

A P P E N D I X

APPENDIX

Decision of the Court of Appeals for the Eleventh Circuit, <i>United States v. Ruben Ramirez-Rivera</i> , 22-11662 (April 27, 2023)	A-1
Judgment imposing sentence	A-2

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[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 22-11662

Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RUBEN RAMIREZ-RIVERA,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 2:21-cr-14032-DMM-1

Before NEWSOM, GRANT, and ANDERSON, Circuit Judges.

PER CURIAM:

Ruben Ramirez-Rivera appeals the district court's denial of his motion to suppress evidence that law enforcement obtained following the traffic stop of a car in which he was a passenger. He argues, first, that there was no probable cause for the stop because the testimony of the officer who initiated the stop, Detective Seth Abelin, did not show that the car's tag was illegible from 50 feet away, as required to violate Fla. Stat. § 316.221(2). Second, he contends that law enforcement unreasonably prolonged the stop to conduct a K-9 sniff test of the car.

Because a motion to suppress evidence presents a mixed question of law and fact, we review the district court's factual findings for clear error and its application of the law to the facts *de novo*. *United States v. Lewis*, 674 F.3d 1298, 1302-03 (11th Cir. 2012). We construe all facts in the light most favorable to the party that prevailed in the district court. *United States v. Holt*, 777 F.3d 1234, 1255 (11th Cir. 2015). We defer to the district court's factual determinations unless the district court's understanding of the facts is "unbelievable." *Id.* at 1256 (quotation marks omitted).

The Fourth Amendment protects individuals from unreasonable searches and seizures. U.S. Const. amend. IV. Because a routine traffic stop is a limited form of seizure that is more analogous to an investigative detention than a custodial arrest, we

analyze the legality of such stops under the standard articulated in *Terry v. Ohio*, 392 U.S. 1 (1968). *Holt*, 777 F.3d at 1256. “*Terry* and its progeny allow an officer to, consistent with the Fourth Amendment, conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot.” *United States v. Gonzalez-Zea*, 995 F.3d 1297, 1302 (11th Cir.) (quotation marks omitted), *cert. denied*, 142 S. Ct. 506 (2021).

In *Terry*, the Supreme Court adopted “a dual inquiry for evaluating the reasonableness of an investigative stop.” *Id.* (quotation marks omitted). Under *Terry*’s two-part inquiry, we must “first examine ‘whether the officer’s action was justified at its inception,’ which turns on whether the officers had a reasonable suspicion that the defendant had engaged in, was engaging in, or was about to engage in, a crime.” *Id.* (quoting *Terry*, 392 U.S. at 20). Second, we must consider “whether the stop was reasonably related in scope to the circumstances which justified the interference in the first place.” *Id.* (quotation marks and brackets omitted).

Moreover, “the *duration* of the traffic stop must be limited to the time necessary to effectuate the purpose of the stop.” *Holt*, 777 F.3d at 1256 (quotation marks omitted). “Generally, a traffic stop may not last any longer than necessary to process the traffic violation.” *Id.* However, an officer may prolong a traffic stop in “special circumstances.” *Id.* (quotation marks omitted). Specifically, “an officer may prolong a traffic stop to investigate the driver’s license and the vehicle registration, including by requesting a computer check, or while waiting for the results of a criminal

history check that is part of the officer’s routine traffic investigation.” *Id.* Such activities, however, “must not prolong the traffic stop beyond a reasonable amount of time under the circumstances of the stop.” *Id.* Although we measure the reasonableness of a stop’s duration under the totality of the circumstances, we have approved traffic stops lasting, for example, for 14 minutes and 50 minutes. *Id.* However, “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.” *Rodriguez v. United States*, 575 U.S. 348, 350 (2015). “A seizure justified only by a police-observed traffic violation, therefore, becomes unlawful if it is prolonged beyond the time reasonably required to complete the mission of issuing a ticket for the violation.” *Id.* at 350-51 (quotation marks and brackets omitted).

