IN THE SUPREME COURT OF THE UNITED STATES

ABILIO HERNANDEZ et al.,

Petitioners Docket No. _____

v.

JASON BOLES et al.,

Respondents

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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APPENDIX

RECOMMENDED FOR PUBLICATION
Pursuant to Sixth Circuit I.O.P. 32.1(b)

File Name: 20a0032p.06

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

ABILIO HERNANDEZ; LAZARO BETANCOURT; NORGE RODRIGUEZ; JOSE PEREZ,

Plaintiffs-Appellants,

v.

JASON BOLES; DONNIE CLARK,

Defendants-Appellees.

No. 18-6281

Appeal from the United States District Court
for the Eastern District of Tennessee at Winchester.
No. 4:17-cv-00025—Travis R. McDonough, District Judge.

Argued: July 30, 2019

Decided and Filed: January 30, 2020

Before: SILER, STRANCH, and NALBANDIAN, Circuit Judges.

COUNSEL

ARGUED: Drew Justice, JUSTICE LAW OFFICE, Murfreesboro, Tennessee, for Appellants. Amanda S. Jordan, OFFICE OF THE TENNESSEE ATTORNEY GENERAL, Nashville, Tennessee, for Appellees. **ON BRIEF:** Drew Justice, JUSTICE LAW OFFICE, Murfreesboro, Tennessee, for Appellants. Amanda S. Jordan, Peako A. Jenkins, OFFICE OF THE TENNESSEE ATTORNEY GENERAL, Nashville, Tennessee, for Appellees.

OPINION

JANE B. STRANCH, Circuit Judge. Tennessee Highway Patrol Trooper Jason Boles pulled Abilio Hernandez over for driving 77 miles per hour in a 70-mph zone. Boles checked

Hernandez and Lazaro Betancourt, the front seat passenger and owner of the car, for warrants. When the warrant check came back negative, Boles asked for and was refused consent to search the car. Trooper Donnie Clark then ran a search for the names of all four occupants of the car through a second, more comprehensive database, which was pending when a K-9 unit arrived. The dog sniffed the outside of the stopped car, alerting to the odor of drugs, but the dog did not alert again when allowed into the car, and the K-9 handler stated that the dog "didn't hit." After checking with their supervisor, the Troopers manually searched the car and found a number of re-encoded gift cards and suspected amphetamines. The four occupants of the car (hereafter called collectively the "Hernandez-Plaintiffs") were arrested and held for months in pre-trial incarceration before all charges were ultimately dropped.

The Hernandez-Plaintiffs filed suit under 42 U.S.C. § 1983, alleging that the Troopers violated the Fourth Amendment by (a) illegally searching the car and (b) unreasonably extending the car stop. The district court granted qualified immunity to the Troopers on the car search based on caselaw existing at that time. At trial, the jury found that the car stop was not impermissibly prolonged. The district court denied the Hernandez-Plaintiffs' Rule 50 motion for judgment as a matter of law. Based on the state of the caselaw at the time of the events in question and the standards governing Rule 50, we **AFFIRM**.

I. BACKGROUND

A. The Events of December 17, 2015

Hernandez was driving a Yukon SUV in Coffee County, Tennessee when Trooper Boles clocked him driving 77 miles per hour in a 70-mph zone. Boles waited for Hernandez's car to exit Interstate 24, then pulled him over at the side of a local road at 11:52 a.m. Boles was part of a Tennessee Highway Patrol unit called "Interdiction Plus" that "pull[s] people over for minor traffic offenses and then investigate[s] them for more serious crimes." His unit stops motorists for traffic violations such as minor speeding infractions and then, if there are no "indicators" of criminal activity, "they're given a warning . . . and they're released." In this case, Boles did not plan to issue Hernandez a ticket for speeding if he saw no such indicators; instead he planned only "to issue him a warning citation."

Betancourt, owner of the Yukon, was sitting in the front passenger seat; Norge Rodriguez and Jose Perez were sitting in the back seat. Boles approached the car and requested Hernandez's driver's license, the car's registration, and proof of insurance. Upon learning that Betancourt owned the car, he also requested Betancourt's license. Boles went back to his patrol car and requested a warrant check from the National Criminal Information Center (NCIC). At 11:59 a.m., seven minutes into the stop, the dispatcher told Boles that the NCIC warrant check was negative.

Boles returned to the Yukon, requested Hernandez to step out for questioning, then asked where he was going, who was in the car, whether he had ever been in trouble, and so on. Trooper Donnie Clark arrived during the questioning. Boles then attempted to question the other occupants of the car but was stymied by their limited English. Hernandez and Betancourt repeatedly denied having anything illegal in the car, but Betancourt refused to consent to a car search. Boles told them to wait a few minutes, and Clark requested a K-9 unit.

Boles then obtained driver's licenses from Rodriguez and Perez and ran NCIC warrant checks on them as well. At about 12:13 p.m., dispatch told him that the warrant checks on Rodriguez and Perez were also negative. Around 12:12 or 12:13 p.m., Clark called the Blue Lightning Operations Center (BLOC), a more comprehensive database that Boles did not have access to, to conduct a more detailed check on all four occupants of the car.

While the Troopers awaited the results from BLOC, a dog handler arrived with a K-9 unit at about 12:17 p.m. The police dog sniffed the exterior of the Yukon, alerting to the odor of drugs.[1] The handler then opened the car doors and the rear compartment and let the drug dog into the car to sniff the interior. The dog did not alert once inside the vehicle; instead, it ate some fast food out of a bag. After the dog did not alert inside the car, the K-9 handler shook the hands of all four occupants and gave them a thumbs up. The K-9 handler then told Clark, "Donnie, I'm sorry, Bubba."

[1]The dog's handler testified that it alerts to drugs by sitting down. As the Hernandez-Plaintiffs note, the dog cannot be seen sitting down on the Troopers' dashcam video. But, on this video, it is impossible to see what the dog is doing on the far side of the car. In any event, the Hernandez-Plaintiffs did not argue at summary judgment or on appeal that the Troopers lacked probable cause to search the car because the drug dog never alerted.

After the dog failed to alert, Clark received a return call from BLOC. Clark told Boles to call their supervisor and tell him, "We've got a refusal, and the canine didn't hit, and they've got an extensive background—meth." Boles received authorization to conduct a search, and Clark searched the Yukon. Clark found some gift cards in the driver's side door and a large number of gift cards rubber-banded together, as well as a bag containing an unknown substance, in a bag in the back seat. Clark later used a scanner to ascertain that the gift cards had been re-encoded with credit card numbers.

The Hernandez-Plaintiffs were arrested for possession of 370 re-encoded gift cards and 15 grams of a substance believed to be methamphetamine. Hernandez, Betancourt, and Perez were held in pre-trial incarceration for nine months until the criminal charges against them were dismissed. Rodriguez was held in pre-trial incarceration for only three months before the dismissal of charges because he was bailed out.

B. Procedural History

Both parties moved for summary judgment on the claims of an illegal car search and unreasonable duration of the traffic stop. The district court granted summary judgment to the Troopers on the car-stop claim based on qualified immunity, concluding that "[p]laintiffs have not identified any legal authority clearly establishing, or even hinting at, their right to be free of searches and seizures when a dog alerts to the outside of a vehicle, but not the inside." The court denied both parties' motions on the prolongation of the stop. On the Troopers' motion it held that, viewing the facts in the light most favorable to the Hernandez-Plaintiffs, "[a] reasonable jury could find that Boles unreasonably prolonged the stop in violation of the Fourth Amendment when he began to further question Hernandez after receiving a negative NCIC report." On the Hernandez-Plaintiffs' motion, it held that "viewing the evidence in the light most favorable to Defendants, a reasonable jury could determine that, based on the totality of the circumstances, Defendants diligently pursued the traffic-violation investigation."

At trial, the jury found for the Troopers on the sole remaining claim—that the traffic stop was unreasonably prolonged. The district court denied the Hernandez-Plaintiffs' subsequent

motion for judgment as a matter of law under Federal Rule of Civil Procedure 50. The present timely appeal followed.

