

1 F.4th 492

United States Court of Appeals, Seventh Circuit.

UNITED STATES of America, Plaintiff-Appellee,

v.

Jacques S. GHOLSTON, Defendant-Appellant.

No. 20-2168

|

Argued November 30, 2020

|

Decided June 14, 2021

|

Rehearing Denied July 29, 2021

**Synopsis**

**Background:** Defendant was charged with possession of five or more grams of methamphetamine with intent to distribute. The United States District Court for the Central District of Illinois, [Richard Mills](#), Senior District Judge, [2019 WL 3752908](#), denied defendant's motion to suppress evidence, after adopting the report and recommendation of [Tom Schanzle-Haskins](#), United States Magistrate Judge, [2019 WL 4891700](#). Defendant pleaded guilty, but reserved his right to challenge ruling on motion to suppress. Defendant appealed.

**Holdings:** The Court of Appeals, Wood, Chief Judge, held that:

[1] police officer did not unreasonably delay traffic stop in order to communicate with other officers on unrelated topics, and

[2] police officer's failure to ask for defendant's proof of insurance at start of traffic stop was innocent mistake, not manipulative ruse.

Affirmed.

[Hamilton](#), Circuit Judge, filed dissenting opinion.

**Procedural Posture(s):** Appellate Review; Preliminary Hearing or Grand Jury Proceeding Motion or Objection.

West Headnotes (7)

- [1] **Criminal Law** 🔑 Review De Novo  
**Criminal Law** 🔑 Evidence wrongfully obtained

In cases involving appeal of denial of motion to suppress, mixed standard of review applies: Court of Appeals reviews district court's factual findings for clear error, and evaluates legal conclusions and mixed questions of law and fact de novo. [U.S. Const. Amend. 4](#).

- [2] **Automobiles** 🔑 Detention, and length and character thereof

Whether lawful traffic stop extends so long that it raises constitutional concerns turns on reasonableness. [U.S. Const. Amend. 4](#).

1 Cases that cite this headnote

- [3] **Automobiles** 🔑 Detention, and length and character thereof

**Automobiles** 🔑 Inquiry; license, registration, or warrant checks

Seizure made in order to issue warning ticket to automobile driver can become unlawful if it is prolonged beyond time reasonably required to complete that mission; side-inquiries into other potential crimes such as drug-related activity represent a detour from the original mission. [U.S. Const. Amend. 4](#).

- [4] **Automobiles** 🔑 Inquiry; license, registration, or warrant checks

A traffic stop may call for a variety of measures beyond printing the ticket, including checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance. [U.S. Const. Amend. 4](#).

- [5] **Automobiles** 🔑 Detention, and length and character thereof

**Automobiles** 🔑 Inquiry; license, registration, or warrant checks

Police officer did not unreasonably delay traffic stop in order to communicate with other officers on unrelated topics; even if officer had to use same keyboard, there were many reasons why he might have been able to communicate with his fellow officers without slowing down ticket process, including his need to wait for dispatch to verify that defendant's identification (ID) was valid. *U.S. Const. Amend. 4*.

1 Cases that cite this headnote

- [6] **Criminal Law** 🔑 Search and arrest

Clear error review applied to district court's conclusion, based on police officer's testimony, that officer did not unreasonably delay traffic stop in order to communicate with other officers on unrelated topics, since it was finding of fact. *U.S. Const. Amend. 4*.

- [7] **Automobiles** 🔑 Inquiry; license, registration, or warrant checks

Police officer's failure to ask for defendant's proof of insurance at start of traffic stop was innocent mistake, not manipulative ruse, since officer had to get out of his car to catch up with defendant, who already had left his truck, and he simply may have been focusing on catching defendant, rather than on details of ticket-writing, and officer told his fellow officers that he found it frustrating that he had to enter defendant's identification (ID) information second time for second ticket. *U.S. Const. Amend. 4*.

1 Cases that cite this headnote

**\*493** Appeal from the United States District Court for the Central District of Illinois. No. 18-CR-30039 — **Richard Mills**, Judge.

## Attorneys and Law Firms

**Matthew Weir**, Attorney, Office of the United States Attorney, Springfield, IL, for Plaintiff-Appellee.

**Thomas W. Patton**, Attorney, Office of the Federal Public Defender, Peoria, IL, for Defendant-Appellant.

Before **Easterbrook**, Wood, and **Hamilton**, Circuit Judges.

## Opinion

Wood, Circuit Judge.

**\*494** Officer Erik Cowick pulled over Jacques Gholston just after midnight on April 29, 2018, for turning without signaling. Because Cowick suspected that Gholston was a drug dealer, he called for a trained dog to perform a drug sniff at the scene. As Cowick was finishing the routine procedures required for a minor traffic violation, the dog arrived and alerted officers to the presence of methamphetamine.

The discovery of the drugs led in time to federal charges for possession of five or more grams of methamphetamine with intent to distribute, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(B). In response, Gholston filed a pretrial motion to suppress the evidence of the meth seized as a result of the dog sniff. He contended that Cowick unreasonably delayed the stop in order to allow the “K9” officer to arrive and perform an inspection. The district court denied the motion. Gholston then pleaded guilty, reserving his right to challenge the ruling on the motion to suppress. We conclude that the district court committed no reversible error in finding that Cowick did not unlawfully prolong the stop and thus did not violate Gholston's Fourth Amendment rights. We therefore affirm.

## I

Officer Cowick had long suspected that Gholston was distributing large quantities of methamphetamine from his truck. Cowick had an informant, Taylour Toolate, who occasionally provided information about criminal activity in Quincy, Illinois. On one occasion at an unspecified time, Toolate informed Cowick that she believed that Gholston was about to pick up and deliver large quantities of methamphetamine using his green pickup truck, which had a toolbox in the bed. She predicted that Gholston would

store the methamphetamine in a magnetic box affixed to the bottom of the truck. Cowick also vaguely said that other people he had arrested in the past told him that Gholston sold methamphetamine from his truck. Cowick could not identify any of them by name, nor could he provide any details or documentation about those supposed encounters.

In the early morning hours of April 29, 2018, Cowick was patrolling a high crime area in Quincy. He spotted Gholston's green pickup truck with the toolbox in its bed. Evidently Cowick had kept Toolate's tip in mind for some time, as she had been incarcerated since January 10, 2018. He decided to follow Gholston to see if he could stop him for a traffic infraction.

An opportunity presented itself when, around 12:16 am, Gholston turned right from 5th Street onto Chestnut Street without using a turn signal. Cowick caught up to Gholston's truck, activating his emergency lights at 12:17 am as he made the same turn onto Chestnut Street. By the time Cowick finished turning, Gholston had already parked the truck and was walking away. This further heightened Cowick's suspicions, as he believes that "walk[ing] away from a traffic stop in this area" usually means drugs are involved. Cowick radioed to dispatch that he was preparing to make a stop. He then called out for Gholston to stop, but Gholston kept walking. This, too, disturbed Cowick, because he thought that the two had made eye contact. Cowick decided to follow Gholston on foot, calling after Gholston until he responded and returned to the car. Gholston explained that he did not hear Cowick calling him at first. He added that Cowick did not turn on his lights until after Gholston was already out of the car, and so he did not realize that Cowick was after him. Cowick handcuffed Gholston at 12:18 am \*495 and sat him on the curb. Around that time, Officers Hodges and Cirrincione arrived at the scene.

Cowick began the standard procedure for writing a ticket, but there were a few delays along the way. When asked for his license, Gholston explained that his ID was in his truck. Cowick, unprovoked, asked if there was a reason Gholston did not want Cowick to retrieve the ID from the vehicle, to which Gholston responded "huh." That was the most that Gholston said; he never stated in so many words that he did not want Cowick to retrieve the ID from the car. Instead, Gholston verbally conveyed his ID information to Cowick. Cowick also conducted an additional consensual search of Gholston's person; it did not turn up anything. He then returned to his squad car and radioed dispatch

to confirm whether Gholston had a valid driver's license. Dispatch informed Cowick that Gholston's ID was valid but that he also had a Notice of Violation ("Notice") on file for improperly parking over a year earlier.

At that point Cowick contacted two more officers to assist him with the stop. First, at 12:24:23 am, he looked up the location of a K9 officer, Deputy Saalborn (known as "sam12"), who was six to seven miles away from the stop. Next, he called for assistance in retrieving the Notice from the police station and delivering it to the traffic stop. Sargent Elbus radioed back that he could pick up the Notice. Cowick immediately responded at 12:26:43 am, using the car's messaging terminal, inviting Elbus to "take your time!!" because he was "trying to get sam12 here." Cowick was also communicating with Officer Cirrincione about getting Saalborn to the scene. At 12:28:03 am, Cirrincione messaged Cowick through his car terminal saying that Saalborn was on the way.


