

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

LINDSAY LEIGH NANNY,

Defendant-Appellee.

UNPUBLISHED

August 16, 2011

No. 298599

Oakland Circuit Court

LC No. 2010-009139-AR

Before: CAVANAGH, P.J., and WILDER and OWENS, JJ.

PER CURIAM.

The prosecution appeals by leave granted the circuit court's order affirming the district court's dismissal of charges against defendant. We reverse and remand for further proceedings.

The prosecution argues that the district court erred in suppressing the evidence as an unreasonable search and seizure in violation of the Fourth Amendment. We agree. This Court reviews de novo a trial court's ruling on a motion to suppress. *People v Williams*, 472 Mich 308, 313; 696 NW2d 636 (2005). The trial court's factual findings are reviewed for clear error. *People v Hyde*, 285 Mich App 428, 436; 775 NW2d 833 (2009). A factual finding is clearly erroneous if it leaves this Court with a definite and firm conviction that the trial court has made a mistake. *People v Akins*, 259 Mich App 545, 564; 675 NW2d 863 (2003). This Court reviews de novo determinations regarding whether the Fourth Amendment was violated. *Hyde*, 285 Mich App at 436.

The Michigan Constitution and the United States Constitution guarantee that a person shall be free from unreasonable searches and seizures. US Const, Am IV; Const 1963, art 1, § 11. The reasonableness of a search or seizure depends on whether the police officer's actions were justified from the inception and whether his actions were reasonably related in scope to the circumstances. *Williams*, 472 Mich at 314, citing *Terry v Ohio*, 392 US 1; 88 S Ct 1868; 20 L Ed 2d 889 (1968).

A warrantless traffic stop is permissible when a police officer has probable cause to believe that a traffic violation has occurred. *Whren v US*, 517 US 806, 810; 116 S Ct 1769; 135 L Ed 2d 89 (1996); *People v Davis*, 250 Mich App 357, 363; 649 NW2d 94 (2002). An actual violation of the vehicle code need not be proved; all that is required is that the officer has a reasonable suspicion that a violation may have occurred. *People v Peebles*, 216 Mich App 661, 665-667; 550 NW2d 589 (1996). The parties concede that failing to stop at a stop sign

constitutes a traffic violation and that defendant failed to stop at a stop sign. Thus, Officer Brian Illingworth was justified in stopping defendant's vehicle. The only remaining question is whether Illingworth's actions were reasonably related in scope to the circumstances. *Williams*, 472 Mich at 314-315.

"A traffic stop is reasonable as long as the driver is detained only for the purpose of allowing an officer to ask reasonable questions concerning the violation of law and its context for a reasonable period." *Williams*, 472 Mich at 315. Moreover, "when a traffic stop reveals a new set of circumstances, an officer is justified in extending the detention long enough to resolve the suspicion raised." *Id.* Likewise, during a routine traffic stop, a police officer may request a driver to step from the vehicle and off to the shoulder of the road. *Pennsylvania v Mimms*, 434 US 106, 110-111; 98 S Ct 330; 54 L Ed 2d 331 (1977); *People v Chapo*, 283 Mich App 360, 368; 770 NW2d 68 (2009).

Furthermore, the United States Supreme Court has held that, as long as the traffic stop is not prolonged, an officer may use a drug-detection dog to sniff a vehicle during the stop, even if the defendant does not consent and the officer lacks reasonable, articulable suspicion that the occupants of the vehicle are involved with narcotics. *Illinois v Caballes*, 543 US 405, 409-410; 125 S Ct 834; 160 L Ed 2d 842 (2005). A canine sniff is permissible under these circumstances because it does not implicate any legitimate privacy interest. *People v Jones*, 279 Mich App 86, 93; 755 NW2d 224 (2008). "[A] canine sniff is not a search within the meaning of the Fourth Amendment as long as the sniffing canine is legally present at its vantage point when its sense is aroused." *Id.*, citing *Caballes*, 543 US at 409-410.

After legally stopping defendant in a high crime and drug area, Illingworth initiated a conversation that lasted a few minutes. During this time, Illingworth asked defendant for her driver's license, proof of insurance, and registration. Defendant was only able to produce a valid driver's license. Illingworth then asked defendant why she went to the apartment complex and inquired whether various narcotics were inside her vehicle. Although defendant denied that any narcotics were located inside her vehicle, she averted her eyes away from Illingworth and turned towards the interior of her vehicle when Illingworth asked defendant if there was marijuana present. Illingworth again asked defendant her purpose in going into the apartment complex, and defendant provided a different answer. Illingworth then requested to search defendant's vehicle, but defendant refused to give consent. At this point, Illingworth requested that defendant exit her vehicle. Illingworth properly asked defendant reasonable questions related to the traffic law violation and the surrounding context for a reasonable period. *Williams*, 472 Mich at 315. Furthermore, because Illingworth requested that defendant exit her vehicle during the traffic stop investigation, his request was lawful. *Mimms*, 434 US at 110-111; *Chapo*, 283 Mich App at 368.

Likewise, during the traffic stop investigation, Illingworth properly conducted a dog sniff of the exterior of defendant's vehicle immediately after ordering defendant out of her vehicle. While speaking with defendant, Illingworth noticed defendant's differing answers, and avoidance of eye contact and body movement when asked about marijuana. Defendant's behavior created new circumstances that allowed Illingworth to properly continue his investigation. *Williams*, 472 Mich at 315. Regardless, the dog was located in Illingworth's police vehicle and the dog sniff was conducted at around the same time Illingworth ran a LEIN

check on defendant. Thus, defendant's detention was not unreasonably prolonged by the dog sniff of her vehicle during the traffic stop. *Caballes*, 543 US at 409-410; *Jones*, 279 Mich App at 93.

Consequently, defendant's argument that the totality of circumstances reveals a Fourth Amendment violation based on an unreasonable search and seizure is unpersuasive. Defendant was properly stopped for a traffic violation and, pursuant to *Williams*, she was not unreasonably detained. Likewise, pursuant to *Caballes*, because the dog sniff did not prolong the traffic stop, it was proper.

We note that because the use of the dog sniff on defendant's vehicle was legal, Illingworth's inside search of defendant's vehicle was also legal pursuant to the automobile exception and no warrant was required. See *Pennsylvania v Labron*, 518 US 938, 940; 116 S Ct 2485; 135 L Ed 2d 1031 (1996) (the police may search a vehicle and any containers therein without a warrant if they have probable cause to believe the vehicle contains contraband); *People v Clark*, 220 Mich App 240, 243; 559 NW2d 78 (1996) (if a properly trained dog indicates the presence of a controlled substance, that indication is sufficient to establish probable cause to search the vehicle).

Reversed and remanded for further proceedings. We do not retain jurisdiction.

/s/ Mark J. Cavanagh

/s/ Kurtis T. Wilder

/s/ Donald S. Owens