II. ANALYSIS

A. Prolongation of the Car Stop

"We review *de novo* a district court's decision to deny a renewed motion for judgment as a matter of law under Rule 50(b)." *EEOC v. New Breed Logistics*, 783 F.3d 1057, 1065 (6th Cir. 2015) (citation omitted). For the Hernandez-Plaintiffs to succeed on their challenge, they must nonetheless "overcome the substantial deference owed a jury verdict." *Radvansky v. City of Olmsted Falls*, 496 F.3d 609, 614 (6th Cir. 2007). Like the district court, this court "may grant the [Rule 50] motion 'only if in viewing the evidence in the light most favorable to the non-moving party, there is no genuine issue of material fact for the jury, and reasonable minds could come to but one conclusion, in favor of the moving party.'" *New Breed Logistics*, 783 F.3d at 1065 (quoting *Radvansky*, 496 F.3d at 614). We begin with the governing law.

In *Rodriguez v. United States*, the Supreme Court held that officers may not prolong a traffic stop to have a drug dog sniff a car—a crime detecting action not ordinarily incident to a traffic stop—absent independent reasonable suspicion to detain the motorist(s). 135 S. Ct. 1609, 1615–16 (2015). The Court determined that the police violated the Fourth Amendment by detaining Rodriguez for seven or eight minutes after terminating the traffic stop by issuing him a ticket. *Id.* at 1613–16 (rejecting the argument that the prolongation of the stop was permissible because it was *de minimis*). "Like a *Terry* stop, the 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." *Id.* at 1614 (citation omitted). "Authority for the seizure thus ends when tasks tied to the traffic infraction are—or reasonably should have been—completed;" whichever comes first. *Id.*

The Supreme Court opined that the "ordinary inquiries incident to the traffic stop" that do not impermissibly extend a stop include "checking the driver's license [and] determining whether there are outstanding warrants against the driver." *Id.* at 1615 (cleaned up). We have held that checking passengers for warrants and brief questioning are permissible as part of a

traffic stop, *United States v. Smith*, 601 F.3d 530, 542 (6th Cir. 2010), and that summoning a drug dog to sniff a stopped car is permissible as long as it does not "improperly extend the length of the stop," *United States v. Bell*, 555 F.3d 535, 542 (6th Cir. 2009). But *Rodriguez* clarifies that any extension of a traffic stop absent independent reasonable suspicion is improper. 135 S. Ct. at 1615–16. This is a bright-line rule. *Id.*

The Hernandez-Plaintiffs maintain that they are entitled to judgment as a matter of law because, on the undisputed facts, the Troopers unreasonably prolonged the duration of the car stop. They assert that the traffic stop should have ended when the initial warrant check of Hernandez and Betancourt came back negative, or at least when the initial warrant check of the backseat passengers was concluded, and contend that it was unreasonably dilatory to check everyone a second time in another database.

The Troopers maintain that the warrant checks of the four occupants through two separate databases and the questioning of them were "ordinary inquiries incident to the traffic stop" and thus they did not impermissibly extend the stop. The Troopers further contend that because they were still awaiting the results of the background check from BLOC at the time that the drug dog first sniffed the car, calling the dog to the scene did not prolong the traffic stop.[2]

The issue here is whether, at the time of the dog sniff, the stop had been prolonged beyond the duration of the tasks incident to the initial stop or past the time reasonably required "to address the traffic violation that warranted the stop." *Rodriguez*, 135 S. Ct. at 1614. In other words, the Hernandez-Plaintiffs need to show either that the second warrant check of the occupants was not "tied to the traffic infraction" or that the traffic stop "reasonably should have been" already completed. *Id.* This is the type of circumstance-specific Fourth Amendment inquiry that, in the civil context, is generally reserved to the jury, as it was here. *See, e.g.*, *Gardenhire v. Schubert*, 205 F.3d 303, 315–18 (6th Cir. 2000) (holding that whether the police had probable cause was a question for the jury). For the Hernandez-Plaintiffs to prevail on their

[2]The Troopers also argued at summary judgment that, even if the traffic stop was unreasonably extended, they had reasonable suspicion to detain the Hernandez-Plaintiffs based on Hernandez's demeanor and answers to Trooper Boles's questioning. But the Troopers did not make this argument in their response to the Rule 50 motion or on appeal. It is therefore forfeited.

Rule 50 motion, they must show that under the facts of this case, running a check of a second database or waiting 20 minutes to call for a second warrant check unreasonably extended the traffic stop *as a matter of law*.

The Hernandez-Plaintiffs argue that the stop was legally improper because the Troopers "were using a traffic stop as a pretext to fish for evidence of other crime." It is well established, however, that police officers may stop a vehicle that commits a traffic violation and look for evidence of a crime, even if the traffic stop is merely a pretext and they do not have an independent reasonable suspicion of criminal activity. *See Whren v. United States*, 517 U.S. 806, 813, 819 (1996); *see also United States v. Everett*, 601 F.3d 484, 495 n.12 (6th Cir. 2010) ("[I]t is the objective conduct of the officer which the diligence standard measures; his subjective intent or hope to uncover unrelated criminal conduct is irrelevant."). To be sure, the Hernandez-Plaintiffs were free to argue to the jury that the Troopers impermissibly extended the traffic stop by checking a second database or waiting 20 minutes to call BLOC because they were trying to uncover evidence of a crime. But Trooper Boles's admission that he was interested in ferreting out crime rather than merely issuing traffic tickets does not alter the Fourth Amendment analysis. It remains the case that an officer's subjective intent is generally immaterial; the stop, by contrast, is unlawful if it is prolonged beyond the duration of tasks incident to the traffic stop or "beyond the time reasonably required" to address the traffic violation. *Rodriguez*, 135 S. Ct. at 1614–15 (quoting *Illinois v. Caballes*, 543 U.S. 405, 407 (2005)); *see also Bell*, 555 F.3d at 541–42 (holding that officers may pursue unrelated matters during a traffic stop, such as calling a drug dog to the scene to sniff the car, while they are waiting for the results of a warrant check, as long as they do not impermissibly prolong the stop).

The Hernandez-Plaintiffs argue that the traffic stop was unreasonably prolonged because the initial warrant check was completed 18 minutes before the drug dog showed up, the NCIC warrant check of the backseat passengers was completed four minutes beforehand, and "[c]hecking BLOC was a way to kill time. Even assuming that it had any valid purpose at all, the Troopers did not do it diligently" because they waited until 20 minutes into the stop to call BLOC. Certainly, the jury could have found that it was unreasonable to continue to detain the Hernandez-Plaintiffs after the initial warrant check of Hernandez and Betancourt came back

negative because that was not necessary to carry out the traffic stop—especially given that no ticket was being written—or that the Troopers were unreasonably dilatory in waiting 20 minutes to call BLOC. But the Hernandez-Plaintiffs cite no authority mandating such a determination as a matter of law. And though the delay caused by checking two different databases is troubling, the Hernandez-Plaintiffs point to no bright-line rule that officers are limited to checking one database for warrants during a traffic stop. Whether the traffic mission was (or should have been) over by the time the dog arrived was a question properly submitted to the jury.

In sum, the jury assessed all the facts and arguments and determined that the Troopers did not unreasonably prolong the traffic stop. The district court correctly determined that the question of whether the Troopers impermissibly prolonged the traffic stop was reserved to the jury. Drawing all reasonable inferences in favor of the Troopers, as we must, we cannot say that the Hernandez-Plaintiffs have met the high burden of showing that the jury's verdict was unreasonable as a matter of law. We therefore affirm the denial of the Hernandez-Plaintiffs' Rule 50(b) motion for judgment.