Throughout the time he was completing the ticket, Cowick continued to urge Elbus to take his time, sending him messages at 12:29:15 am and 12:29:20 am to that effect. He did the opposite with Saalborn, urging him at 12:30:31 am to "drive fast" because he could guarantee that Gholston had drugs in his car. Cowick printed Gholston's warning ticket for failing to use his turn signal at 12:32:27 am, 14 minutes after he had handcuffed Gholston.




As Cowick returned to Gholston to hand him the printed ticket, he realized that he had not yet asked Gholston for his insurance information. Gholston explained that his girlfriend had the truck insured but that he did not have proof of insurance on him. Cowick went back to his car to write a ticket for that infraction. As Cowick was finishing the second ticket, Saalborn arrived and walked the drug-sniffing dog around Gholston's truck. The dog alerted as the ticket was still printing. The officers searched the truck and discovered 9 grams of methamphetamine.




The government brought charges against Gholston, and as we noted, he moved to suppress the drugs on the ground that Cowick unreasonably extended the stop in violation of the Fourth Amendment. The district court referred the motion to suppress to a magistrate judge, who held that Cowick did extend the stop beyond the time reasonably required so that Saalborn could arrive and search for the methamphetamine. Nevertheless, the magistrate judge found that the stop did not raise constitutional concerns because Cowick had reasonable suspicion to continue holding Gholston based on Toolate's tip.

For the most part, the district court adopted the magistrate judge's findings of fact, but it disagreed with her in one key respect, finding that Cowick did *not* unreasonably extend the stop. Cowick's delays, it thought, were minor, and his failure to request Gholston's \*496 insurance information at the start of the stop was a good-faith blunder.

## II

[1] In cases involving an appeal of a denial of a motion to suppress, a mixed standard of review applies: We review the district court's factual findings for clear error, and we evaluate legal conclusions and mixed questions of law and fact *de novo*.  *United States v. Williams*, 731 F.3d 678, 683 (7th Cir. 2013).

[2] [3] Whether a lawful stop extends so long that it raises constitutional concerns turns on reasonableness. As relevant for our purposes, a seizure made in order to issue a warning ticket to a driver “can become unlawful if it is prolonged beyond the time reasonably required to complete that mission.”  *Illinois v. Caballes*, 543 U.S. 405, 407, 125 S.Ct. 834, 160 L.Ed.2d 842 (2005);  *Rodriguez v. United States*, 575 U.S. 348, 357, 135 S.Ct. 1609, 191 L.Ed.2d 492 (2015). The goal is to complete such a stop in a reasonable time. Side-inquiries into other potential crimes such as drug-related activity represent a “detour[ ] from [the original] mission.”  *Rodriguez*, 575 U.S. at 356, 135 S.Ct. 1609.

[4] While officers must act diligently, we repeatedly have declined to adopt even a rule of thumb that relies on the number of minutes any given stop lasts. We explained recently in  *United States v. Lopez*, 907 F.3d 472 (7th Cir. 2018), that we ask whether the defendant was detained longer than necessary for the underlying investigation, not “exactly how many minutes the stop lasts.”  *Id.* at 486. A stop may call for a variety of measures beyond printing the ticket, including “checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance.”  *Rodriguez*, 575 U.S. at 355, 135 S.Ct. 1609.

[5] Guided by these principles, the district court found that Officer Cowick did not unreasonably extend Gholston's stop. It noted that most of the alleged delays were attributable to

reasonable mistakes or forces outside of Cowick's control. For example, it found as a fact that Gholston's failure to provide Cowick with his ID increased the amount of time needed for the stop. Cowick had to enter Gholston's information manually rather than filling all fields with a quick scan of a barcode. The district court further determined that Cowick made an “innocent mistake” when he failed to acquire Gholston's proof of insurance at the beginning of the stop; the oversight, the court found, was attributable to the unusual nature of the stop. Reasonable delays such as these, the court concluded, largely accounted for why this routine stop lasted longer than some.

The district court next reasoned that none of Cowick's actions unrelated to the stop meaningfully lengthened it. The district court catalogued a few of the examples that had concerned the magistrate judge: Cowick spoke with Hodges and Cirrincione about his suspicion that Gholston had drugs in his truck; he took time away from completing the tickets to call several people; he sent messages to Elbus asking him to obtain the Notice; he repeatedly urged Saalborn to arrive with the dog as soon as possible. Despite all this, the district court concluded that Cowick did not unreasonably prolong the stop. The district court credited Cowick's testimony that he never stopped working on the warning between 12:24 am and 12:32 am (when he printed the warning ticket), even as he communicated with the other officers. As we noted, the district court concluded that Cowick's delay issuing the proof-of-insurance \*497 ticket was an innocent mistake and that the dog alerted as the ticket printed.


Gholston takes issue with the district court's determination that Cowick did not unreasonably delay the stop. In Gholston's opinion, Cowick took a number of actions unconnected to writing the tickets, and those steps collectively gave rise to an unconstitutional extension of the stop.

The first period of delay to which Gholston points could not unreasonably have prolonged the stop. Gholston argues that Cowick had the information he needed to begin writing Gholston's ticket at 12:22 am, but he did not begin doing so until 12:24 am. Why? Because he first conducted a consent search of Gholston's person and continually prodded Gholston to agree to a search of the car. That has nothing to do with Saalborn; Cowick did not contact Saalborn until after returning to his car to begin issuing the ticket. The district court thus correctly disregarded these events.



Gholston also disagrees with the district court's characterization of Cowick's actions while Cowick sat in his car working on the ticket and urging Saalborn to hurry to the scene. Gholston emphasizes that Cowick sent messages to Elbus and Saalborn multiple times while in his car and called Elbus once to ensure that Elbus was receiving his messages. No reasonable person, he contends, could think that Cowick was diligently working on the ticket during that time, because Cowick admitted that he had to use the same keyboard to message the other officers and to complete the ticket.

[6] Given the deferential standard of review that applies to the underlying facts, however, we see no reversible error. The district court's conclusion, based on Cowick's testimony, that Cowick did not unreasonably delay the stop in order to communicate with other officers on unrelated topics is a finding of fact that we review for clear error. Even if Cowick had to use the same keyboard, there are many reasons why he might have been able to communicate with his fellow officers without slowing down the ticket process, including his need to wait for dispatch to verify that Gholston's ID was valid. We cannot say that the district court's factual determination was clearly erroneous.

[7] Nor did the district court commit clear error when it determined that Cowick's failure to ask for Gholston's proof of insurance at the start of the stop was an innocent mistake, not a manipulative ruse. Recall that Cowick had to get out of his car to catch up with Gholston, who already had left his truck. He may simply have been focusing on catching Gholston, rather than on the details of ticket-writing. Characterizing that omission one way or the other is a straightforward credibility issue for the court. We have no reason to disturb it. The court's finding was corroborated by the fact that Cowick told his fellow officers that he found it frustrating that he had to enter Gholston's ID information a second time for the second ticket. Similarly, it makes no difference whether Gholston refused to allow Cowick to retrieve his ID from the truck, because Gholston began communicating his ID information verbally. In sum, we cannot say that the district court committed clear error in finding that the need to enter Gholston's ID information manually added any appreciable time to the stop.

Gholston contends that the district court's reasoning is inconsistent with the holding of  *Rodriguez v. United States*, 575 U.S. 348, 135 S.Ct. 1609, 191 L.Ed.2d 492 (2015), which rejects a *de minimis* rule for extensions of a stop.

Gholston correctly notes that this is the way the district court characterized Cowick's delays.

\*498 Although the district court may have chosen imperfect language to describe its factual findings, in substance it stayed within the bounds identified in  *Rodriguez*. The Court there identified a number of routine activities that accompany traffic stops, including license and warrant checks and verification of registration and insurance.  *Rodriguez*, 575 U.S. at 355, 135 S.Ct. 1609. The district court here found that Cowick detained Gholston only long enough to complete these same procedures, and that the dog alerted before Cowick had finished printing the second ticket. This is not a case in which an officer completes the activities for a stop and then detains the suspect longer in order to allow time for a K9 officer to arrive. The district court credited Cowick's testimony that he never stopped working on the ticket even as he communicated with other officers. Critically, the court found that Cowick did not extend the stop at all, not that any delay was permissibly *de minimis*. Based on those factual findings, the court correctly held that this stop did not run afoul of the Fourth Amendment.