As to the use of drug dogs during traffic stops, the Supreme Court has held that “the use of a well-trained narcotics-detection dog—one that does not expose noncontraband items that otherwise would remain hidden from public view—during a lawful traffic stop, generally does not implicate legitimate privacy interests.” *Illinois v. Caballes*, 543 U.S. 405, 409 (2005) (quotation marks and citation omitted).

In *Holt*, we concluded that there was no error in the district court’s denial of Holt’s motions to suppress evidence seized during two traffic stops involving canine units. *Holt*, 777 F.3d at 1257. We held that the record clearly supported the district court’s findings that, prior to the arrival of the canine units, neither traffic stop

exceeded an ordinary traffic stop in duration or scope. *Id.* In particular, we explained that the length of time that elapsed before the deployment of the drug dog—27 minutes in the first stop, and only a few minutes in the second stop—was not unreasonable, and “uncontroverted testimony established that the canine units arrived while the officers still were conducting routine records checks and preparing the traffic citations.” *Id.* Accordingly, we held that the use of the canines to sniff the exterior of the vehicles during lawful traffic stops did not violate the Fourth Amendment. *Id.*

Under Florida law, “[e]ither a taillamp or a separate lamp shall be so constructed and placed as to illuminate with a white light the rear registration plate and render it clearly legible from a distance of 50 feet to the rear.” Fla. Stat. § 316.221(2). This Court has affirmed the constitutionality of traffic stops for violations of inoperable-tag-light laws. *Holt*, 777 F.3d at 1244, 1256-57.

Here, Ramirez-Rivera has not shown that the district court erred in denying his motion to suppress. *See Holt*, 777 F.3d at 1255-57; *Gonzalez-Zea*, 995 F.3d at 1302. First, the court did not err in deciding that the traffic stop was based on Officer Abelin’s reasonable suspicion that the car was violating § 316.221(2). *See Gonzalez-Zea*, 995 F.3d at 1302; *Holt*, 777 F.3d at 1256. The record showed that Officer Abelin had just pulled into the parking lot of a Frito Lay factory when the car passed by on a parallel road. It was 7:38 p.m. and dark out, and Officer Abelin noticed that one of the passing car’s tag lights was out, leaving one side of its tag “unreadable” in the dark. Officer Abelin testified that he made a U-turn,

followed the car a short distance, and when he was “[a]bout 30 feet [away] with [his] light shining on the back rear end of the vehicle [he] could see the tag. Based on this, the court found that the tag was not legible from 50 feet away, as required by § 316.221(2). This finding was not clearly erroneous, because the court’s interpretation of Officer Abelin’s testimony—that he could not read the tag until he was 30 feet away—was not “unbelievable,” but was a reasonable understanding of Officer Abelin’s testimony. *See Holt*, 777 F.3d at 1256 (quotation marks omitted). Because the court did not clearly err in its factual finding that the tag was illegible from 50 feet away, it did not err in concluding that the traffic stop was based on reasonable suspicion and was, thus, lawful. *See id.*; *Gonzalez-Zea*, 995 F.3d at 1302.

Second, the district court did not err in finding that law enforcement did not unlawfully prolong the stop to conduct the K-9 drug sniff. *See Holt*, 777 F.3d at 1256-57. As stated above, the stop itself was lawful. The record showed that Officer Abelin approached the car and asked its occupants for identification and, ultimately, to step out of the vehicle. Officer Abelin then relayed their identification information to dispatch, and within five minutes—while Officer Abelin was waiting to hear back from dispatch—a second officer conducted a K-9 sniff of the car and the dog gave a positive narcotics alert on the car. Because the sniff occurred while Officer Abelin was still conducting a routine record check, it did not unlawfully prolong the stop in violation of the Fourth Amendment. *See Holt*, 777 F.3d at 1256-57. Moreover, the entire

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duration of the stop, between the time Officer Abelin pulled over the car to when he placed Ramirez-Rivera under arrest, was approximately eight minutes, which was not an unreasonable amount of time to conduct a routine record check under the totality of the circumstances. *Holt*, 777 F.3d at 1257.