B. The Car Search

The Hernandez-Plaintiffs also argue that the district court erred in granting partial summary judgment to the Troopers on the ground that the car search did not violate clearly established law. "We review a district court's grant of summary judgment *de novo*." *Brown v. Lewis*, 779 F.3d 401, 410 (6th Cir. 2015) (citation omitted). Granting summary judgment "is appropriate only 'if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.' It is not appropriate if . . . a reasonable jury could return a verdict for the nonmoving party." *Id.* (quoting Fed. R. Civ. P. 56(a)). In reviewing a grant of summary judgment, this court "must view all evidence, and draw all reasonable inferences, in the light most favorable to the [non-moving party]." *Id.*

Qualified immunity "protects government officials from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Goodwin v. City of Painesville*, 781 F.3d 314, 320–21 (6th Cir. 2015) (quoting *Pearson v. Callahan*, 555 U.S. 223, 231 (2009)). At summary

judgment, qualified immunity must be denied and the case sent to the jury if the court finds that "there are genuine issues of material fact as to whether [the Officers] violated [the plaintiff's] Fourth Amendment rights in an objectively unreasonable way and . . . those rights were clearly established at the time of [the plaintiff's] arrest such that a reasonable officer would have known that his conduct violated them." *Id.* at 321 (alterations in original) (quoting *St. John v. Hickey*, 411 F.3d 762, 768 (6th Cir. 2005)). Though courts may answer these two questions "in either order," *id.*, we address first whether a constitutional violation occurred and then whether there was a violation of the Hernandez-Plaintiffs' clearly established rights.

1. Constitutional Violation

At issue is whether the Troopers violated the Fourth Amendment by manually searching the Yukon even though the drug dog did not alert to the car's interior. It is blackletter law that the police can lawfully search a car without a warrant if they have probable cause. *See, e.g.*, *United States v. Ross*, 456 U.S. 798, 809 & n.11 (1982) (collecting cases). The Troopers articulate only one basis for probable cause to search the car: the drug dog's alert to the exterior. And the Hernandez-Plaintiffs do not dispute that the Troopers had probable cause to have the dog climb into and sniff the interior of the car following its initial alert. So, the question is whether the Troopers *still* had probable cause to conduct a manual search after the dog failed to alert to the interior of the car.

The Hernandez-Plaintiffs argue that the Troopers did not have probable cause for this search because, "under the specific circumstances, the dog alert was unreliable." They rely on *Florida v. Harris*, 568 U.S. 237 (2013), for the proposition that "officers must look at the specific circumstances before concluding that an alert has produced probable cause." The Troopers respond that, even if there was a constitutional violation, they are entitled to qualified immunity because the Hernandez-Plaintiffs cannot "point to any legal authority clearly establishing that a drug dog's alert to the outside but not the inside of a vehicle would not provide probable cause to search the vehicle."

The Hernandez-Plaintiffs' reliance on *Harris* does not resolve the legal issue. *Harris* stands for the proposition that a dog's alert only provides probable cause if, in "controlled

settings," the "dog performs reliably in detecting drugs." *See* 568 U.S. at 248. The *Harris* Court did leave open the possibility that even if "a dog is generally reliable, circumstances surrounding a particular alert may undermine the case for probable cause—if, say, the officer cued the dog (consciously or not), or if the team was working under unfamiliar conditions." *Id.* at 247. But that does not cover the situation here—where a dog first alerts to the exterior and then fails to alert to the interior of a car. The unrebutted evidence in the record showed that the drug dog was generally reliable: The dog's handler testified at his deposition that "she didn't do any false alerts since the time I got her till the time I retired." And there is nothing in the record to suggest that the circumstances of the dog's alert undermine the dog's reliability in the sense meant by *Harris*.

The issue is governed by our precedent addressing the circumstances under which probable cause dissipates. We held almost thirty years ago that the information acquired from a fruitless search can dissipate probable cause and render a subsequent search illegal. *See United States v. Bowling*, 900 F.2d 926, 932 (6th Cir. 1990). In *Bowling*, officers searched a trailer home pursuant to a search warrant a few hours after officers had conducted a consent search of the premises and found nothing. *Id.* at 930–31. We "agree[d] with [the] proposition" that "where an initial fruitless consent search dissipates the probable cause that justified a warrant, new indicia of probable cause must exist to repeat a search of the same premises." *Id.* at 932. Nonetheless, we declined to suppress the evidence found during the second search because, though the consent search "was detailed at points, it was not overall as intricate as the search under the warrant." *Id.* at 934. In fact, incriminating evidence was found in a car behind the trailer, which was not even searched during the consent search. *Id.* Thus, *Bowling* concluded, "the consent search here was not so broad as to dissipate probable cause." *Id.*

Other circuits to treat the issue agree that the acquisition of new information can dissipate the probable cause for a search. *See United States v. Dalton*, 918 F.3d 1117, 1128–29 (10th Cir. 2019) ("Like the Sixth Circuit in *Bowling*, we are persuaded that probable cause becomes stale when new information received by the police nullifies information critical to the earlier probable cause determination . . . ."); *United States v. Ortiz-Hernandez*, 427 F.3d 567, 574–75 (9th Cir. 2005) (holding that any probable cause to arrest the defendant was dissipated after a strip search

revealed that he did not have drugs); *Bigford v. Taylor*, 834 F.2d 1213, 1218–19 (5th Cir. 1988) (holding that the police "may not disregard facts tending to dissipate probable cause").

We have also held that the failure of a drug-sniffing dog to alert to a car dispels suspicion. *See United States v. Davis*, 430 F.3d 345, 356 (6th Cir. 2005) (holding that officers no longer had reasonable suspicion to detain a motorist on suspicion of drug possession and call a second drug-sniffing dog to the scene after the first drug-sniffing dog did not alert). Indeed, *Davis* stated that "[o]nce the drug-sniffing dog was brought to the scene and failed to alert positively . . . , the officers' suspicions that Davis was in possession of narcotics were dispelled." *Id.*

Based on *Bowling* and *Davis*, a reasonable jury could find in the Hernandez-Plaintiffs' favor. *Bowling* stands for the proposition that a fruitless search negates probable cause, if it is sufficiently thorough, and *Davis* stands for the proposition that a drug dog's failure to alert dispels suspicion. Viewing the evidence in the light most favorable to the Hernandez-Plaintiffs and drawing all reasonable inferences in their favor, a jury could determine that the dog's fruitless sniffing of the car interior was sufficiently thorough to dissipate the probable cause to search provided by its initial alert. The dog's handler opened all four of the SUV's doors and the rear compartment, allowing the dog to sniff the whole interior, and the dog spent several minutes inside the car. After the dog failed to alert, moreover, the dog's handler shook the occupants' hands, gave them a thumbs up, and apologized to Trooper Clark for the dog's failure to alert. These actions suggest that the handler felt the dog had cleared the Hernandez-Plaintiffs. Then, when telling Boles what information to relay to their supervisor, Clark said that "the canine didn't hit." A reasonable jury could conclude that the dog's failure to alert inside the car dispelled the probable cause provided by its initial alert to the exterior, and the Troopers could therefore no longer lawfully search the car.

The Hernandez-Plaintiffs argue that the district court should have awarded them summary judgment. In this particular situation, however, a dispute of material fact remained for the jury to resolve. In his deposition, the dog's handler said that, although the drug dog had "been in parts of all of [the car]," the dog "had not searched it all" because "she got playing with that food bag." He testified that he had cut the search short because he was "embarrassed" that

the Hernandez-Plaintiffs were "laughing at [the] dog" for focusing her attention on the food. Viewing the evidence in the light most favorable to the Troopers, a reasonable jury could have concluded that, because the first search of the car by the dog was not sufficiently thorough, it did not dissipate the probable cause justifying a second, manual car search. *See Bowling*, 900 F.2d at 934 (holding that "the consent search . . . was not so broad as to dissipate probable cause"). We therefore turn to whether the law was clearly established.