### III

Having determined that the stop was not unreasonably extended, we need not reach Gholston's other arguments. The district court's factual findings were not clearly erroneous. On that understanding of the events in question, the stop was not unconstitutionally extended beyond the time reasonably required, and so we AFFIRM the judgment of the district court.

*Hamilton*, Circuit Judge, dissenting.

"This is not how we typically do a traffic stop." Officer Cowick's testimony admitted the obvious: he and his colleagues slow-walked the pretextual traffic stop of Mr. Gholston (for turning without signaling in otherwise deserted streets) while waiting on a drug-sniffing dog. The majority opinion acknowledges the ample evidence of this delay: texting one officer to hurry up with the dog while texting another to take his time to bring some needed paperwork, taking time to handcuff and frisk Gholston, taking time to convince Gholston to agree to a more thorough search of his person, doing the search, and trying to convince him to consent to a search of his vehicle. Even with all these

delays, the legitimate turn-signal ticket was complete about five minutes before the dog arrived. At that point, Officer Cowick stretched the stop out further by circling back to the subject of proof of insurance. That tactic succeeded in prolonging the stop just long enough for the dog to arrive, sniff, and alert.

Despite the evidence of delay, the majority affirms the denial of Gholston's motion to suppress primarily by deferring to the district court's factual finding that Officer Cowick's late request for insurance information was the result of an "innocent mistake." I respectfully dissent. Even if the mistake was honest, it still unreasonably prolonged the stop. And with respect, that finding of an "innocent mistake" was clearly erroneous. This elementary and convenient "mistake" provided the only rationale for continuing to detain Gholston until the dog arrived. Other judges finding facts in such cases can and should be more skeptical about such tactics to prolong pretextual traffic stops.

Police often use a trivial traffic infraction to justify a traffic stop that metamorphoses into an opportunity to investigate other possible crimes, especially drug trafficking. The Supreme Court has held that such a stop does not violate the Fourth Amendment if the police officer has probable cause to believe the driver violated a traffic law, regardless of the officer's real motive. \*499 *Whren v. United States*, 517 U.S. 806, 813, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996). The Court has imposed important limits on this police tactic, especially in terms of limited time and purposes. A seizure that is lawful at its inception can violate the Fourth Amendment if it is prolonged beyond the time reasonably required to complete the initial mission of the stop. *Illinois v. Caballes*, 543 U.S. 405, 407, 125 S.Ct. 834, 160 L.Ed.2d 842 (2005).

In *Rodriguez v. United States*, 575 U.S. 348, 135 S.Ct. 1609, 191 L.Ed.2d 492 (2015), the Court provided its most detailed guidance to date on these limits. The Court explained that a "police stop exceeding the time needed to handle the matter for which the stop was made violates the Constitution's shield against unreasonable seizures." *Id.* at 350, 135 S.Ct. 1609. During a traffic stop, the police officer must stick to the "mission" of the seizure: ensuring road safety, "determining whether to issue a traffic ticket, ... 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 355, 135 S.Ct. 1609.

If those activities and the officer's observations provide reasonable suspicion about criminal activity sufficient to detain the subject against his will—that's usually the aim of the pretextual stop in the first place—the officer may then act appropriately. But an officer may not prolong the stop, "absent the reasonable suspicion ordinarily demanded to justify detaining an individual." *Id.*; accord, e.g., *United States v. Cole*, 994 F.3d 844, 853 (7th Cir. 2021), rehearing en banc granted (June 9, 2021). *Rodriguez* held that lower courts may not shrug off delays as "de minimis" when the subject is being detained against his will. 575 U.S. at 356–57, 135 S.Ct. 1609 (rejecting "de minimis" rule applied by circuit court).

Applying these general rules to this case, Officer Cowick's stop of Gholston for the turn-signal infraction departed from his legitimate constitutional mission in a couple of respects. He spent several of the first minutes of the stop not on traffic matters but on handcuffing Gholston, obtaining his consent to a search of his person, carrying out the search, and unsuccessfully trying to convince Gholston to consent to a search of his vehicle.

After Officer Cowick got around to his legitimate purposes, in which he had zero interest, he completed the warning ticket for the turn-signal infraction at 12:32 am. At that time, the drug-sniff by a police dog that was Officer Cowick's real goal was not yet possible. The dog and his handler were still on their way, so Gholston should have been free to go on about his business. Officer Cowick's testimony made clear, though, that he simply was not going to let Gholston leave before the dog could arrive for a sniff of the vehicle. Further detention for that purpose violated the Fourth Amendment unless Officer Cowick had some other legitimate basis to restrain Gholston's liberty. He did not.

The government and police officers have offered three theories for continued detention: reasonable suspicion of drug trafficking; a de facto policy of detention to serve a "Notice of Violation" on a parking infraction; and Officer Cowick's belated pivot to proof of insurance. None of these theories should save this deliberately prolonged traffic stop.

*Reasonable Suspicion:* Officer Cowick was interested in Gholston based on a stale tip. A meth user who occasionally

provided Officer Cowick with information of unknown reliability had told him that Gholston was selling meth from his truck. The tip was at least three and a half months old, and Officer Cowick admitted that he had never used any information from the \*500 tipster to arrest anyone or to obtain a search warrant. Tr. 50. Officer Cowick said that he had heard the same from other people on the street, but he could not identify any other sources and had never even made a note of them. The vague, stale, and uncorroborated tips gave Officer Cowick his motive to stop Gholston for the turn-signal infraction, but they fell well short of the reasonable suspicion needed to restrain a person's liberty. Nothing that occurred during the traffic stop, until the delayed dog-sniff, added enough to those tips to justify detaining Gholston.<sup>1</sup>




*The Parking Infraction:* After Officer Cowick had handcuffed and searched Gholston, he finally checked the driver's license information with a dispatcher. He was told that Gholston was the subject of a "Notice of Violation" in the Quincy police files. Officer Cowick claimed that he had authority to detain Gholston until another officer delivered that notice from headquarters to the traffic stop. And the need/opportunity to wait for delivery of the notice was the reason Officer Cowick repeatedly told the officer making the delivery to "take your time" while at the same time urging the handler of the drug-sniffing dog to hurry. Cowick testified at the hearing that he was not going to let Gholston go anywhere until the notice was delivered to the scene. Tr. 45, 83.

The federal government does not defend this rationale. Such notices are not arrest warrants. None of the officers offered any legal basis for this practice of detaining drivers to serve such notices on them, and none exists. The government stipulated that there was nothing in the police department's policy and procedures manual regarding this practice of holding motorists until such notices could be served. Tr. 163–64.


*Proof of Insurance:* Officer Cowick had all the information he needed to prepare the turn-signal warning by 12:22 am. Tr. 83. Even with all his texting, he finished and printed the warning ticket for the turn-signal violation at 12:32 am. He knew then that the canine officer and the drug-sniffing dog were on their way from a location six or seven miles away. According to Officer Cowick, *only then* did he realize he had not checked whether Gholston had proof of insurance for his vehicle. At 12:33, he asked Gholston for proof of insurance, which Gholston did not have in the vehicle. The officer then began preparing another ticket for violating the


state law requiring proof of insurance in the vehicle. This took four more minutes. At 12:37 am, Cowick was working on the proof-of-insurance ticket as the drug-sniffing dog arrived. Within thirty seconds of arrival, the dog alerted on the vehicle. Officer Cowick was still printing the ticket.



The magistrate judge and district judge both found that Cowick's failure to ask for insurance initially was "an innocent mistake" rather than a ploy to prolong the pretextual traffic stop until the dog could arrive. The majority accepts that finding as decisive and not clearly erroneous. With respect, I disagree on both points.

 *Rodriguez* adopted an objective standard: the stop may "last no longer than is necessary to effectuate" the purpose that justified it.  575 U.S. at 354, 135 S.Ct. 1609, quoting  *United States v. Sharpe*, 470 U.S. 675, 684, 105 S.Ct. 1568, 84 L.Ed.2d 605 (1985). "Authority for the seizure thus ends when tasks tied to the traffic infraction are—or reasonably should have \*501 been—completed."




 *Id.*, citing  *Sharpe*, 470 U.S. at 686, 105 S.Ct. 1568.

 *Rodriguez* does not require perfect efficiency, but Officer Cowick's "innocent mistake" did not extend the time objectively necessary to complete his legitimate tasks that justified detaining Gholston.