AFFIRMED.

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
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April 27, 2023

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 22-11662-GG
Case Style: USA v. Ruben Ramirez-Rivera
District Court Docket No: 2:21-cr-14032-DMM-1

All counsel must file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause. Although not required, non-incarcerated pro se parties are permitted to use the ECF system by registering for an account at www.pacer.gov. Information and training materials related to electronic filing are available on the Court's website.

Enclosed is a copy of the court's decision filed today in this appeal. Judgment has this day been entered pursuant to FRAP 36. The court's mandate will issue at a later date in accordance with FRAP 41(b).

The time for filing a petition for rehearing is governed by 11th Cir. R. 40-3, and the time for filing a petition for rehearing en banc is governed by 11th Cir. R. 35-2. Except as otherwise provided by FRAP 25(a) for inmate filings, a petition for rehearing or for rehearing en banc is timely only if received in the clerk's office within the time specified in the rules. Costs are governed by FRAP 39 and 11th Cir.R. 39-1. The timing, format, and content of a motion for attorney's fees and an objection thereto is governed by 11th Cir. R. 39-2 and 39-3.

Please note that a petition for rehearing en banc must include in the Certificate of Interested Persons a complete list of all persons and entities listed on all certificates previously filed by any party in the appeal. See 11th Cir. R. 26.1-1. In addition, a copy of the opinion sought to be reheard must be included in any petition for rehearing or petition for rehearing en banc. See 11th Cir. R. 35-5(k) and 40-1 .

Counsel appointed under the Criminal Justice Act (CJA) must submit a voucher claiming compensation for time spent on the appeal no later than 60 days after either issuance of mandate or filing with the U.S. Supreme Court of a petition for writ of certiorari (whichever is later) via the eVoucher system. Please contact the CJA Team at (404) 335-6167 or cja_evoucher@ca11.uscourts.gov for questions regarding CJA vouchers or the eVoucher system.

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OPIN-1 Ntc of Issuance of Opinion

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT PIERCE DIVISION

UNITED STATES OF AMERICA

v.

RUBEN RAMIREZ-RIVERA

JUDGMENT IN A CRIMINAL CASE**§****§****§****Case Number: 2:21-CR-14032-DMM(1)****USM Number: 71699-509****§****Counsel for Defendant: Panayotta Augustin-Birch****Counsel for United States: Justin Hoover****THE DEFENDANT:**

<input checked="" type="checkbox"/>	pleaded guilty to count(s)	One and Three
<input type="checkbox"/>	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	
<input type="checkbox"/>	pleaded nolo contendere to count(s) which was accepted by the court	
<input type="checkbox"/>	was found guilty on count(s) after a plea of not guilty	

The defendant is adjudicated guilty of these offenses:

Title & Section / Nature of Offense

21:841(a)(1),(b)(1)(A)(vi) Possession with intent to distribute 400 grams or more of fentanyl
 18:924(c)(1)(A)(i) Possession of a firearm in furtherance of a drug trafficking crime

Offense Ended	Count
09/27/2020	1
09/27/2020	3

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s)
 Remaining Count(s) is are dismissed on the motion of the United States

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

April 27, 2022

Date of Imposition of Judgment

Signature of Judge

DONALD M. MIDDLEBROOKS
UNITED STATES DISTRICT JUDGE

Name and Title of Judge

April 27, 2022

Date

DEFENDANT: RUBEN RAMIREZ-RIVERA
CASE NUMBER: 2:21-CR-14032-DMM(1)

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

ONE HUNDRED EIGHTY (180) MONTHS. This term consists of 120 Months as to Count 1 and 60 Months as to Count 3 to run consecutive to Count 1.