2. Clearly Established Right

This brings us to the clearly-established prong of the qualified immunity inquiry. "In inquiring whether a constitutional right is clearly established, we must 'look first to decisions of the Supreme Court, then to decisions of this court and other courts within our circuit, and finally to decisions of other circuits.'" *Brown v. Battle Creek Police Dep't*, 844 F.3d 556, 566–67 (6th Cir. 2016) (quoting *Walton v. City of Southfield*, 995 F.2d 1331, 1336 (6th Cir. 1993)). At the time of the manual car search, it was clearly established that (a) probable cause to search an area is dissipated when a sufficiently thorough prior search has been fruitless and (b) the failure of a drug-sniffing dog to alert dispels suspicion. *See Davis*, 430 F.3d at 356; *Bowling*, 900 F.2d at 932–34.

But, to overcome qualified immunity, the clearly established law must be specific enough "to put a reasonable officer on notice that the conduct at issue was unconstitutional." *Lewis*, 779 F.3d at 417. "[T]here need not be a case with the exact same fact pattern or even 'fundamentally similar' or 'materially similar' facts; rather, the question is whether the defendants had 'fair warning' that their actions were unconstitutional." *Goodwin*, 781 F.3d at 325 (quoting *Cummings v. City of Akron*, 418 F.3d 676, 687 (6th Cir. 2005) (alteration in original)). Nevertheless, the relevant principles should be defined at a "high 'degree of specificity,'" especially in the Fourth Amendment context. *District of Columbia v. Wesby*, 138 S. Ct. 577, 590 (2018) (quoting *Mullenix v. Luna*, 136 S. Ct. 305, 309 (2015) (per curiam)). Because probable cause "cannot be 'reduced to a neat set of legal rules'" and is "'incapable of precise definition or quantification,'" police "'officers will often find it difficult to know how the general standard of probable cause applies in the precise situation encountered.'" *Id.* (quoting *Illinois v. Gates*, 462 U.S. 213, 232 (1983); *Maryland v. Pringle*, 540 U.S. 366, 371 (2003); *Ziglar v. Abbasi*,

137 S. Ct. 1843, 1866 (2017). Thus, in the Fourth Amendment context, "[w]hile there does not have to be 'a case directly on point,' existing precedent must place the lawfulness of the particular [search] 'beyond debate.'" *Id.* (quoting *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011)).

Here, neither *Bowling* nor *Davis* is specific enough to clearly establish that the manual car search was illegal. *Bowling* establishes that a fruitless search can dissipate probable cause and *Davis* establishes that the failure of a drug-sniffing dog to alert at all dispels suspicion. But neither governs the unusual circumstances of this case, where the same drug-sniffing dog first alerted and then failed to alert to a car during a subsequent search. At the time of these events, a reasonable officer would not have been on notice that the drug dog's failure to alert again to the interior of the car was the kind of new information that dissipated the probable cause provided by its initial alert to the car exterior. This case provides such notice for future searches. Accordingly, we affirm the district court's grant of qualified immunity to the Troopers.

C. Recoverable Damages for an Illegal Search or Seizure

This brings us to one more issue addressed by the parties—whether damages are recoverable for pre-trial incarceration stemming from an illegal search or seizure, a question of first impression in this circuit. Because there is no basis for liability in this case, this issue is pretermitted.

III. CONCLUSION

For the foregoing reasons, we **AFFIRM** the district court's denial of the Hernandez-Plaintiffs' Rule 50(b) motion and the district court's grant of partial summary judgment to the Troopers on the car-stop claim.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 18-6281

ABILIO HERNANDEZ; LAZARO BETANCOURT; NORGE RODRIGUEZ; JOSE PEREZ,

Plaintiffs - Appellants,

v.

JASON BOLES; DONNIE CLARK,

Defendants - Appellees.

FILED
Jan 30, 2020
DEBORAH S. HUNT, Clerk

Before: SILER, STRANCH, and NALBANDIAN, Circuit Judges.

JUDGMENT

On Appeal from the United States District Court
for the Eastern District of Tennessee at Winchester.

THIS CAUSE was heard on the record from the district court and was argued by counsel.

IN CONSIDERATION THEREOF, it is ORDERED that the judgment of the district court is AFFIRMED.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

No. 18-6281

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Mar 06, 2020
DEBORAH S. HUNT, Clerk

ABILIO HERNANDEZ; LAZARO BETANCOURT; NORGE RODRIGUEZ; JOSE PEREZ,

Plaintiffs-Appellants,

v.

JASON BOLES; DONNIE CLARK,

Defendants-Appellees.

O R D E R

BEFORE: SILER, STRANCH, and NALBANDIAN, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT WINCHESTER

ABILIO HERNANDEZ et al.,	)	
	)	Case No. 4:17-cv-25
Plaintiffs,	)	
	)	Judge Travis R. McDonough
v.	)	
	)	Magistrate Judge Susan K. Lee
JASON BOLES et al.,	)	
	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

Before the Court is Plaintiffs' renewed motion for judgment as a matter of law, pursuant to Rule 50(b) of the Federal Rules of Civil Procedure (Doc. 77). For the following reasons, Plaintiffs' motion will be **DENIED**.

I. FACTUAL BACKGROUND

The following facts were either stipulated to by the parties or admitted as evidence at trial and are undisputed. On December 17, 2015, at 11:52 a.m., Defendant Trooper Jason Boles stopped Plaintiffs for speeding on the interstate. (Doc. 62, at 2; Doc. 33, at 1.) Boles asked for the car registration, insurance, and the driver's and front passenger's licenses and began checking them at 11:55 a.m. (Trial Ex. 1, at 11:55–11:56.) At 11:59 a.m., after determining that the licenses of the driver, Plaintiff Abilio Hernandez, and the front passenger, Plaintiff Lazaro Betancourt, were not suspended and finding no outstanding warrants for either individual, Boles began to question Hernandez outside of the vehicle. (Doc. 62, at 2.) Boles asked Hernandez for details about the trip and the identities of the other passengers. (Trial Ex. 1, at 12:02–12:04; Trial Ex. 2, at 12:04–12:05.) Boles also asked Hernandez about his criminal history and whether

there was anything illegal in the vehicle. (*Id.*) Boles went on to interrogate the passengers in a similar manner and collected the licenses of the two backseat passengers, Norge Rodriguez and Jose Perez. (Doc. 62, at 3.) At approximately 12:06 p.m., Boles sought consent to search the vehicle, and his request was denied. (Trial Ex. 1, at 12:06–12:07.) At about 12:13, Boles's warrant search of Rodriguez and Perez through the National Crime Information Center ("NCIC") database came back negative, (Doc. 62, at 3); between 12:12 and 12:14, Defendant Trooper Donnie Clark made a call to run a check through Blue Lightning Operations Center ("BLOC"), another crime database. (Trial Ex. 2.) Sergeant Robert Argraves arrived at about 12:17 with a drug dog, which began sniffing around the outside of the vehicle at 12:18 or 12:19 (Doc. 62, at 3.)

II. PROCEDURAL HISTORY

A jury trial was held in this matter on August 13-14, 2018. Plaintiffs moved for judgment under Rule 50(a) before the case was submitted to the jury, (Doc. 67), and their motion was denied. The jury was tasked with determining whether Defendants violated Plaintiffs' civil rights, pursuant to 42 U.S.C. § 1983, to be free from unreasonable search and seizure under the Fourth Amendment. (Doc. 62, at 2.) The jury found in favor of Defendants, (Doc. 72), and judgment to that effect was entered on August 21, 2018 (Doc. 76).

Plaintiffs filed this renewed motion for judgment as a matter of law on September 11, 2018. (Doc. 77.) Defendants filed their response in opposition on September 25, 2018. (Doc. 78.) Plaintiffs' renewed motion for judgment as a matter of law (Doc. 77) is now ripe for this Court's review.

