

IN THE UTAH COURT OF APPEALS

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State of Utah,	)	MEMORANDUM DECISION
	)	(Not For Official Publication)
Plaintiff and Appellee,	)	
	)	Case No. 20070478-CA
v.	)	
	)	F I L E D
Robert Versluis,	)	(August 21, 2008)
	)	
Defendant and Appellant.	)	<span style="border: 1px solid black; padding: 2px;">2008 UT App 307</span>

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Fourth District, Provo Department, 061403735  
The Honorable Claudia Laycock

Attorneys: Aaron P. Dodd, Provo, for Appellant  
Mark L. Shurtleff and Joanne C. Slotnik, Salt Lake  
City, for Appellee

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Before Judges Greenwood, Thorne, and Billings.

PER CURIAM:

Robert Versluis appeals the district court's May 23, 2007 order denying his motion to withdraw his guilty pleas. Versluis asserts that his pleas were not knowingly or voluntarily made because his counsel was ineffective for failing to file a motion to suppress evidence and advise him of a possible violation of his constitutional rights.

The denial of a motion to withdraw a guilty plea will be reversed only if the trial court abused its discretion and the denial of the motion to withdraw was clearly erroneous. See State v. Smit, 2004 UT App 222, ¶ 7, 95 P.3d 1203. Versluis based his motion to withdraw his guilty pleas on the grounds that he believed his trial counsel was ineffective for failing to file a motion to suppress and explain the potential violation of his constitutional rights. In order to prevail on an ineffective assistance of counsel claim, a defendant must demonstrate: (1) that his trial counsel's performance was objectively deficient, and (2) that there was a reasonable probability that the outcome would likely have been more favorable to the defendant had his or her counsel acted otherwise. See State v. Mecham, 2000 UT App 247, ¶ 21, 9 P.3d 777. Because a defendant has the burden to satisfy both prongs of this test, "it is

unnecessary for this court to apply both parts where our inquiry reveals that one of its parts is not satisfied." Id.

Versluis cannot establish that there is a reasonable probability that the district court would have granted the motion to suppress evidence. Versluis asserts that the police exceeded the scope of the traffic stop without reasonable suspicion to do so. Once a traffic stop is made, the detention must be temporary and last no longer than is necessary to effectuate the purpose of the traffic stop. See State v. Lopez, 873 P.2d 1127, 1132 (Utah 1994). Any "[i]nvestigative questioning that further detains the driver must be supported by reasonable suspicion of more serious criminal activity." Id.

The record demonstrates that the district court correctly determined that the police officer had articulable, reasonable suspicion to extend the traffic stop. First, the police had received information from a confidential informant that Versluis would be transporting illegal narcotics from Salt Lake City to the Carbon County area on or about September 7, 2006. The information provided by the informant was detailed and verified by the police officer.

Second, as a trained drug recognition expert, the police officer possessed additional reasonable suspicion to extend the traffic stop to inquire about Versluis's sobriety due to his signs and symptoms of illegal narcotics use. Based on the reasonable suspicion that Versluis could be under the influence of narcotics, the police officer was entitled to ask Versluis to submit to field sobriety tests. Versluis performed poorly on the field sobriety tests. The record also demonstrates that once Versluis was out of his vehicle, he consented to allow a search of the passenger compartment, which resulted in the discovery of drug paraphernalia. A timely K-9 sniff of the vehicle also alerted the police to the presence of drugs in the vehicle's trunk. Thus, there were sufficient grounds to extend the search to include the vehicle's trunk. Based on these factors, the district court correctly determined that there was no legitimate suppression issue. Even if Versluis's counsel had filed a motion to suppress, the district court would not have granted it.

Versluis cannot demonstrate that the district court's outcome would have been different had his counsel filed a motion to suppress as the record supports the district court's determination that there was not a legitimate suppression issue. Thus, Versluis cannot demonstrate that his counsel was ineffective. Because Versluis cannot demonstrate that his counsel was ineffective, we cannot say that the district court

abused its discretion in denying his motion to withdraw his guilty pleas.

Accordingly, the district court's order is affirmed.

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Pamela T. Greenwood,  
Presiding Judge

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William A. Thorne Jr.,  
Associate Presiding Judge

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Judith M. Billings, Judge