No. 22A681

In the Supreme Court of the United States

Corey Forest,
Petitioner,

v.

State of Tennessee,
Respondent.

On Petition for Writ of Certiorari
to the Tennessee Supreme Court

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether a law enforcement officer acting as a private citizen who initiates a traffic stop with no intention of ever attempting to complete the "mission" of the traffic stop has the authority to prolong the duration of the traffic stop in five discretely different ways while waiting on a drug dog to arrive?

2. Whether a law enforcement officer acting as a private citizen may permissibly conduct a "citizen's arrest" for the offense of speeding, even though the statute governing the offense of speeding requires the issuance of a traffic citation to the person in lieu of arrest, continued custody, and the taking of the arrested person before a magistrate?

3. Assuming, *arguendo*, that a law enforcement officer acting as a private citizen may permissibly conduct a citizen's arrest for an offense,

such as speeding, that requires the issuance of a traffic citation in lieu of arrest, does that private citizen also have the authority to conduct a purely pretextual stop, particularly when the arresting person never intends to even attempt a statutorily mandated duty to write a traffic citation in lieu of arrest, continued custody, and the taking of the arrested person to a magistrate?

4. Assuming, *arguendo*, that a private citizen has the authority to conduct a pretextual stop, should that pretextual stop be subject to the "balancing" analysis set forth in *Whren v. United States* involving a search or seizure conducted in an extraordinary manner?

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Corey Forest ("Mr. Forest"), petitions this Court for a writ of certiorari to review the judgment of the Tennessee Supreme Court dismissing Mr. Forest's appeal.

OPINIONS BELOW

On August 7, 2015, the Circuit Court for Maury County, Tennessee, entered an Order denying Mr. Forest's motion to suppress. Following a bench trial, Mr. Forest was convicted of possessing greater than one-half of a gram of cocaine with intent to sell and possessing a firearm during the commission of a dangerous felony, and Mr. Forest timely appealed to the Tennessee Court of Criminal Appeals. On May 18, 2021, the Tennessee Court of Criminal Appeals filed its opinion affirming the denial of Mr. Forest's suppression motion and affirming Mr. Forest's convictions. *See* App. 3; *see also State v. Forest*, No.

M2020-00329-CCA-R3-CD, 2021 WL 1979084 (Tenn. Crim. App. May 18, 2021). On October 15, 2021, the Tennessee Supreme Court granted Mr. Forest's Application for Permission to Appeal. *See* App. 2. Following briefing and oral argument, the Tennessee Supreme Court entered an unreported Order on October 24, 2022, dismissing Mr. Forest's appeal as "improvidently granted." *See* App. 1; *see also State v. Forest*, M2020-00329-SC-R11-CD.

JURISDICTION

As stated, *supra*, the Tennessee Supreme Court entered an Order dismissing Mr. Forest's appeal on October 24, 2022. *See* App. 1. On January 23, 2023, Mr. Forest mailed via the United States Postal Service by first-class mail, postage prepaid, and bearing a postmark dated January 23, 2023, an Application for an Extension of Time to file the instant Petition. The Hon. Brett M. Kavanaugh,

Associate Justice of the Supreme Court of the United States and Circuit Justice for the State of Tennessee, granted Mr. Forest's Application and extended the time to file the instant Petition to February 22, 2023. Mr. Forest now timely files this Petition and invokes this Court's jurisdiction pursuant to 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISIONS

United States Constitution, Amendment IV:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Tennessee Constitution, Article I, Section 7:

> That the people shall be secure in their persons, houses, papers and possessions, from unreasonable searches and seizures; and that general warrants, whereby an officer may be commanded to search suspected places, without evidence of the fact committed, or to

> seize any person or persons not named, whose offences are not particularly described and supported by evidence, are dangerous to liberty and ought not be granted.