III. STANDARD OF LAW

A court may grant a renewed judgment as a matter of law in a jury trial if "the court finds that a reasonable jury would not have a legally sufficient evidentiary basis" for its verdict. Fed. R. Civ. P. 50. When ruling on a Rule 50(b) motion, a court may deny the motion outright, grant a new trial on any relevant issue, or grant judgment as a matter of law to the moving party. Fed. R. Civ. P. 50(b)(1)-(3). In deciding whether a party is entitled to judgment as a matter of law, the court should draw all reasonable inferences in favor of the non-moving party. *Bell v. Johnson*, 308 F.3d 594, 601 (6th Cir. 2000).

A Rule 50(b) motion for judgment as a matter of law should be granted "only if in viewing the evidence in the light most favorable to the non-moving party, there is no genuine issue of material fact for the jury, and reasonable minds could come to but one conclusion, in favor of the moving party." *Radvansky v. City of Olmsted Falls*, 496 F.3d 609, 614 (6th Cir. 2007) (quoting *Gray v. Toshiba Am. Consumer Prods., Inc.*, 263 F.3d 595, 598 (6th Cir. 2001)). To succeed, a moving party "must overcome the substantial deference owed a jury verdict." *Id.* "[T]he jury's verdict should not be disturbed simply because different inferences and conclusions could have been drawn or because other results are more reasonable." *Wheaton v. N. Oakland Med. Ctr.*, No. 00-74656, 2006 WL 44163, at *2 (E.D. Mich. Jan. 6, 2006).

IV. ANALYSIS

As required by Rule 50(b), Plaintiffs moved for judgment under Rule 50(a) before the case was submitted to the jury. (Doc. 67); *see* Fed. R. Civ. P. 50. As noted by Plaintiffs in their renewed motion, Plaintiffs had already "argu[ed] the same things" in their motion for summary judgment, and "incorporated [their motion for summary judgment] by reference into their oral motion at trial." (Doc. 77, at 7.) Also as noted by Plaintiffs, "[t]he Court noted the similarity

between the motions when denying the Rule 50 motion at trial, saying that nothing meaningful had changed." (*Id.*) This remains true.

Plaintiffs' renewed motion for judgment as a matter of law centers on the argument that there is no genuine dispute of fact as to whether the troopers violated the Fourth Amendment by "abandon[ing] the purpose of the stop, and fail[ing] to perform traffic-related tasks diligently[.]" (Doc. 77, at 7–8.) But Plaintiffs take too narrow a position on the issue of diligence. *See United States v. Campbell*, 511 F. App'x 424, 428 (6th Cir. 2013) ("[T]he traffic stop may have been extended past what was strictly necessary for the primary purpose of issuing a warning citation. . . . But Campbell does not prevail merely because there is some *de minimis* prolongation of a stop. . . . [T]he ultimate touchstone of the Fourth Amendment . . . is reasonableness.").

Plaintiffs' motion for summary judgment (Doc. 47) made the same argument. In resolving that motion, the Court stated:

> Under well-settled Fourth-Amendment law, "[a] seizure for a traffic violation justifies a police investigation of that violation." *Rodriguez v. United States*, 135 S. Ct. 1609, 1614 (2015). That investigation may include "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." *Id.* at 1615 (internal quotation marks omitted). An officer may also investigate matters unrelated to the traffic violation so long as it does not prolong the roadside detention "beyond the time reasonably required to complete the mission of issuing a [traffic citation]." *Id.* (internal quotation marks omitted). In other words, the officer is required to diligently pursue the traffic-violation investigation. *Id.* at 1614.
>
> In determining whether a stop has been improperly prolonged, "the proper inquiry is whether the totality of the circumstances surrounding the stop indicates that the duration of *the stop as a whole*—including any prolongation due to suspicionless unrelated questioning—was reasonable." *United States v. Everett*, 601 F.3d 484, 494 (6th Cir. 2010) (emphasis in original). Additionally, a dog sniff may be conducted without reasonable suspicion as long as it does not unreasonably prolong the initial stop. *Illinois v. Caballes*, 543 U.S. 405, 407–09 (2005). But a dog sniff may violate the Fourth Amendment if the traffic stop was unreasonably prolonged before the dog was employed. *See id.*

(Doc. 51, at 6–7.) The Court went on to explain that "a reasonable jury could determine that, based on the totality of the circumstances, Defendants diligently pursued the traffic-violation investigation." (*Id.* at 12.) The Court noted[1] several undisputed actions of Defendants which were susceptible of different findings by reasonable jurors, including Boles's decisions to continue questioning of Hernandez after the NCIC report came in, to check all four Plaintiffs' driver's licenses, and to check BLOC for warrants after NCIC had already returned a negative result. (*Id.* at 12–14.)

Perhaps most importantly, the Court critiqued Plaintiffs' motion for "mak[ing] much ado about certain time intervals" despite the Sixth Circuit's resistance to "adopting a bright-line rule on time intervals." (*Id.* at 14 (quoting *United States v. Everett*, 601 F.3d 484, 494 (6th Cir. 2010) ("[W]e conclude that it would be inappropriate merely to evaluate the reasonableness of the interval of prolongation in isolation." (emphasis removed))). Nevertheless, Plaintiffs resurrect this argument in the instant motion. (*See* Doc. 77, at 11.) Plaintiffs cite, for support, this Court's recent order granting a motion to suppress in *United States v. Lujan*, No. 4:17-CR-37 (E.D. Tenn. Aug. 7, 2018). But Defendants persuasively distinguish this case by pointing out that in *Lujan*, unlike here, the officer "determine[d] that the vehicle's tag, which was the basis for the stop, was not illegally displayed prior to speaking with the driver." (Doc. 78, at 4 n.3); *see Lujan*, No. 4:17-CR-37, at *2. The *Lujan* officer's continuation of the traffic stop despite his knowledge that there was no traffic violation is a key factual difference from the instant case, where it was undisputed that Plaintiffs were pulled over for speeding. (Doc. 78, at 4 n.3; Doc. 62, at 2; Doc. 33, at 1.)

[1] To avoid unnecessary repetition, the Court incorporates, by reference, the case law cited in support of its order ruling on parties' cross-motions for summary judgment (Doc. 51).

The jury was tasked with deciding whether Defendants unreasonably prolonged the traffic stop, given the totality of the circumstances.[2] Plaintiffs characterizes the jury's role in this case as "provid[ing] the Defendants with an opportunity to nullify the Fourth Amendment." (Doc. 77, at 7.) Plaintiffs argue that the jury "was asked to rule on what amounts to a criminal motion to suppress." (*Id.*) But this was a § 1983 case, not a criminal motion to suppress, and jurors are routinely asked to decide whether police officers acted reasonably and/or diligently in such cases. *See, e.g.*, *Herrera-Amaya v. Arizona*, No. CV-14-02278-TUC-RM, 2018 WL 487835, at *3 (D. Ariz. Jan. 19, 2018) (denying Plaintiff's motion for summary judgment) ("[W]hether Officer Duckett *unreasonably* prolonged the duration of the traffic stop by asking unrelated questions while he performed the duties necessary to complete the stop—and, if so, at what point the prolonged detention became unreasonable and whether reasonable suspicion of criminal activity existed at that point—are issues properly reserved for the jury."); *Akridge v. Finnegan*, No. 3:13-0588, 2015 WL 5320554, at *5 (M.D. Tenn. Sept. 11, 2015) (same) ("T]he ultimate question of whether Defendant acted diligently to accomplish the purpose of the traffic stop or . . . unreasonably prolonged the duration of the traffic stop is a question for the jury."); *Rouei v. Vill. of Skokie*, 61 F. Supp. 3d 765, 772 (N.D. Ill. 2014) (same).