Even if such an "innocent mistake" could justify a prolonged stop, despite  *Rodriguez*, the evidence of pretext and deliberate delay here was unusually strong. How else to interpret Cowick's texts telling the canine officer to hurry up—texting him to "drive fast" and that he could "guarantee" there was "a good amount"—while telling the officer with the Notice of Violation to "take your time!" Officer Cowick started with handcuffing, a frisk, another personal search, and an attempt to convince Gholston to consent to a vehicle search. And as noted, Officer Cowick virtually admitted to the deliberate delays when he testified more generally that "this is not how we typically do a traffic stop." Tr. 81.

 *Rodriguez* listed checking proof of insurance as one of just a handful of routinely legitimate subjects for pretextual traffic stops.  575 U.S. at 355, 135 S.Ct. 1609. Officer Cowick testified that at the beginning of the stop, he was so focused on the possibility of drugs and his supposed difficulty in getting Gholston's attention that he just forgot to ask about insurance.

This was a highly improbable oversight. “License, registration, insurance” is an absolutely routine and elementary step at the start of any traffic stop. We are supposed to believe that Officer Cowick remembered the first two and just happened to forget the third?

“Forgetting” to ask about insurance can work too easily to justify prolonged pretextual stops, at least if judges are willing to believe the excuse. We encountered the same “forgetfulness” recently in  *United States v. Cole*, 994 F.3d at 853, where the officer making the pretextual stop did not ask for insurance information until at least fifteen minutes into the stop and after he had called for a drug-sniffing dog. ( *Cole* was decided on other grounds.) For other recent examples of similar delays in pretextual stops, see *United States v. Byron*, 817 Fed. App’x 753, 755 (11th Cir. 2020) (delayed request for insurance information; affirming suppression on other grounds where officer prolonged traffic stop without justification);  *Matthews v. Las Vegas Metro. Police Dep’t*, 2021 WL 356235, \*2 (D. Nev. Feb. 1, 2021) (officer requested insurance information fifteen to twenty

minutes after start of traffic stop); *United States v. Bullock*, 2020 WL 5553562, \*13 (N.D. Iowa Aug. 21, 2020) (officer delayed requesting insurance information; motion to suppress denied on other grounds; presence of firearms in car and questions about permits for them gave officers good reasons not to focus on insurance).

A few instances of pretextual stops with delayed requests for insurance information do not prove this is a common tactic for prolonging such stops. Maybe it’s just a coincidence that the officers in  *Cole* and this case happened to make the same convenient mistake. Yet the effects of such a delay in accomplishing the real purpose of a pretextual stop call for judges to be less credulous. I read the majority opinion’s reliance on the standard of review as signaling that a different finding by the trial court on the delayed insurance request would also have been affirmed here. With respect, though, I believe we should reverse here.

#### All Citations

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### Footnotes

- 1 There is a minor factual dispute about how quickly Gholston realized Officer Cowick was stopping him; Gholston was already out of his truck and walking away before the officer turned on his red and blue lights. But once Officer Cowick had Gholston’s attention, he was entirely cooperative.

IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF ILLINOIS  
SPRINGFIELD DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 18-30039
	)	
JACQUES GHOLSTON,	)	
	)	
Defendant.	)	

OPINION

RICHARD MILLS, United States District Judge:

Defendant Jacques Gholston has filed a motion to suppress.

The motion to suppress was referred to the magistrate judge for a hearing and Report and Recommendation.

In the Report and Recommendation, United States Magistrate Judge Tom Schanzle-Haskins recommends that the motion to suppress be denied.

The Defendant has filed objections to the Report and Recommendation.

The Court has reviewed the record, including the transcript of the motion hearing before Judge Schanzle-Haskins.

I. BACKGROUND

On April 29, 2018, Quincy, Illinois Police Officer Erik Cowick arrested Defendant Jacques Gholston when he and other officers found methamphetamine in

## Appendix B

a truck following a traffic stop of the Defendant. On July 10, 2018, the Defendant was charged by Indictment with one count of possession of 5 grams or more of methamphetamine (actual), with intent to distribute, in violation of 18 U.S.C. § 841(b)(1)(B).

On September 18, 2018, the Defendant filed a motion to suppress. On March 25 and 26, 2019, the Court held a hearing on the motion. A transcript of the hearing was filed and the parties have submitted post-hearing memoranda.

In the Report and Recommendation, the magistrate judge found that “Officer Cowick may have extended the stop for a minute or two beyond the time needed to conduct the traffic stop.” Doc. No. 27, at 17. He then noted the Court “does not need to decide whether Officer Cowick unreasonably delayed completing the traffic stop because Officer Cowick had reasonable suspicion based on articulable facts that Gholston was distributing methamphetamine from the Truck.” *Id.* at 18. Accordingly, the magistrate judge found that Officer Cowick had a proper basis to detain the Defendant until Deputy Saalborn arrived and the K-9 alerted on the Truck.

Pursuant to 28 U.S.C. § 636(b)(1)(C), the Court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.”

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The Court notes that Defendant does not object to the summary of facts contained in the Report and Recommendation. Accordingly, the Court will only recite those facts that are pertinent to its conclusion.

### II. DISCUSSION

What begins as a lawful traffic stop might violate the Fourth Amendment if the officer exceeds the scope or unreasonably prolongs the stop. *See United States v. Lewis*, 920 F.3d 483, 491 (7th Cir. 2019). “A traffic stop ‘can become unlawful if it is prolonged beyond the time reasonably required to complete the mission of issuing a warning ticket.’” *Id.* (quoting *Rodriguez v. United States*, 135 S. Ct. 1609, 1614-15 (2005)). A dog sniff of a vehicle’s exterior only for illegal drugs does not violate an individual’s Fourth Amendment rights, even when there is no reasonable suspicion of drugs. *See Illinois v. Caballes*, 543 U.S. 405, 410 (2005). However, such a stop becomes unlawful “if it is prolonged beyond the time reasonably required to complete the stop’s original mission.” *Lewis*, 920 F.3d at 491 (quoting *Rodriguez*, 135 S. Ct. at 1612).

Here, it took twenty minutes from the beginning of the traffic stop until the drug dog alerted—from 12:17 a.m. to 12:37 a.m. Whether that is a reasonable amount of time is a close question. *United States v. Garrett*, 139 F. App’x 720, 723 (7th Cir. 2005) (stating that “if Cade alerted within 5 or 10 minutes of Garrett being pulled over, that would likely be a reasonable amount of time for [the officer] to still

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be responding to a traffic violation. But if the alert happened 19 minutes into the stop, perhaps not.”).

In *United States v. Sanford*, 806 F.3d 954 (7th Cir. 2015), the amount of time that elapsed between the initial stop of the car until the dog alerted for drugs was 26 or 27 minutes. *See id.* at 957. The defendant in *Sanford* claimed the police “dawdled” in issuing the ticket. *See id.* at 959. “The trooper who had stopped the car spent several minutes chatting with a fellow trooper about sports and a euchre tournament while twice stating (then quickly correcting himself) that he wanted to wait for the dog to arrive before completing the writing of the ticket.” *Id.* The court concluded that extending the stop by about eight minutes was “not an unreasonable amount of time to prolong the stop.” *Id.*

“[W]hen an officer acts expeditiously but is delayed waiting for the arrival of a drug-sniffing dog or other investigative resources, a 20-minute stop could be justifiable.” *United States v. Lopez*, 907 F.3d at 472, 486 (7th Cir. 2018). However, “a 15-minute stop would be too long if the investigation justifying the stop finished at the 14-minute mark.” *Id.*

Part of the delay here can be attributed to the Defendant’s refusal to produce his license. As a result, Officer Cowick could not scan in the identifying information from the coded bar on the back of the license. Instead, he had to manually enter the information. Part of the delay can also be attributed to Officer Cowick’s failure at

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the outset of the traffic stop to ask for proof of insurance, which resulted in the officer having to manually enter the information twice. The Court agrees with the magistrate judge that this was an “innocent mistake” due to the non-routine nature of the traffic stop, in that the Defendant had gotten out of his vehicle and was walking across the street until Officer Cowick directed him to return. It was not a routine stop in which the officer would walk up to the vehicle and ask the driver for his license and proof of insurance. The Court concludes that most of the time that elapsed during the traffic stop is due to these extenuating circumstances.