STATUTORY PROVISIONS

Tennessee Code Annotated section 40-7-109(a)(1)-(3):

(a) A private person may arrest another:

(1) For a public offense committed in the arresting person's presence;

(2) When the person arrested has committed a felony, although not in the arresting person's presence; or

(3) When a felony has been committed, and the arresting person has reasonable cause to believe that the person arrested committed the felony.

Tennessee Code Annotated section 40-7-118(b)(1):

> A peace officer who has arrested a person for the commission of a misdemeanor committed in the peace officer's presence, or who has taken custody of a person arrested by a private person for the commission of a misdemeanor, shall issue a citation to the arrested person to appear in court in lieu of the continued custody and the taking of the arrested person before a magistrate….

Tennessee Code Annotated section 55-10-207(b)(1):

> Whenever a person is arrested for a violation of any provision of chapter 8, 9, 10 or 50 of this title or § 55-12-139, or chapter 52, part 2 of this title, punishable as a misdemeanor, and the person is not required to be taken before a magistrate or judge as provided in § 55-10-203, the arresting officer shall issue a traffic citation to the person in lieu of arrest, continued custody and the taking of the arrested person before a magistrate, except as provided in subsection (h).

STATEMENT OF THE CASE

As of April 28, 2014, the Columbia Police Department in Columbia, Tennessee, had been surveilling an apartment complex for two (2) days. *See* App. 3 at 34-35. When Mr. Forest was observed at the apartment complex on both days, foot and vehicle traffic at the apartment complex would increase. *See id.* No drug transactions were observed, and no drugs were found in any apartment. *See id.* at 37. Officer Neylan Barber ("Officer Barber") was

instructed to follow Mr. Forest's vehicle from the apartment complex to try to find a reason to stop Mr. Forest's vehicle. *See id.* at 35, 37. State Trooper Michael Kilpatrick ("Trooper Kilpatrick") was already *en route* with his drug dog—to be used once Officer Barber "found a stop" on Mr. Forest. *See id.* at 37.

Officer Barber was a member of the Columbia Police Department, driving a marked patrol vehicle that night. As Officer Barber followed Mr. Forest, both vehicles travelled fifteen to twenty miles outside the city limits of Columbia. *See id.* at 39. As both vehicles approached the county line between Maury and Lawrence Counties—the stop occurred less than a mile from and as close as 100 yards to the county line—Officer Barber, at that point a private citizen acting well outside of his law enforcement jurisdiction, stopped Mr. Forest for speeding. *See id.* at 37, 39. Officer Barber had no radar, but he "paced"

Mr. Forest's vehicle at sixty (60) miles per hour as he entered a fifty-five (55) m.p.h. zone, and then as Mr. Forest quickly entered a fifty (50) m.p.h. zone. *See id.* at 35. Officer Barber's pacing had a margin of error of four (4) to five (5) miles per hour. The pacing, stop, and ensuing roadside encounter are caught on Officer Barber's dashcam video.

When Officer Barber stopped Mr. Forest, Officer Barber had no intention of writing Mr. Forest a traffic citation. *See id.* at 37. Mr. Forest's license had already been run by the police department prior to the traffic stop, and Mr. Forest's license came back as "clear." *Id.* Mr. Forest produced his driver's license, proof of insurance, and handgun carry permit. *See id.* at 41. Next, Officer Barber obtained Mr. Forest's registration. When Mr. Forest produced his registration, Officer Barber observed numerous

$20.00 bills in Mr. Forest's wallet. After the arrest, it turned out to be $382.00. *See id.*

Approximately six minutes after the traffic stop was initiated, *see id.* at 36, Trooper Kilpatrick arrived at the scene of the traffic stop as Officer Barber returned to his patrol unit with Mr. Forest's registration in hand. Once Trooper Kilpatrick arrived, Officer Barber completely abandoned any pretext of writing a ticket. *See id.* at 37. Officer Barber began explaining to Trooper Kilpatrick what was going on. Officer Barber asked for consent to search Mr. Forest's vehicle, which Mr. Forest refused. *See id.* at 36. At that point, Trooper Kilpatrick ran his drug dog around Mr. Forest's vehicle and, according to Trooper Kilpatrick, the drug dog alerted on the driver's side door. *See id.* After the drug dog "alerted," the vehicle was searched and five (5) bags of cocaine

weighing a total of 30.92 grams, along with a firearm, were discovered. *See id.*