Based on the facts stipulated by the parties and admitted into evidence at trial, and drawing all reasonable inferences in favor of Defendants, the Court finds that a reasonable jury

[2] An alternative theory also supports the verdict and garners some support from Defendants' trial testimony, namely that Defendants had a reasonable suspicion justifying continued detention. *But see United States v. Hill*, 195 F.3d 258, 264 (6th Cir. 1999). Whether or not they lacked justification to extend the stop after receiving the results of the NCIC check, Defendants may have "at that time developed a reasonable suspicion of criminal activity." *Campbell*, 511 F. App'x at 428. Jurors may have credited Boles's testimony that Plaintiffs' nervousness and sweating, lack of eye contact, vague answers about their trip, and lack of knowledge about the other passengers, among other factors, indicated a likelihood that they were involved in a crime. (*See, e.g.*, Trial Tr. Aug. 13, 2018, at 11:40–11:44, 13:53–13:54.)

could have found that Defendants did not unreasonably prolong the traffic stop given the totality of the circumstances. Accordingly, Plaintiffs are not entitled to judgment as a matter of law, and their motion will be **DENIED**.

V. CONCLUSION

For the foregoing reasons, Plaintiffs' renewed motion for judgment as a matter of law (Doc. 77) is hereby **DENIED**.

SO ORDERED.

/s/ Travis R. McDonough
TRAVIS R. MCDONOUGH
UNITED STATES DISTRICT JUDGE

General Docket
United States Court of Appeals for the Sixth Circuit

Court of Appeals Docket #: 18-6281 **Docketed:** 12/06/2018
Nature of Suit: 3440 Civil Rights: Other **Termed:** 01/30/2020
Abilio Hernandez, et al v. Jason Boles, et al
Appeal From: Eastern District of Tennessee at Winchester
Fee Status: fee paid

Case Type Information:
1) Civil
2) Private
3) Civil Rights

Originating Court Information:
District: 0649-4 : 4:17-cv-00025
Court Reporter: Elizabeth Coffey
Trial Judge: Travis R. McDonough, U.S. District Judge
Date Filed: 05/19/2017
Date Order/Judgment: 11/07/2018
Date NOA Filed: 12/05/2018

Prior Cases:
None

Current Cases:
None

ABILIO HERNANDEZ Plaintiff - Appellant	Paul Andrew Justice, III Direct: (615) 419-4994 [COR LD NTC Retained] Justice Law Office 1902 Cypress Drive Murfreesboro, TN 37130
LAZARO BETANCOURT Plaintiff - Appellant	Paul Andrew Justice, III Direct: (615) 419-4994 [COR LD NTC Retained] (see above)
NORGE RODRIGUEZ Plaintiff - Appellant	Paul Andrew Justice, III Direct: (615) 419-4994 [COR LD NTC Retained] (see above)
JOSE PEREZ Plaintiff - Appellant	Paul Andrew Justice, III Direct: (615) 419-4994 [COR LD NTC Retained] (see above)
v.	
JASON BOLES Defendant - Appellee	Amanda Shanan Jordan [COR LD NTC Retained] Office of the Attorney General of Tennessee P.O. Box 20207 Nashville, TN 37202-0207 Peako Andrea Jenkins Direct: 615-741-8059 [COR NTC Retained] Office of the Attorney General of Tennessee P.O. Box 20207 Nashville, TN 37202-0207
DONNIE CLARK	Amanda Shanan Jordan

Defendant - Appellee	[COR LD NTC Retained] (see above)
	Peako Andrea Jenkins Direct: 615-741-8059 [COR NTC Retained] (see above)

ABILIO HERNANDEZ; LAZARO BETANCOURT; NORGE RODRIGUEZ; JOSE PEREZ

Plaintiffs - Appellants

v.

JASON BOLES; DONNIE CLARK

Defendants - Appellees

12/06/2018	☐ 1 3 pg, 80.96 KB	Civil Case Docketed. Notice filed by Appellants Lazaro Betancourt, Abilio Hernandez, Jose Perez and Norge Rodriguez. Transcript needed: y (BSM) [Entered: 12/06/2018 03:50 PM]
12/06/2018	☐ 2	The case manager for this case is: Briston Mitchell (BSM) [Entered: 12/06/2018 03:52 PM]
12/07/2018	☐ 3	Mediation Office is involved in this appeal. (LMR) [Entered: 12/07/2018 03:20 PM]
12/07/2018	☐ 4 2 pg, 243.59 KB	A Telephone Mediation conference has been scheduled for 01/10/2019 at 10:00 AM (ET) with Rod McFaull. [Please open notice for important details and deadlines.] (LMR) [Entered: 12/07/2018 03:22 PM]
12/17/2018	☐ 5 1 pg, 331.08 KB	APPEARANCE filed for Appellees Jason Boles and Donnie Clark by Amanda S. Jordan. Certificate of Service: 12/17/2018. [18-6281] (ASJ) [Entered: 12/17/2018 04:00 PM]
12/17/2018	☐ 6 1 pg, 40.57 KB	CORPORATE DISCLOSURE STATEMENT filed by Attorney Ms. Amanda Shanan Jordan for Appellees Jason Boles and Donnie Clark Certificate of Service: 12/17/2018. [18-6281] (ASJ) [Entered: 12/17/2018 04:03 PM]
12/17/2018	☐ 7 1 pg, 343.39 KB	APPEARANCE filed for Appellees Jason Boles and Donnie Clark by Peako Jenkins. Certificate of Service: 12/17/2018. [18-6281] (PAJ) [Entered: 12/17/2018 04:17 PM]
12/19/2018	☐ 8 1 pg, 63.87 KB	APPEARANCE filed for Appellants Abilio Hernandez, Lazaro Betancourt, Norge Rodriguez and Jose Perez by Paul Andrew Justice III. Certificate of Service: 12/19/2018. [18-6281] (PAJ) [Entered: 12/19/2018 08:39 PM]
12/19/2018	☐ 9 1 pg, 78.53 KB	CIVIL APPEAL STATEMENT OF PARTIES AND ISSUES filed by Attorney Mr. Paul Andrew Justice, III for Appellants Lazaro Betancourt, Abilio Hernandez, Jose Perez and Norge Rodriguez. Certificate of Service:12/19/2018. [18-6281] (PAJ) [Entered: 12/19/2018 08:42 PM]
12/19/2018	☐ 10 1 pg, 66.86 KB	CORPORATE DISCLOSURE STATEMENT filed by Attorney Mr. Paul Andrew Justice, III for Appellants Lazaro Betancourt, Abilio Hernandez, Jose Perez and Norge Rodriguez Certificate of Service: 12/19/2018. [18-6281] (PAJ) [Entered: 12/19/2018 08:45 PM]
12/19/2018	☐ 11	TRANSCRIPT ordered from Ms. Elizabeth Coffey, filed by Mr. Paul Andrew Justice, III for Lazaro Betancourt, Abilio Hernandez, Jose Perez and Norge Rodriguez. [11] ; ----- This is to order a transcript of the following proceedings and to certify that satisfactory financial arrangements have been completed ----- Transcript ordered on: *12/19/2018* ; District Court Judge/Magistrate: *Judge Travis McDonough* ; Hearing Dates: *07/09/2018 - Motion in limine at Pretrial Conference; 08/13/2018 - Trial testimony; 08/14/2018 - Trial Testimony and Jury instructions* ; Specially authorized proceedings: *Jury Instructions, Trial Testimony, Motions in Limine* ; Method of Payment: *Private Funds* ; Court reporter acknowledgement is due in 14 days. Certificate of Service: 12/19/2018. [18-6281] (PAJ) [Entered: 12/19/2018 08:50 PM]
12/20/2018	☐ 12	NOTIFICATION: Setting acknowledgement deadline, relating to transcript order, [11]. Elizabeth Coffey's acknowledgement is due 01/03/2019. (BSM) [Entered: 12/20/2018 09:19 AM]
01/04/2019	☐ 13	NOTIFICATION: Setting transcript deadline, relating to transcript order, [11] Transcript to be filed in district court by Elizabeth Coffey by 02/04/2019. (BSM) [Entered: 01/04/2019 11:36 AM]
01/10/2019	☐ 14	Mediation Office is no longer involved in this appeal. (MLB) [Entered: 01/10/2019 02:47 PM]
02/05/2019	☐ 15	Transcript, [11], has been filed in the District Court on *02/05/2019* ; Court Reporter: Ms. Elizabeth Coffey ; Actual Number of Pages: *105* ; Actual Number of Volumes: *3* ; [18-6281] (EC) [Entered: 02/05/2019 06:58 AM]
02/05/2019	☐ 16 5 pg, 116.51 KB	BRIEFING LETTER SENT setting briefing schedule: appellant brief due 03/18/2019;. appellee brief due 04/16/2019; (BSM) [Entered: 02/05/2019 09:49 AM]
03/18/2019	☐ 17 51 pg, 284.17 KB	APPELLANT BRIEF filed by Mr. Paul Andrew Justice, III for Lazaro Betancourt, Abilio Hernandez, Jose Perez and Norge Rodriguez Certificate of Service:03/18/2019. Argument Request: requested. [18-6281] (PAJ) [Entered: 03/18/2019 11:57 PM]
04/16/2019	☐ 18 32 pg, 160.05 KB	APPELLEE BRIEF filed by Ms. Amanda Shanan Jordan for Jason Boles and Donnie Clark Certificate of Service:04/16/2019. Argument Request: not requested. [18-6281] (ASJ) [Entered: 04/16/2019 03:24 PM]
05/06/2019	☐ 19 12 pg, 155.28 KB	REPLY BRIEF filed by Attorney Mr. Paul Andrew Justice, III for Appellants Lazaro Betancourt, Abilio Hernandez, Jose Perez and Norge Rodriguez Certificate of Service:05/06/2019. [18-6281] (PAJ) [Entered: 05/06/2019 11:45 PM]
06/12/2019	☐ 20 1 pg, 140.66 KB	RECORD RECEIVED from Mr. Paul Andrew Justice, III for Abilio Hernandez, Lazaro Betancourt, Norge Rodriguez and Jose Perez. Aty/Pty - CD/DVD, Comment: 2 sets of 4 copies of Boles and Clark Dash Cam videos. Trial exhibits 1, 2, Sealed: None. (MH) [Entered: 06/12/2019 11:57 AM]
06/17/2019	☐ 21 2 pg, 105.15 KB	ORAL ARGUMENT SCHEDULED for 9:00 a.m. (Eastern Time) on Tuesday, July 30, 2019. (JRH) [Entered: 06/17/2019 09:42 AM]
06/21/2019		Oral argument acknowledgment filed by Attorney Mr. Paul Andrew Justice, III for Appellants Lazaro