The magistrate judge found that Officer Cowick wanted to continue the traffic stop until Deputy Saalborn arrived with the K-9. Officer Cowick spoke with Officer Hodges privately about his belief the Defendant had methamphetamine in the truck. Moreover, he interrupted his preparation of the written warning to send messages to Sergeant Elbus telling him to take his time with the outstanding Notice of Violation, to talk to Sergeant Elbus on the phone and to send a message to Deputy Saalborn to hurry up because he would have to let Defendant go once he served the Notice of Violation. The magistrate judge found that although these activities did not take significant amounts of time, the activities delayed completing the traffic stop. “Officer Cowick may have extended the stop for a minute or two beyond the time he needed to conduct the traffic stop.” Doc. No. 27, at 17.

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The magistrate judge concluded that the Court “does not need to decide whether Officer Cowick unreasonably delayed completing the traffic stop because Officer Cowick had reasonable suspicion based on articulable facts that Gholston was distributing methamphetamine from the Truck.” *Id.* at 18.

Upon reviewing the record, the Court concludes that the traffic stop of the Defendant was not prolonged beyond the amount of time reasonably required to complete the stop. Officer Cowick testified he never stopped working on the warning while communicating with other officers about the situation. Between 12:24 and 12:32 a.m., Officer Cowick prepared and printed the warning for failure to signal while making a right turn. At 12:33 a.m., Cowick exited his squad car and asked the Defendant if he had proof of insurance. The Defendant responded that while his girlfriend had insurance on the truck, he did not have any proof of insurance.

At 12:34, Officer Cowick returned to his squad car to write the ticket for driving without proof of insurance. Officer Cowick had to reenter all the identifying information to generate the ticket. At 12:35 a.m., Cowick told one of the other officers that it made no sense that one had to go back and start all over to write the second ticket. At 12:37 a.m., Deputy Saalborn arrived at the scene with the K-9. At 12:37 a.m., the K-9 alerted on the truck. Officer Cowick told the Defendant the dog had alerted and that they would search the truck. The officers found

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methamphetamine in the truck. At 12:40 a.m., the Defendant was placed under arrest for possession of methamphetamine.

Officer Cowick testified he was still working on the insurance citation at the time the K-9 arrived. He said the citation was printing out at the time the dog alerted.

Because this was not a routine traffic stop, the Court finds that the stop was not unreasonably prolonged. It was prolonged due to an innocent mistake, that being Officer Cowick's failure to ask for both license and proof of insurance at the beginning of the stop. Another factor which contributed to the length of the stop was the Defendant's failure to produce his license, which resulted in Cowick having to manually enter the information on the citations.

Officer Cowick's communication with other officers generally related to the traffic stop. Unlike the officers in *Sanford*, Cowick was not talking about sports or a euchre tournament or otherwise dawdling. Moreover, Cowick's actions did not extend the 20-minute stop by as much as eight minutes, as in *Sanford*, which the Seventh Circuit determined was "not an unreasonable amount of time," in a stop that lasted 26 or 27 minutes. *Sanford*, 806 F.3d at 959.

Officer Cowick was completing the second citation when the dog alerted 20 minutes into the stop. Based on the particular circumstances of this case, the Court finds that the 20-minute stop was justifiable. *See Lopez*, 907 F.3d at 486. Any delay attributed to Cowick's actions was de minimis and did not unreasonably extend the

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stop. Once the dog alerted, the officers had probable cause to search the vehicle. *See United States v. Bentley*, 795 F.3d 630, 635 (7th Cir. 2015).

### III. CONCLUSION

Based on the foregoing, the Court finds that Officer Cowick had probable cause to believe the Defendant committed the traffic violation. The officer did not detain the vehicle longer than reasonably necessary in order for the K-9 to arrive. Once the K-9 alerted, probable cause existed to search the vehicle. Therefore, the Court need not determine whether reasonable suspicion existed that Defendant was distributing methamphetamine from his truck.

Accordingly, the Court will adopt the magistrate judge's recommendation to deny the Defendant's motion to dismiss.

Ergo, the Court ADOPTS the Report and Recommendation [d/e 27] of United States Magistrate Judge Tom Schanzle-Haskins.

The Motion to Dismiss of Defendant Jacques Gholston [d/e 8] is DENIED.

ENTER: August 8, 2019

FOR THE COURT:

/s/ Richard Mills  
Richard Mills  
United States District Judge

**IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF ILLINOIS, SPRINGFIELD DIVISION**

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
v. ) No. 18-cr-30039  
 )  
JACQUES GHOLSTON, )  
 )  
Defendant. )

**REPORT AND RECOMMENDATION**

TOM SCHANZLE-HASKINS, U.S. MAGISTRATE JUDGE:

This matter comes before the Court on Defendant Jacques Gholston's Motion to Suppress (d/e 8) (Motion). For the reasons set forth below, The Motion should be DENIED.

**BACKGROUND**

On July 10, 2018, a Grand Jury issued an Indictment (d/e 1) (Indictment) charging Gholston with one count of possession of 5 grams or more of methamphetamine (actual), with intent to distribute, in violation of 18 U.S.C. § 841(b)(1)(B). On April 29, 2018, Quincy, Illinois, Police Officer Erik Cowick arrested Defendant when he and other officers found methamphetamine in a truck Gholston had been driving. On September 18, 2018, Gholston filed the Motion. The Court held an evidentiary hearing on the Motion on March 25 and 26, 2019. Defendant appeared in person

with his attorney Assistant Federal Public Defender Thomas Patton. Assistant U.S. Attorneys Matthew Weir and Victor Yanz appeared for the Government. A transcript of that hearing has been completed and the parties have submitted their post-hearing memoranda. The matter is ready for this Court's recommendation.

### STATEMENT OF FACTS

Shortly after midnight on April 29, 2018, Officer Cowick patrolled in uniform in a marked squad car in the City of Quincy, Illinois, in the vicinity of 5<sup>th</sup> and Chestnut Streets. Officer Cowick testified that the area was a "high crime, high drug, gang activity" area. Transcript Vol. 1 (d/e 21), at 8-9.<sup>1</sup> Officer Cowick recorded his patrol with a video camera mounted on the front dashboard of his marked patrol car. Officer Cowick also wore a wireless microphone. During routine patrolling, the audiovisual equipment recorded video but not sound. The equipment started recording audio from Officer Cowick's microphone when Officer Cowick turned on his squad car's emergency lights. Transcript Vol. 1, at 13. The audio-visual recording of the incident leading up to Gholston's arrest was admitted into evidence. Government Exhibit A. Unless otherwise indicated, the

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<sup>1</sup> The Transcript is filed in two volumes (d/e 21 and 22). Volume 1 contains the transcript of proceedings on March 25, 2019 (pages 1-131), and Volume 2 contains the transcript of proceedings on March 26, 2019 (pages 132-237).

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sequence of events, quotations, and timing is based on the Court's review of the audiovisual recording, including the time stamp on the recording. Neither party disputes the accuracy of the audiovisual recording or the time stamp.

At approximately 12:15 a.m., Officer Cowick was driving on 5<sup>th</sup> Street. Officer Cowick saw a green pickup truck with a toolbox in the bed (Truck) traveling in the opposite direction on 5<sup>th</sup> Street. Several individuals had told him that Gholston sold methamphetamine from a green pickup truck with a toolbox in the bed. Officer Cowick knew the name of one of these individuals, Taylour Toolate. Transcript Vol. 1, at 48. Toolate was addicted to methamphetamine. Toolate had provided Officer Cowick with information about criminal activity in the area. Officer Cowick had not used the information she provided to secure an arrest warrant or arrest anyone. Transcript Vol. 1, at 49-50. She said Gholston was picking up large quantities of methamphetamine. She indicated that Gholston was selling methamphetamine using a green pickup truck. She told Officer Cowick that he kept the drugs in a magnetic box attached to the bottom of the truck and gave Officer Cowick the location where the Truck was parked. Transcript Vol. 1, at 52. Officer Cowick knew that Toolate had a relationship with someone in Gholston's family, and so, knew information about Gholston's

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family. Transcript Vol. 1, at 126-27. Cowick went to the location Toolate gave him and confirmed that the green truck she described was parked there as she said. Transcript Vol. 1, at 127.