At the trial-court level, Mr. Forest filed a motion to suppress, arguing that the traffic stop occurred without any legal basis whatsoever, was unduly prolonged, and violated his guarantees against unreasonable searches and seizures under the United States and Tennessee Constitutions. *See id.* at 34. After the trial court denied Mr. Forest's motion to suppress, Mr. Forest eventually proceeded to a bench trial. Upon being convicted of possessing greater than one-half of a gram of cocaine with intent to sell and possession of a firearm during the commission of a dangerous felony, *see id.* at 42, Mr. Forest timely perfected his direct appeal to the Tennessee Court of Criminal Appeals.

On direct appeal, the Tennessee Court of Criminal Appeals held that Officer Barber, who at the

time of the traffic stop was "Private Citizen" Barber, had probable cause to believe that Mr. Forest committed a traffic infraction—speeding. *See id.* at 46. Ignoring that Officer Barber was acting as "Private Citizen" Barber at the time of the traffic stop, the Tennessee Court of Criminal Appeals held that "Officer Barber did not detain [Mr. Forest] any longer than necessary to conduct the stop." *See id.* at 49. Although "Private Citizen" Barber kept Mr. Forest detained for approximately six minutes prior to Trooper Kilpatrick's arrival with no intention of ever issuing Mr. Forest a speeding ticket or otherwise abiding by his private-citizen-arrest obligations mandated by statute, the Tennessee Court of Criminal Appeals quoted an unreported Tennessee opinion from 2005 that "'no hard-and-fast time limit exists beyond which a detention is automatically considered too long and, thereby unreasonable.'" *See*

id. at 47-48 (quoting *State v. Bruce*, No. E2004-02325-CCA-R3-CD, 2005 WL 2007215, at *7 (Tenn. Crim. App. Aug. 22, 2005)). The Tennessee Court of Criminal Appeals' opinion mentioned this Court's opinion in *Rodriguez v. United States* a grand total of one time—in passing—by citing to the trial court citing to *Rodriguez* in its order denying Mr. Forest's suppression motion. *See* App. 3 at 40 (citing *Rodriguez v. United States*, 575 U.S. 348, 354 (2015)).

Mr. Forest timely appealed to the Tennessee Supreme Court, which granted Mr. Forest's Application for Permission to Appeal. Without any explanation, the Tennessee Supreme Court ultimately dismissed Mr. Forest's appeal as "improvidently granted," even though the case had already been fully briefed and orally argued.

REASONS FOR GRANTING THE WRIT

1. **In direct violation of this Court's holding in *Rodriguez*, the trial and appellate courts of Tennessee have authorized a law enforcement officer acting as a private citizen to initiate a traffic stop with no intention of ever attempting to complete the "mission" of the traffic stop and to prolong the duration of the traffic stop in five discretely identifiable ways while waiting for a drug dog to arrive.**

The "mission" of a traffic stop is to address the traffic violation that warranted the stop and attend to related safety concerns. *See Illinois v. Caballes*, 543 U.S. 405, 407 (2005). Authority for the seizure ends when tasks tied to the traffic infraction are—or reasonably should have been—completed. *See Rodriguez*, 575 U.S. at 354. Accordingly, a seizure justified only by an observed traffic violation becomes unlawful if it is prolonged beyond the time reasonably required to complete the mission of issuing a ticket for the violation. *See id.* at 350-51. A traffic stop

prolonged beyond that point is unlawful. *See id.* at 357.