	22 1 pg, 70.84 KB	Betancourt, Abilio Hernandez, Jose Perez and Norge Rodriguez. Certificate of Service: 06/21/2019. [18-6281] (PAJ) [Entered: 06/21/2019 07:39 PM]
06/25/2019	23 1 pg, 375.53 KB	Oral argument acknowledgment filed by Attorney Ms. Amanda Shanan Jordan for Appellees Jason Boles and Donnie Clark. Certificate of Service: 06/25/2019. [18-6281] (ASJ) [Entered: 06/25/2019 11:32 AM]
07/22/2019	24	NOTIFICATION REGARDING ORAL ARGUMENT [non-document]: The Sixth Circuit Clerk's Office has temporarily relocated to the third floor of the Potter Stewart Courthouse in Cincinnati. Please go to Room 312 when checking in. (LTK) [Entered: 07/22/2019 03:02 PM]
07/30/2019	25 1 pg, 113.63 KB	CAUSE ARGUED by Mr. Paul Andrew Justice, III for Appellants Abilio Hernandez, Lazaro Betancourt, Norge Rodriguez and Jose Perez and Ms. Amanda Shanan Jordan for Appellees Jason Boles and Donnie Clark before Siler, Circuit Judge; Stranch, Circuit Judge and Nalbandian, Circuit Judge. (JRH) [Entered: 07/30/2019 02:53 PM]
01/30/2020	26 15 pg, 238.2 KB	OPINION and JUDGMENT filed : AFFIRMED. Decision for publication. Eugene E. Siler, Jr., Jane Branstetter Stranch (AUTHORING), and John B. Nalbandian, Circuit Judges. (CL) [Entered: 01/30/2020 09:32 AM]
02/13/2020	28 14 pg, 195.4 KB	NOTICE OF DOCKETING ERROR, ENTRY REMOVED. Name of Document: PETITION for en banc rehearing filed by Mr. Paul Andrew Justice, III for Lazaro Betancourt, Abilio Hernandez, Jose Perez and Norge Rodriguez. Type of Error: 01/30/2020 opinion not attached. Action taken: Attorney instructed to redocket. (BLH) [Entered: 02/14/2020 08:54 AM]
02/14/2020	29 27 pg, 378.4 KB	PETITION for en banc rehearing filed by Mr. Paul Andrew Justice, III for Lazaro Betancourt, Abilio Hernandez, Jose Perez and Norge Rodriguez. Certificate of Service: 02/14/2020. [18-6281] (PAJ) [Entered: 02/14/2020 10:40 AM]
03/06/2020	30 2 pg, 81.43 KB	ORDER filed denying petition for en banc rehearing [29] filed by Mr. Paul Andrew Justice, III. Eugene E. Siler, Jr., Jane Branstetter Stranch, and John B. Nalbandian, Circuit Judges. (BLH) [Entered: 03/06/2020 10:45 AM]
03/16/2020	31 2 pg, 11.13 KB	MANDATE ISSUED with no costs taxed. (MRE) [Entered: 03/16/2020 08:34 AM]

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Description:	Docket Report (filtered)	**Search Criteria:**	18-6281
Billable Pages:	2	**Cost:**	0.20

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA

ABILIO HERNANDEZ, et al.,	)	
	)	Case No. 4:17-CV-25
Plaintiffs,	)	
	)	Judge Travis R. McDonough
v.	)	
	)	Magistrate Judge Susan K. Lee
JASON BOLES, et al.,	)	
	)	
Defendants.	)	

AGREED FINAL PRETRIAL ORDER

This Court conducted a Final Pretrial Conference pursuant to Rule 16 of the Federal Rules of Civil Procedure on July 9, 2018. Drew Justice appeared as counsel for the plaintiffs and Amanda Jordan and Peako Jenkins appeared as counsel for the defendants. The following action was taken:

I. Jurisdiction

This is an action for violation of Plaintiffs' civil rights under the Fourth Amendment. Jurisdiction of the Court is invoked pursuant to 42 U.S.C. § 1983. The jurisdiction of the Court is not disputed.

II. Pleadings

The pleadings are amended to conform to this pretrial order.

III. General Nature of the Claims of the Parties:

a. **Claims:** The following claims (including claims stated in the complaint, counterclaims, crossclaims, third-party claims, etc.) have been filed:

i. Civil Rights violation pursuant to 42 U.S.C. § 1983 for unreasonable search and seizure under the Fourth Amendment

b. **Stipulated Facts:** The following facts are uncontroverted.

i. At the time of the traffic stop on December 17, 2015, defendants Jason Boles and Donnie Clark were acting under color of state law as employees of the Tennessee Highway Patrol.

ii. The plaintiffs were traveling in a 2002 GMC Yukon driven by Abilio Hernandez.

iii. While traveling on Interstate 24, the plaintiffs passed Trooper Boles, who was located in the interstate crossover.

iv. Trooper Boles, using his radar, determined that Mr. Hernandez was traveling 77 mph in a 70 mph zone.

v. Trooper Boles activated his blue lights and pulled the plaintiffs over on Relco Drive off Exit 114 at 11:52 a.m.

vi. At 11:59 p.m. dispatch informed Trooper Boles that the National Crime Information Center ("NCIC") report for both Mr. Hernandez and Mr. Betancourt were negative.

vii. At 12:00 p.m., Trooper Boles returned to the plaintiffs' vehicle and asked Mr. Hernandez to step out and began to question him.

viii. Among other questions, Trooper Boles asked Mr. Hernandez if he had been in trouble before and he responded that he had been in trouble for a cocaine-related charge.