Officer Cowick testified that he was “pretty positive” that Toolate was the first person to tell him that Gholston was selling methamphetamine out of a green truck. He conceded, though, that there could have been someone who gave him this information before Toolate did. Transcript Vol. 1, at 54. Officer Cowick was not sure when she told him this information. He estimated two months before the April 29 traffic stop, but he was not sure. Transcript Vol. 1, at 51-52. Toolate was in custody from January 10, 2018, until after the April 29, 2018 traffic stop, so she told Officer Cowick this information some time before January 10, 2018. See Defendant’s Post Hearing Brief in Support of His Motion to Suppress and Reply to the Government’s Post Hearing Brief (d/e 25), at 21, and attached Excerpts of Adams County Circuit Court Docket Sheets for Criminal Proceedings against Toolate in Case Nos. 2015 CF 126, 2017 CF 938, and 2017 CM 427.<sup>2</sup>

When the opportunity presented itself, Officer Cowick questioned individuals arrested for drug violations about where they got their drugs.

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<sup>2</sup> The Court takes judicial notice of these public records from the Adams County Circuit Court.

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He was often told by these individuals that Gholston sold methamphetamine from a green truck. Transcript Vol. 1, at 53. Officer Cowick did not document the information he received from Toolate or the other individuals arrested for possession of methamphetamine. Transcript Vol. 1, at 55.

Prior to this traffic stop, Officer Cowick spoke to other officers who confirmed that Gholston had multiple convictions for drug trafficking and had just completed federal supervised release for a methamphetamine-related crime. Officers previously told him that, at one time, Gholston was one of the top dealers in Quincy, that he had been charged multiple times with possession of methamphetamine, and that he would resist arrest and possibly run. Transcript Vol. 1, at 20-22. Officer Cowick collected this type of information over time “so that I could use that again to make a stronger case if I were ever to be able to get him in a traffic stop or do anything with it.” Transcript Vol. 1, at 53.

At 12:16 a.m., the Truck passed Officer Cowick traveling in the opposite direction. Officer Cowick testified that he verified the license plate number on his inboard computer to confirm that the Truck was the green truck used by Gholston. Transcript Vol. 1, at 58-59. Officer Cowick then turned his squad car around and followed the Truck. The Truck made a

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right turn from 5<sup>th</sup> Street onto Chestnut Street. The Truck turned without signaling. When Officer Cowick saw this traffic violation, he sped up to catch the Truck. Officer Cowick turned on his emergency lights at 12:17 a.m., just as he made the turn from 5<sup>th</sup> Street onto Chestnut Street. The video shows that after Officer Cowick completed his turn onto Chestnut Street, the Truck was parked on Chestnut Street between 5<sup>th</sup> Street and 4<sup>th</sup> Street. Transcript Vol. 2, at 182. Still at 12:17 a.m., as Officer Cowick drove down Chestnut street with his emergency lights flashing, Gholston walked away from the Truck and crossed to the other side of Chestnut Street out of the view of the video camera. Officer Cowick testified that “there’s only certain reasons why someone would walk away from a traffic stop in this area, and typically that means narcotics of some sorts.” Transcript Vol. 1, at 81. At 12:17 a.m., Officer Cowick stopped the squad car just behind the Truck.

Officer Cowick notified his dispatcher that he was making the traffic stop and then called out to Gholston to stop. Cowick testified that he and Gholston made eye contact. Gholston, however, kept walking away. Cowick exited his squad car and ran after Gholston calling for Gholston to stop. Gholston stopped and came back to the Truck. Transcript Vol. 1, at 15.

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Officer Cowick asked Gholston why he did not come back when Officer Cowick instructed him to do so. Still at 12:17 a.m., Gholston told Officer Cowick he did not see him. At 12:18 a.m., Officer Cowick handcuffed Gholston for officer safety and because Gholston walked away from the traffic stop of the Truck. Cowick told Gholston that he was not under arrest, only detained. Gholston said that Officer Cowick did not turn on his lights ("red and blues") until he came up on the Truck. Officer Cowick asked Gholston why he did not stop once he saw the lights. Gholston said he did not know Cowick was after him. At 12:18 a.m., Officer Cowick patted down Gholston to check for weapons and radioed for back up. Transcript Vol. 1, at 67.

At 12:19 a.m., Officer Cowick had Gholston sit on the curb in front of the squad car and directly behind the Truck, in full view of the camera. At that moment, Officers Mike Cirrincione and Paul Hodges appeared at the scene. Officer Cowick asked Gholston for his license. Gholston told Cowick the license was in the Truck, but Gholston would not let Cowick retrieve the license. Gholston told Officer Cowick that he would provide identifying information to Officer Cowick. See Transcript Vol. 1, at 72, 123-24. While Gholston and Officer Cowick talked, the other two officers walked around the exterior of the Truck. Gholston turned away from Officer

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Cowick several times to see what the two other officers were doing near the Truck.

At 12:20 a.m., Officer Cowick asked Officer Hodges to speak to him privately away from Officer Cirrincione and Gholston. Officer Cowick told Officer Hodges that Gholston had walked away from the Truck when Officer Cowick stopped it. Cowick said he believed Gholston was carrying drugs in the Truck. Officer Hodges suggested asking for consent to search. During this conversation, Officer Cowick radioed in Gholston's name to dispatch. At 12:22 a.m., the dispatcher told Officer Cowick that there was an outstanding Notice of Violation (NOV) for Gholston at the station. An NOV is notice of a city ordinance violation, usually a parking ticket or some other non-moving traffic violation. Transcript Vol. 1, at 22, 39-41.

Officer Cirrincione testified that he spoke to Gholston while Officer Cowick and Hodges were conferring. Officer Cirrincione testified that he asked Gholston why he stopped the Truck. According to Officer Cirrincione, Gholston answered that he stopped because he saw Officer Cowick's squad car turn around behind him on 5<sup>th</sup> Street. Transcript Vol. 2, at 200.

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At 12:22 a.m., Officer Cowick walked back to Gholston and asked for permission to search him. Gholston consented. While Officer Cowick searched Gholston, the other two officers again walked around the Truck and looked in its windows. While Officer Cowick searched him, Gholston turned his head several times to look at other the two officers near the Truck. Officer Cowick also asked for permission to search the Truck. Gholston refused permission to search the Truck.

At 12:24 a.m., Officer Cowick and Cirrincione went back to the squad car. While Officer Cowick was in the squad car, Officer Cirrincione stood next to the driver's window at the car. Transcript Vol. 2, at 200. Both are out of view of the camera. Officer Cowick remained in his squad car from 12:24 to 12:33 a.m. During this time Officer Cowick communicated with Dispatch and other officers and prepared a warning for failure to signal when making a right turn. Officer Cowick typed in the information by hand to prepare the warning. Typing the information in by hand took several minutes. Officer Cowick had to type in all the background information about Gholston because Gholston refused to provide his license. If Gholston had provided his license, Cowick could have scanned in the identifying information from the coded bar on the back of the license. Transcript Vol. 1, at 14.

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At 12:24 a.m., Officer Cowick radioed Dispatch to find the location of the officer on duty with a drug-sniffing dog (K-9). See Transcript Vol. 2, at 217. The K-9 Officer on duty was Adams County, Illinois, Deputy Sheriff Saalborn. Quincy is located in Adams County, Illinois. Dispatch told Officer Cowick that Deputy Saalborn was in an area of Adams County known as Sheridan, about six or seven miles away. Transcript Vol. 1, at 90. Officer Cowick told Officer Cirrincione that it was “guaranteed” that Gholston had drugs in the Truck. Cowick said that Gholston kept the drugs in a magnetic box underneath the Truck.

At 12:25 a.m., while Officer Cowick and Cirrincione were at the squad car, Officer Hodges had a conversation with Gholston. The video shows the interaction between Gholston and Hodges, but the recording does not contain an audio recording of their conversation. At 12:25 a.m., Officer Hodges opened the driver’s side door to the Truck, reached in, and returned to Gholston’s position between the Truck and the squad car. Officer Hodges had retrieved Gholston’s cell phone from the Truck. See Transcript Vol. 1, at 93; Transcript Vol. 2, at 218. Officer Hodges placed a cell phone on the bumper of the Truck and took the handcuffs off Gholston. Gholston picked up the cell phone that Officer Hodges had placed on the Truck bumper. At 12:26 a.m., Gholston started talking on the cell phone.

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At 12:26 a.m., Cowick asked Dispatch if someone could come to the scene to serve the NOV. Quincy Police Sergeant Nathan Elbus responded that he could pick up the NOV and bring it to the scene to serve it.

Transcript Vol. 1, at 22; see Transcript Vol. 2, at 140-41, 144-45. Officer Cowick testified that he planned to detain Gholston until the NOV was served on Gholston. Under Quincy Police Department policy or practice, he could detain a person in order to serve an outstanding NOV. Transcript Vol. 1, at 42-45; Transcript Vol. 2, at 161-64, 207-08. At 12:26 a.m., Sergeant Elbus began driving to the Quincy Police Station to get the NOV. Transcript Vol. 2, at 138-39.