The foregoing principles mean nothing—not to Mr. Forest, not to Tennesseans, and not to anyone else in the entirety of the United States—if they do not apply to the facts of the instant case. Officer Barber, who became "Private Citizen" Barber when he travelled more than one mile outside the city limits of Columbia, Tennessee while following Mr. Forest fifteen to twenty miles outside the city limits, *see* Tenn. Code Ann. § 6-54-301, never intended to complete the "mission" of the traffic stop relative to a speeding infraction. Officer Barber admitted during the suppression hearing that he never had any intention of writing Mr. Forest a ticket, let alone conduct a citizen's arrest, for speeding. Undeterred, Officer Barber illegally activated his emergency lights as a private citizen and conducted a traffic stop of Mr.

Forest's vehicle, anyway. *See id.* § 55-9-414(a)(1) (providing that only full-time, salaried, uniformed law enforcement officers of the state, county, or city and municipal government of the State, and commission members of the Tennessee Bureau of Investigation when their official duties so require, may exhibit blue flashing emergency lights).

Based on Officer Barber's own testimony, the "mission" of the traffic stop was never a "mission" Officer Barber ever had any intention whatsoever of *actually completing*. Instead, while acting in the capacity of a private citizen, Officer Barber prolonged the duration of the traffic stop while waiting on Trooper Kilpatrick to arrive. Initially, Officer Barber approached Mr. Forest's vehicle and asked for Mr. Forest's license, registration, and proof of insurance—three requests a private citizen would not make. *Cf. Delaware v. Prouse*, 440 U.S. 648, 658-660 (1979)

(holding that an officer's mission, beyond addressing the reason for the traffic stop, includes checking the driver's license, checking for outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance). When Officer Barber returned to his marked patrol vehicle with emergency blue lights illegally flashing, Officer Barber was advised via radio that the Tennessee Highway Patrol, i.e., Trooper Kilpatrick, was on his way to the scene of the traffic stop. *See* App. 3 at 37.

As Officer Barber began to run Mr. Forest's driver's license, he was advised that Mr. Forest's driver's license was "clear." *Id.* Since the officers did not know the identity of the driver when they began following Mr. Forest's vehicle, they *must* have run Mr. Forest's license plate as well as his registration in order to ascertain that the vehicle belonged to Mr. Forest during the fifteen to twenty miles that Officer

Barber followed Mr. Forest. Otherwise, Officer Barber's supervisor would have not been able to inform Officer Barber via radio that Mr. Forest's *license* had already been "cleared" as "valid." Officer Barber explained that this was their usual procedure.

Given that Mr. Forest's license had already been "cleared" before the traffic stop had even been initiated, Officer Barber should have diligently worked to finalize the mission of the traffic stop by at least making some effort to comply with the citizen's arrest statute. Instead, Officer Barber returned to his patrol vehicle and commented about the amount of money in Mr. Forest's possession. *See id.* at 41. When Officer Barber arrived at his patrol unit, Trooper Kilpatrick had arrived. *See id.* Officer Barber began updating Trooper Kilpatrick about what had transpired up that point, confessing at the suppression hearing that he was completely

"abandoning" any pretext of writing a ticket at that point. *See id.* at 37.

Even assuming, *arguendo*, that the "mission" of the traffic stop had not been completed up to this point, the "mission" was most certainly completed when Officer Barber came to the realization that he was completely "abandoning" any pretext of writing a ticket when Trooper Kilpatrick arrived. The "mission" of the traffic stop—to address the speeding infraction—had unequivocally been completed at that point. Mr. Forest should have been allowed to drive away. He was not permitted to do so.

Instead, the dashcam video reflects Officer Barber announcing that he was "going to go ahead and pull [Mr. Forest] out and I'll go through my spiel and ask him for consent." If there were any possible doubt that the "mission" of the traffic stop had been completed by that point, Officer Barber removed that

doubt by telling Mr. Forest, "I'm not going to write you a traffic citation or anything like that." At that exact moment in time, the "mission" of the traffic stop had unquestionably been completed and Mr. Forest should have been permitted to get back in his vehicle and go on his way.