ix. At approximately 12:05, Trooper Boles requested licenses from Mr. Rodriguez and Mr. Perez.

x. Trooper Clark ran all four occupants through the Blue Lighting Operations Center ("BLOC").

xi. At 12:13 p.m., dispatch informed Trooper Boles that the National Crime Information Center ("NCIC") report for both Mr. Rodriguez and Mr. Perez were negative.

xii. Sergeant Robert Argraves, who was employed with the Coffee County Sheriff's Department, arrived with a drug dog at 12:17 p.m.

xiii. At the time the dog arrived, the BLOC search was still pending.

xiv. The dog handler said that the dog alerted to the outside of the vehicle at approximately 12:19 p.m.

c. **Plaintiffs' Theory:**

The four Plaintiffs were traveling on the interstate when they were stopped by Defendant Jason Boles for going seven miles over the speed limit. Both Defendants — Trooper Jason Boles and Trooper Donnie Clark — are from a division of the Tennessee Highway Patrol that pulls people over for minor traffic violations and then investigates them for serious felonies. From the very beginning, Trooper Boles acted far more interested in the Plaintiffs' travel destination than the actual speeding violation. After checking the car registration and the driver license for both the driver and the front passenger, and after verifying that neither person had any active warrants, Trooper Boles abandoned any pretense of a traffic seizure. He just ordered the driver out of the car to interrogate him about his activities. At about the same time as this interrogation began, Defendant Donnie Clark arrived. Both Troopers seized the Plaintiffs on the side of the road for

roughly eighteen minutes to investigate them for potential drug trafficking. The Troopers never tried to write a traffic citation, never intended to write a traffic citation, and never did write a traffic citation. Seizing the Plaintiffs in this manner violated their Fourth Amendment rights.

After roughly eighteen minutes of drug investigation, the Troopers brought a drug dog to the scene. Allegedly the dog alerted for drugs. After debating at length whether the dog had alerted properly, the Troopers finally searched the vehicle and found a bag with a large number of re-encoded gift cards. They arrested all four Plaintiffs for possession of the cards. No drugs were found. The four Plaintiffs spent a lengthy period in jail awaiting trial, but the cases against them were ultimately dismissed. The criminal prosecution and the time in jail were brought about by the unconstitutional seizure on the side of the road. Also, since it was the Troopers' conscious plan all along to search the car and to prosecute the Plaintiffs for any contraband inside, the resulting prosecution was foreseeable. Proximate cause is therefore satisfied.

d. **Defendants' Theory:**

Defendants deny that the traffic stop on December 17, 2015, violated the Plaintiffs' rights under the Fourth Amendment. Troopers Boles and Clark were diligent in their efforts to complete the traffic stop and therefore, the stop was not unreasonably prolonged while they awaited the arrival of a drug dog. Defendants are entitled to qualified immunity for their actions during the traffic stop.

e. **All Other Parties' Claims:** Not applicable

IV. Contested Issues of Law

The contested issues of law are 1) whether Defendants unreasonably prolonged the traffic stop in violation of the Fourth Amendment; and 2) whether Plaintiffs are entitled to recover

damages for injuries stemming from their arrest and incarceration should Defendants be found to have unreasonably prolonged the traffic stop.

Defendants have a pending motion in limine to limit evidence of damages to only those injuries from any invasion of privacy between the period when Trooper Boles received the negative NCIC report and the dog sniff. The following motions are pending:

a. Defendants' First Motion in Limine to Limit Evidence of Damages

b. Defendants' Second Motion in Limine to Exclude Toxicology Report

V. Exhibits

The parties have disclosed all exhibits in accordance with Fed. R. Civ. P. 26(a)(3)(C). All exhibits to be introduced have been pre-marked in such a way as to allow the Court to determine which party is offering them. The parties have prepared a joint list of exhibits. The parties have endeavored to stipulate to the admissibility of all exhibits to the extent possible. The parties cannot stipulate to the admissibility of the following exhibits:

i. Tennessee Bureau of Investigation Official Forensic Chemistry Report—Defendants object to the admissibility of this exhibit under Fed. R. Evid. 401 as the report does not relate to whether Defendants unreasonably prolonged the traffic stop.

ii. Coffee County Jail booking records for Abilio Hernandez—Defendants object to the admissibility of this exhibit under Fed. R. Evid. 401 as the records do not relate to whether Defendants unreasonably prolonged the traffic stop.

iii. Coffee County Jail booking records for Norge Rodriguez—Defendants object to the admissibility of this exhibit under Fed. R. Evid. 401 as the records do not relate to whether Defendants unreasonably prolonged the traffic stop.

iv. Coffee County Jail booking records for Jose Perez-Fonseca—Defendants object to the admissibility of this exhibit under Fed. R. Evid. 401 as the records do not relate to whether Defendants unreasonably prolonged the traffic stop.

v. Criminal court file of Abilio Hernandez—Defendants object to the admissibility of this exhibit under Fed. R. Evid. 401 as the records do not relate to whether Defendants unreasonably prolonged the traffic stop.

vi. Criminal court file of Lazaro Betancourt—Defendants object to the admissibility of this exhibit under Fed. R. Evid. 401 as the records do not relate to whether Defendants unreasonably prolonged the traffic stop.

vii. Criminal court file of Norge Rodriguez—Defendants object to the admissibility of this exhibit under Fed. R. Evid. 401 as the records do not relate to whether Defendants unreasonably prolonged the traffic stop.

viii. Criminal court file of Jose Perez-Fonseca—Defendants object to the admissibility of this exhibit under Fed. R. Evid. 401 as the records do not relate to whether Defendants unreasonably prolonged the traffic stop.

VI. Witnesses

The parties have disclosed all witnessed in accordance with Fed. R. Civ. P. 26(a)(3)(A). A list comprised of the names of all witnesses, their addresses and telephone numbers is as follows:

a. **For Plaintiff(s):**

Name	Address	Telephone No.
1. Abilio Hernandez	can be contacted through counsel	
2. Lazaro Betancourt	can be contacted through counsel	
3. Norge Rodriguez	can be contacted through counsel	

4.	Jose Perez-Fonseca	can be contacted through counsel	
5.	Jason Boles	301 Plus Park, Nashville	931-409-0598
6.	Donnie Clark	301 Plus Park, Nashville	931-273-4731
7.	Scott Dickson	1420 Neal St., Cookeville	931-393-0783
8.	Robert Argraves	261 Bush Road, Manchester	unknown

b. **For Defendant(s):**

	Name	Address	Telephone No.
1.	Jason Boles	301 Plus Park, Nashville	931-409-0598
2.	Donnie Clark	301 Plus Park, Nashville	931-273-4731

VII. Other Matters

a. **Trial:** This case is set for trial before the undersigned and a jury at 9:00 a.m. on July 16, 2018. Counsel shall be present on the first day before commencement of trial to take up any preliminary matters. The probable length of trial is 2 days. The parties should be prepared for trial on the scheduled date. If this case is not heard immediately, it will be held in line until the Court's schedule allows the trial to begin. The parties demand to have a jury trial.

b. **Possibility of Settlement:** There is little likelihood for settlement. No demand has been made by plaintiffs.

c. **Miscellaneous Matters:** An interpreter will be needed, as Spanish is the plaintiffs' primary language.

* * *

This Final Pretrial Order shall supplant the pleadings and is agreed upon by the parties as of July 9, 2018. Fed. R. Civ. P. 16; *see U.S. v. Hougham*, 364 U.S. 310, 315 (1960); *see also Ricker v. Am. Zinser Corp.*, 506 F. Supp. 1 (E.D. Tenn. Sept. 11, 1978), aff'd, 633 F.2d 218 (6th Cir. 1980).

SO ORDERED.

/s/ Travis R. McDonough
TRAVIS R. MCDONOUGH
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND SUBSTANCE:

/s/ *Drew Justice*
Counsel for Plaintiffs

/s/ *Amanda S. Jordan*
Counsel for Defendants