At 12:26 a.m., Officer Cowick sent a text message to Sergeant Elbus's squad car. The Quincy Police Department's squad car onboard computer systems could send instant messages or text messages between squad cars. Officer Cowick was identified in the text messages by his badge number 143, Officer Cirrincione was identified by his badge number 120, and Sergeant Elbus was identified by his badge number 261. Transcript Vol. 1, at 99, 112, 198. The text message said, "Trying to get Sam-12 here." Ex. C, Car-to-Car Communications Log, at 3 of 12. The term "Sam-12" referred to Deputy Saalborn. A few seconds later, Cowick sent a second text message to Sgt. Elbus, which read, "take your time!!"

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Transcript Vol.1, at 24. Cowick testified that he sent these messages, “Just to tell Sergeant Elbus that he doesn’t need to, you know, rush, break his back trying to get an NOV; that I’m gonna get K-9 here to sniff the car.”

Transcript Vol.1, at 25.

At 12:27 a.m., Officer Cirrincione returned to his squad car and contacted Deputy Saalborn to get him to come to the scene to conduct a K-9 free air sniff around the Truck while Cowick worked on completing the written warning. Transcript Vol. 1, at 99-100; Transcript Vol. 2, at 202. At 12:28 a.m., Officer Cirrincione sent a text to Officer Cowick informing him that Saalborn was on his way. Transcript Vol. 2, at 202; Ex. C, Car-to-Car Communications Log, at 4 of 12.

At 12:28 a.m., Cowick spoke out the squad car window to Officer Hodges who was watching Gholston. Officer Cowick asked Officer Hodges to ask Gholston for his current address to input that information into the computer to complete the warning. At 12:28 a.m., Cowick also sent a text message to Deputy Saalborn, “261 had to pick up NOV, so he sint (sic) here yet, then I’ll have to serve it.” Car-to-Car Communications Log, at 7 of 12.

At 12:28, Sergeant Elbus arrived at the Quincy Police Station (Station). Transcript Vol. 2, at 139. Sergeant Elbus estimated it took three

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minutes to park, retrieve the NOV, get back to his car and exit the Station parking garage. Transcript Vol. 2, at 145. The Station was 1.2 miles away from the location of the traffic stop on Chestnut Street. Sergeant Elbus estimated that it took about five minutes to drive from the Station to the traffic stop. Transcript Vol. 2, at 146; Government Exhibit G, Google Maps Map of route from the Station to Fourth and Chestnut Streets.

At 12:29 a.m., Cowick spoke to Sergeant Elbus using the squad car cell phone. Cowick asked if Elbus received his text. Sergeant Elbus told Officer Cowick that he had not received the messages. Officer Cowick said he would send the text again. Transcript Vol. 1, at 28, 150. At 12:29 a.m., Cowick sent two text messages to Sergeant Elbus. The first said, “s12 is on his way,” and the second said, “take yur (sic) time.” Car-to-Car Communications Log, at 6 of 12. At 12:30 a.m., Cowick sent two messages to Deputy Saalborn, “drive fast,” and “garanteee (sic) there is good amount.” At 12:31 a.m. Deputy Saalborn replied, “trying.” Car-to-Car Communications Log, at 7 of 12. At 12:32 a.m., Cowick sent two messages to Sergeant Elbus, “s12 is coming from Sheridan,” followed by, “So I’m hoping he can get here quick.” Car-to-Car Communications Log, at 8 and 9 of 12. Sergeant Elbus testified that he did not recall seeing any of the texts Officer Cowick sent. Sergeant Elbus, however, testified that his

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normal procedure would be to have the app open that would allow him to see car-to-car text messages. Transcript Vol. 2, at 184-86.

Officer Cowick testified that he never stopped working on the warning while he spoke to Cirrincione, Elbus, and Hodges, and sent and received the text messages from Elbus and Saalborn. Transcript Vol. 1, at 100.

At 12:32 a.m., Officer Cowick completed and printed the warning. Transcript Vol. 1, at 30. At 12:33 p.m., Cowick exited his squad car and asked Gholston if he had proof of insurance for the Truck. Officer Cowick testified that he forgot to ask for proof of insurance initially. He said that in a normal traffic stop, he walked up to the driver's side window of the vehicle and asked for proof of insurance, but this was not a normal traffic stop. Gholston had walked away from the Truck and Officer Cowick had to chase after him. Cowick testified that , "In the midst of that, I did fail to remember to ask him for insurance." Transcript Vol. 1, at 32. Gholston said his girlfriend had insurance on the Truck, but he did not have any proof of insurance.

At 12:34 a.m., Officer Cowick returned to the squad car to write the ticket for driving without proof of insurance. Officer Cowick testified that he had to reenter all the identifying information into the computer to generate the ticket. Transcript Vol. 1, at 118. At 12:35 p.m., Officer Cowick told

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either Officer Hodges or Cirrincione (Officer Cowick and the person to whom he was speaking were both out of the view of the camera) that it made no sense that one had to go back and start all over again to write the second ticket.

At 12:37 a.m., Deputy Saalborn arrived at the scene with the K-9. At 12:37 a.m., the K-9 alerted on the Truck. Officer Cowick told Gholston that the dog alerted and that they were going to search the Truck. The officers found methamphetamine in the Truck. At 12:38 a.m., Sergeant Elbus arrived at the traffic stop. Transcript Vol. 2, at 139. At 12:40 a.m., Gholston was placed under arrest for possession of methamphetamine. Once the K-9 alerted, the NOV did not matter to Officer Cowick. Transcript Vol. 1, at 101. At 12:57 a.m., Sergeant Elbus reported that he served the NOV on Gholston and was cleared from the call. Car-to-Car Communications Log, at 11 of 12.

### ANALYSIS

Gholston moves to suppress the drugs and any other evidence found at the April 29, 2019 search of the Truck and any post-arrest statements. Gholston argues that the search violated his Fourth Amendment rights to be free from unreasonable searches and seizures because Officer Cowick unreasonably delayed and extended the stop past the time necessary to

complete the traffic stop, and Officer Cowick did not have reasonable suspicion based on articulable facts that Gholston was engaged in criminal activity necessary to justify detaining Gholston past the time needed to complete the traffic stop.

An officer may stop a vehicle if he has probable cause to believe the driver of the vehicle is committing a traffic violation. The officer further may conduct a free-air sniff around the vehicle by a trained drug-sniffing dog during the course of the traffic stop. Illinois v. Caballes, 543 U.S. 405, 407 (2005). The officer, however, may not detain the vehicle and its occupants longer than would be reasonably necessary to complete a traffic stop in order to conduct the free-air sniff, unless the officer has some other basis for detaining the vehicle. Rodriguez v. United States, \_\_\_ U.S. \_\_\_, 135 S.Ct. 1609, 1612 (2015). An additional valid basis to detain the vehicle beyond the time necessary to conduct a traffic stop exists if the officer has reasonable suspicion of criminal activity, such as possession of illegal drugs. Id. at 1616; see United States v. Guidry, 817 F.3d 997, 1005 (7<sup>th</sup> Cir. 2016).

An officer may also detain a vehicle and its occupants if he has probable cause that the occupants are carrying illegal drugs. An officer with such probable cause may search the vehicle. Caballes, 543 U.S. at

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407; see Guidry, 817 F.3d at 1005 (The officers conducting a traffic stop had an additional independent basis to detain a vehicle once a narcotic sniffing dog indicated that drugs were present).

In this case, Officer Cowick may have extended the stop for a minute or two beyond the time he needed to conduct the traffic stop. Gholston's refusal to provide his driver's license and Officer Cowick's failure to ask for proof of insurance at the beginning of the stop accounted for most of the time taken to complete the stop. The delay caused by Gholston's refusal to provide his license cannot be a basis to invalidate the search. See U.S. v. Sharpe, 470 U.S. 675, 687-88 (1985) The Court further finds that Officer Cowick made an innocent mistake when he failed to ask for proof of insurance initially. The mistake was associated with Gholston's decision to walk away from the traffic stop. This changed Officer Cowick's routine and accounted for the failure to ask about insurance initially. Officer Cowick did not delay asking about insurance to draw out the stop. See U.S. v Lopez, 907 F.3d 472, 486 (7<sup>th</sup> Cir. 2018).