Rather than permit Mr. Forest to get back into his vehicle and go on his way, Officer Barber prolonged the traffic stop—even further—by asking Mr. Forest a series of questions leading up to requesting for consent from Mr. Forest to search the vehicle. *See generally id.* at 36. When Mr. Forest declined to give consent for Officer Barber to search the vehicle, Mr. Forest was escorted away from the vehicle so that Trooper Kilpatrick could run his drug dog around the vehicle. The drug dog first appears in the dashcam video approximately ten minutes after

the initial traffic stop—and the dog allegedly alerts on the driver's door.

Officer Barber, who, again, was acting in his capacity at the time as "Private Citizen" Barber while acting under color of state law, unconstitutionally prolonged the duration of the traffic stop in multiple, discretely identifiable ways:

1. Officer Barber a/k/a Private Citizen Barber never intended to write Mr. Forest a ticket, much less conduct a citizen's arrest, from even before the traffic stop was initiated; therefore, the "mission" of the traffic stop was dead on arrival as soon as the flashing blue emergency lights were activated.
2. When Officer Barber was informed that Mr. Forest's license had already been run and that Mr. Forest's license was "clear."

3. When Trooper Kilpatrick arrived but before Officer Barber was finished prolonging the traffic stop, Officer Barber admitted that he was completely "abandoning" any pretext of writing a ticket.

4. Officer Barber informed Mr. Forest that he was not going to be issuing a traffic citation, but then proceeded to get Mr. Forest out of the vehicle anyway.

5. When Officer Barber pulled Mr. Forest out of the vehicle, Officer Barber began asking a series of questions leading up to Officer Barber asking for consent to search the vehicle.

This Court in *Rodriguez* was abundantly clear that any additional action that prolongs—i.e., adds time to—the "mission" of the traffic stop or that is not related to the "ordinary inquiries incident to [the traffic] stop" is unconstitutional. *See Rodriguez*, 575

U.S. at 354-55. In the instant case, the "mission" of the traffic stop was completed at any *one* of the *five* above-referenced, discretely identifiable points in time during the traffic stop. Nevertheless, the Tennessee Court of Criminal Appeals held that "[t]he record supports the trial court's finding" that "the period of detention was reasonable" *see* App. __ at *8, while mentioning *Rodriguez* only once in passing.

This case calls upon this Court to exercise its supervisory power. The foregoing principles are well-settled and *should* be considered binding precedent on inferior state courts, including those in Tennessee. As of the drafting of this Petition, this Court's holding in *Rodriguez* apparently does not apply to Mr. Forest. This Court should exercise its supervisory power to ensure that officers and private citizens alike throughout the United States are not permitted to blatantly, unlawfully, and unconstitutionally detain

fellow citizens in violation of the United States Constitution and binding precedent from this Court.

2. This Court should exercise its supervisory authority and hold that a law enforcement officer acting as a private citizen does not have the authority to conduct a purely pretextual arrest of another private citizen, particularly when the arresting person never intends to attempt, much less effectuate, a statutorily mandated duty to take the arrested person without unnecessary delay to a magistrate or deliver the arrested person to an officer.

Law enforcement officers are generally permitted to conduct pretextual stops. *See Whren v. United States*, 517 U.S. 806, 813 (1996). Subject to certain searches or seizures conducted in an extraordinary manner, the constitutional reasonableness of a traffic stop does not generally depend on the actual motivation of the individual *officer* involved. *See id.* However, the instant case calls upon this Court to determine whether a law enforcement officer undisputedly acting in the

capacity of a private citizen has the authority to conduct a purely pretextual traffic stop and/or pretextual "citizen's arrest" of another citizen.