The court makes the following recommendations to the Bureau of Prisons:

The defendant be designated to a facility in or as close to Highlands County, Florida

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

at a.m. p.m. on

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 p.m. on

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By
DEPUTY UNITED STATES MARSHAL

DEFENDANT: RUBEN RAMIREZ-RIVERA
CASE NUMBER: 2:21-CR-14032-DMM(1)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: **FIVE (5) YEARS as to Counts 1 and 3 to run concurrently.**

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

DEFENDANT: RUBEN RAMIREZ-RIVERA
 CASE NUMBER: 2:21-CR-14032-DMM(1)

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. I understand additional information regarding these conditions is available at www.flsp.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: RUBEN RAMIREZ-RIVERA
CASE NUMBER: 2:21-CR-14032-DMM(1)

SPECIAL CONDITIONS OF SUPERVISION

Permissible Search: The defendant shall submit to a search of his/her person or property conducted in a reasonable manner and at a reasonable time by the U.S. Probation Officer.

Substance Abuse Treatment: The defendant shall participate in an approved treatment program for drug and/or alcohol abuse and abide by all supplemental conditions of treatment. Participation may include inpatient/outpatient treatment. The defendant will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

Unpaid Restitution, Fines, or Special Assessments: If the defendant has any unpaid amount of restitution, fines, or special assessments, the defendant shall notify the probation officer of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay.

DEFENDANT: RUBEN RAMIREZ-RIVERA
 CASE NUMBER: 2:21-CR-14032-DMM(1)

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments page.

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment**
TOTALS	\$200.00	\$0.00	\$0.00		

The determination of restitution is deferred until An *Amended Judgment in a Criminal Case (AO245C)* will be entered after such determination.
 The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Restitution amount ordered pursuant to plea agreement \$

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on the schedule of payments page may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

the interest requirement is waived for the fine restitution
 the interest requirement for the fine restitution is modified as follows:

Restitution with Imprisonment - It is further ordered that the defendant shall pay restitution in the amount of **\$0.00**. During the period of incarceration, payment shall be made as follows: (1) if the defendant earns wages in a Federal Prison Industries (UNICOR) job, then the defendant must pay 50% of wages earned toward the financial obligations imposed by this Judgment in a Criminal Case; (2) if the defendant does not work in a UNICOR job, then the defendant must pay a minimum of \$25.00 per quarter toward the financial obligations imposed in this order. Upon release of incarceration, the defendant shall pay restitution at the rate of 10% of monthly gross earnings, until such time as the court may alter that payment schedule in the interests of justice. The U.S. Bureau of Prisons, U.S. Probation Office and U.S. Attorney's Office shall monitor the payment of restitution and report to the court any material change in the defendant's ability to pay. These payments do not preclude the government from using other assets or income of the defendant to satisfy the restitution obligations.

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, 18 U.S.C. §2259.

** Justice for Victims of Trafficking Act of 2015, 18 U.S.C. §3014.

*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: RUBEN RAMIREZ-RIVERA
CASE NUMBER: 2:21-CR-14032-DMM(1)

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A Lump sum payments of \$200.00 due immediately, balance due

It is ordered that the Defendant shall pay to the United States a special assessment of \$200.00 for Counts 1 and 3 , which shall be due immediately. Said special assessment shall be paid to the Clerk, U.S. District Court. Payment is to be addressed to:

**U.S. CLERK'S OFFICE
ATTN: FINANCIAL SECTION
400 NORTH MIAMI AVENUE, ROOM 8N09
MIAMI, FLORIDA 33128-7716**

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

A Joint and Several
See above for Defendant and Co-Defendant Names and Case Numbers (*including defendant number*), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

B The defendant shall forfeit the defendant's interest in the following property to the United States:
FORFEITURE of the defendant's right, title and interest in certain property is hereby ordered consistent with the plea agreement. The United States shall submit a proposed Order of Forfeiture within three days of this proceeding.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.