Still, Officer Cowick wanted to continue the traffic stop until Deputy Saalborn could arrive with the K-9. Officer Cowick spoke with Officer Hodges privately about the fact that he believed Gholston was carrying methamphetamine in the Truck. He interrupted his preparation of the

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written warning to send messages to Sergeant Elbus telling him to take his time with the NOV, to talk to Sergeant Elbus on the phone, and to send a message to Deputy Saalborn to hurry up because he would have to let Gholston go once he served the NOV. These activities did not take significant amounts of time, but these activities delayed completing the traffic stop.

The Court, however, does not need to decide whether Officer Cowick unreasonably delayed completing the traffic stop because Officer Cowick had reasonable suspicion based on articulable facts that Gholston was distributing methamphetamine from the Truck. Officer Cowick, therefore, had a proper basis to detain Gholston until Deputy Saalborn arrived and the K-9 alerted on the Truck.

Reasonable suspicion is “something less than probable cause but more than a hunch.” United States v. Baskin, 401 F.3d 788, 791 (7<sup>th</sup> Cir. 2005).

Reasonable suspicion is not an onerous standard: Reasonable suspicion requires “considerably less” than a preponderance of the evidence and “obviously less” than probable cause to effect an arrest. United States v. Esquivel– Rios, 725 F.3d 1231, 1236 (10<sup>th</sup> Cir. 2013). “To satisfy the reasonable suspicion standard, an officer need not ‘rule out the possibility of innocent conduct,’ or even have evidence suggesting ‘a fair probability’ of criminal activity.” *Id.* (quoting Poolaw v. Marcantel, 565 F.3d 721, 736 (10<sup>th</sup> Cir. 2009)). Indeed, we have held that factors consistent with innocent travel may contribute to reasonable suspicion.

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United States v. Valles, 292 F.3d 678, 680 (10<sup>th</sup> Cir. 2002). As long as an officer has “a particularized and objective basis for suspecting an individual may be involved in criminal activity, he may initiate an investigatory detention even if it is more likely than not that the individual is not involved in any illegality.” United States v. Johnson, 364 F.3d 1185, 1194 (10<sup>th</sup> Cir. 2004).

United States v. Petit, 785 F.3d 1374, 1379-80 ((10<sup>th</sup> Cir. 2015) (emphasis in the original) (cited with approval in United States v. Sanford, 806 F.3d 954, 959 (7<sup>th</sup> Cir. 2015)). The existence of reasonable suspicion is an objective inquiry based on the totality of the circumstances. United States v. Lewis, 920 F.3d 483, 493 (7<sup>th</sup> Cir. 2019).

In this case, Officer Cowick had learned several articulable facts that supported his suspicion that Gholston was dealing methamphetamine. The totality of the circumstances in this case demonstrate that Officer Cowick had reasonable suspicion. Toolate told Officer Cowick that Gholston was dealing methamphetamine from a green truck with a toolbox. Toolate had provided useful information to Officer Cowick in the past. A tip from a known informant is more reliable because her “reputation can be assessed” and she can be “held responsible if her allegations turn out to be fabricated.” Florida v. J.L., 529 U.S. 266, 270 (2000). Toolate had also been involved in a relationship with a member of Gholston’s family and so had an additional basis for knowing about Gholston’s activities. Toolate also told Officer Cowick where Gholston parked his truck. Officer Cowick

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confirmed that a green truck with a toolbox was parked at the location given by Toolate. Officer Cowick also asked individuals who had been convicted of possession of methamphetamine for information about who was dealing methamphetamine. Several of these individuals told Officer Cowick that Gholston sold methamphetamine out of a green truck like the truck in the traffic stop. These individuals used methamphetamine and knew who sold methamphetamine in Quincy. Their statements, along with the Toolate's connection to Gholston's family and her accurate information about the location of the truck, tended to corroborate Toolate's story. See United States v. Lopez, 907 F.3d 472, 482 (7<sup>th</sup> Cir. 2018) ("The reasonable-suspicion standard requires police to verify at least some facts supporting the informant's allegation of criminal activity before seizing the subject of the tip.").

In addition, Officer Cowick confirmed with other officers that Gholston had been a methamphetamine dealer in the past and had been convicted of drug trafficking. He also confirmed that Gholston had multiple convictions for drug trafficking, was at one time a top dealer in Quincy, and had just gotten off federal supervised release for a methamphetamine-related crime. These prior convictions provided additional information to support Officer Cowick's reasonable suspicion. See United States v. Finke,

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85 F.3d 1275, 1282 (7<sup>th</sup> Cir. 1996) (Prior drug convictions were a factor to support a finding of reasonable suspicion).

On April 29, 2018, when Officer Cowick turned around and followed the Truck, Gholston turned the corner, parked the Truck, and tried to walk away. Officer Cowick ordered Gholston to return to the Truck, but Gholston continued to walk away even after making eye contact with Officer Cowick. Gholston's attempt to get away from the Truck after Officer Cowick turned on his emergency lights again corroborated the other information that the Truck may have contained drugs. See D.Z. v. Buell, 796 F.3d at 755-56 (7<sup>th</sup> Cir. 2015) (attempting to evade law enforcement can be a factor in determining probable cause).

In addition, Gholston also first told Officer Cowick he did not see the squad car's emergency lights and then told Officer Cowick that he did not turn on the emergency lights until he was right up on the Truck. The Government correctly points out that these two statements are inconsistent. Gholston either saw the emergency lights or he did not. Such inconsistent statements added to the totality of the circumstances that supported Officer's Cowick's reasonable suspicion. See United States v. Davis, 636 F.3d 1281, 1291 (10<sup>th</sup> Cir. 2011) (cited with approval in Sanford, 806 F.3d at 959).

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All of this information, together, provided “a particularized and objective basis for suspecting” that Gholston “may be involved in criminal activity.” Baskin, 401 F.3d at 791.<sup>3</sup> Officer Cowick had reasonable suspicion to support initiating “an investigatory detention even if it is more likely than not that the individual is not involved in any illegality.” Id.

Gholston argues that each piece of information on which Officer Cowick relied was not sufficient to constitute reasonable suspicion. Reasonable suspicion is determined by looking at the totality of the circumstances facing the officer, not by evaluating individual factors separately. Indeed, factors may not be sufficient in and of themselves but may be part of a totality of circumstances that establish reasonable suspicion. Lewis, 920 F.3d at 493; United States v. Winters, 782 F.3d 289, 298 (7<sup>th</sup> Cir. 2015). That is what occurred here. Officer Cowick had reasonable suspicion that Gholston was selling methamphetamine out of the Truck at the time of the April 29, 2018 traffic stop.

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<sup>3</sup> The Government also relied on evidence that Gholston would not permit Officer Cowick to enter the Truck to retrieve Gholston’s driver’s license and that Gholston appeared nervous when Officers Hodges and Cirrincione looked into the Truck. Gholston argues that he did not appear nervous on the audio-video recording when the Officers looked into the Truck. Gholston also points out that he later gave Officer Hodges permission to go into the Truck to get his cell phone. Gholston argues that this evidence negates any inference that he was worried about the Officers looking into the Truck. For purposes of this Report and Recommendation only, the Court assumes that Gholston was not anxious about the Officers looking into the Truck. The other information Officer Cowick had learned provided him with reasonable suspicion regardless of whether Gholston was nervous about the Officers looking into the windows of the Truck.

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Because Officer Cowick had reasonable suspicion based on articulable facts, he could extend the traffic stop until Deputy Saalborn arrived with the K-9. Lewis, 920 F.3d at 492-93. Once Deputy Saalborn's K-9 alerted on the Truck, Officer Cowick had probable cause to search the Truck. Caballes, 543 U.S. at 407; see Guidry, 817 F.3d at 1005. The methamphetamine was, thus, found pursuant to a valid search based on probable cause. Gholston's arguments to the contrary are not persuasive.

THEREFORE, THIS COURT RECOMMENDS that Defendant Jacques Gholston's Motion to Suppress (d/e 8) should be DENIED.

The parties are advised that any objection to this Report and Recommendation must be filed in writing with the Clerk of the Court within fourteen days after service of a copy of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2). Failure to file a timely objection will constitute a waiver of objections on appeal. See Video Views, Inc. v. Studio 21, Ltd., 797 F.2d 538, 539 (7<sup>th</sup> Cir. 1986). See Local Rule 72.2.

ENTER: May 20, 2019

*sl Tom Schanzle-Haskins*  
TOM SCHANZLE-HASKINS  
UNITED STATES MAGISTRATE JUDGE