, 584 F.3d 935, 952 (10th Cir. 2009), we have consistently considered travel along known drug corridors as a relevant—even if not dispositive—piece of the reasonable suspicion puzzle. For example, in *Pack*, we considered the fact that the defendant and his girlfriend "were traveling along

---

[4] *See also United States v. Flenory*, No. 19-30081, slip. op. at 5–7 (5th Cir. Mar. 5, 2020) (per curiam) (inconsistent stories support reasonable suspicion); *United States v. Pena-Gonzalez*, 618 F. App'x 195, 200 (5th Cir. 2015) (per curiam) (same); *United States v. Vazquez*, 253 F. App'x 365, 370 (5th Cir. 2007) (per curiam) (same); *United States v. Fishel*, 467 F.3d 855, 856–57 (5th Cir. 2006) (same).

[5] Smith argues that inconsistent stories are insufficient on their own to support reasonable suspicion. We do not decide the question because, as the facts show, Solomon had other evidence supporting reasonable suspicion.

a drug trafficking corridor." 612 F.3d at 361. Similarly, in *United States v. Glenn*, 931 F.3d 424, 429 (5th Cir. 2019), we considered the fact that the defendants were traveling on a "known drug-trafficking corridor."[6] Thus, to the extent Smith argues that we cannot consider his presence on I-55, he is incorrect. Smith's travel on I-55 supports reasonable suspicion on these facts.

Finally, we note that by 6:10 p.m., Officer Solomon knew that one of the vehicle's occupants had an outstanding arrest warrant for a parole violation. This fact could have contributed to Officer Solomon's reasonable suspicion. *See Pack*, 612 F.3d at 361 ("We also note, though it was not cited by [Trooper] Worley, that Pack's suspended license could have contributed to Worley's reasonable suspicion of criminal activity, since licenses are usually suspended for less than law abiding conduct.").

In sum, the record supports Officer Solomon's reasonable suspicion, based on his experience, "that criminal activity 'may [have been] afoot.'" *Arvizu*, 534 U.S. at 273 (quoting *Sokolow*, 490 U.S. at 7). The record establishes this reasonable suspicion arose by 6:12 p.m. We therefore conclude that the extension of the stop beyond that time so that Officer Solomon could conduct a narcotics investigation did not violate the Fourth Amendment.

D.

Finally, Smith argues that, even if it was reasonable for Officer Solomon to begin a narcotics investigation, that investigation was unreasonably extended by Officer Solomon's decision to wait until 6:21 p.m. to have Krash conduct the drug sweep. In Smith's view, Officer Solomon should have immediately deployed Krash at 6:11 or 6:12 p.m. rather than "[sitting] around

---

[6] *See United States v. Aguilera*, 655 F. App'x 213, 215 (5th Cir. 2016) (per curiam) (considering travel on known trafficking corridor); *See also United States v. Gonzalez*, 328 F.3d 755, 758 (5th Cir. 2003) (same); *United States v. Villarreal*, 61 F. App'x 119, at *2 (5th Cir. 2003) (per curiam) (same).

idly" until 6:21 p.m.[7] The district court performed no independent analysis on this issue, but concluded it did "not find the time from when the investigation began until Krash was deployed to be an unreasonable delay."

We agree with the district court that the delay was not unreasonable under the circumstances. Smith's argument boils down to disagreeing with Officer Solomon's decision to wait until the in-depth background checks finished before deploying Krash. He offers no legal authority showing this ten-minute period was unreasonable. Rather, he suggests it was unreasonable because, when Solomon finally did conduct a sweep with Krash, it took "only a minute or two." He articulates no other reason.

But "*post hoc* evaluation of police conduct can almost always imagine some alternative means by which the objectives of the police might have been accomplished." *United States v. Sharpe*, 470 U.S. 675, 686–87 (1985). "[T]he fact that the protection of the public might, in the abstract, have been accomplished by 'less intrusive' means does not, itself, render the search unreasonable." *Id.* at 687 (quoting *Cady v. Dombrowski*, 413 U.S. 433, 447 (1973)). The appropriate inquiry "is not simply whether some other alternative was available, but whether the police acted unreasonably in failing to recognize or to pursue it." *Id.*

The record does not suggest that Solomon unreasonably dragged the investigation out. Rather, during the ten-minute interval Smith challenges, the record shows that Solomon was waiting for in-depth background checks on all three men, as well as trying to secure consent to search the vehicle.

---

[7] It is unclear whether Smith presented this precise argument to the district court. If Smith failed to do so, our review would be for plain error only. *See* Fed. R. Crim. P. 52(b); *United States v. Mendez*, 885 F.3d 899, 908 (5th Cir. 2018). At oral argument, the government conceded that Smith raised the argument. We need not decide whether the government was correct. Even under the more lenient standard for reviewing preserved error, Smith's argument fails.

For those reasons, we conclude Officer Solomon did not act unreasonably by waiting until 6:21 p.m. to deploy Krash for the drug sweep.

* * *

After viewing the totality of the circumstances, we conclude that the district court's decision to deny Smith's motion to suppress is supported by a reasonable view of the evidence in the record. *See Massi*, 761 F.3d at 520.

The district court's judgment is therefore AFFIRMED.