Different states have different rules for determining if and/or when private citizens have the authority to conduct "citizen's arrests." *See, e.g.*, Tenn. Code Ann. § 40-7-109(a)(1)-(3) (outlining Tennessee's rules); Cal. Penal Code 837 (outlining California's rules); Ga. Code Ann. § 17-4-60 (citizen's arrest statute repealed pursuant by Ga. Laws, 2021, Act 261, § 2, eff. May 10, 2021). Although private citizens may have the authority to arrest other private persons pursuant to certain state statutes, such as in Tennessee pursuant to Tenn. Code Ann. § 40-7-109(a)(1)-(3), private citizens should generally not be in the business of conducting police work, particularly when, as here, the private citizen has no intention of actually complying with the state-specific

statute governing the private citizen's arrest and detention of the fellow private citizen.

This Court should grant this Petition and hold that private citizens, including those acting under the color of law, do not have the authority to conduct pretextual traffic stops and/or arrests of fellow private citizens, particularly when the private citizen conducting the arrest never intends to attempt, much less effectuate, a statutorily mandated duty to take the arrested person without unnecessary delay to a magistrate or deliver the arrested person to an officer. Resolving this novel issue will secure uniformity of decision, secure settlement of an important question of law, secure settlement of an important question of public interest, and presents a ripe opportunity for this Court to exercise its supervisory authority.

3. **Assuming, *arguendo*, that a law enforcement officer acting as a private citizen has the authority to conduct a purely pretextual traffic stop with no intention of ever effectuating an arrest that formed the basis of the traffic stop, this Court should exercise its supervisory authority and hold that such a pretextual stop conducted by a private person should be subject to the "balancing" analysis set forth in *Whren v. United States* involving a search or seizure conducted in an extraordinary manner.**

In *Whren*, this Court noted that there are certain searches or seizures supported by probable cause that are conducted in such an "extraordinary manner" so as to require a "balancing" analysis. *See Whren*, 517 U.S. at 818. This "balancing" analysis weighs the governmental interest against the individual interest. According to the holding in *Whren*, this "balancing" analysis becomes necessary when the search or seizure is unusually harmful to an individual's privacy or even physical interests, such as seizure by means of deadly force, *see Tennessee v. Garner*, 471 U.S. 1 (1985); unannounced entry into a

home, *see Wilson v. Arkansas*, 514 U.S. 927 (1995); entry into a home without a warrant, *see Welsh v. Wisconsin*, 466 U.S. 740 (1984), or physical penetration of the body, *see Winston v. Lee*, 470 U.S. 753 (1985).

This Court should add the instant case to the list of cases wherein the "balancing" analysis becomes necessary. Acting as a private citizen, Officer Barber intentionally violated Tenn. Code Ann. § 40-7-113(a) by initiating a traffic stop for the offense of speeding, which requires a citation in lieu of arrest. *See* Tenn. Code Ann. §§ 40-7-113(a), 40-7-118(b)(1), 55-10-207(b)(1). Moreover, acting as a private person, Officer Barber unconstitutionally prolonged the duration of the traffic stop in at least five discretely identifiable ways in direct violation of *Rodriguez* and its progeny.

In conducting a "balancing" analysis, the following questions should be considered—

1. Does the governmental interest in having a private person arrest another private person for speeding, a minor traffic infraction, outweigh Mr. Forest's constitutional right to be free from an unconstitutionally prolonged seizure?

2. Does the governmental interest in having a private person arrest another private person for speeding, a minor traffic infraction for which one cannot even be arrested, outweigh Mr. Forest's statutory right to be brought without delay to a magistrate or officer for a citation to be issued in lieu of continued custody?

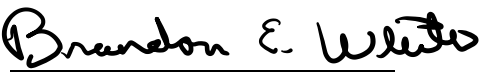
These important questions of law and public interest are ripe for this Court to decide. This Court

should exercise its supervisory authority, grant this Petition, answer these important questions, and secure the uniformity of decisions for like, future cases.

CONCLUSION

For the reasons stated, this Court grant certiorari.

Respectfully submitted,



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APPENDIX

APPENDIX 1

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

STATE OF TENNESSEE
v.
COREY FOREST

No. M2020-00329-SC-R11-CD

Circuit Court for Maury County, Docket No. 24034

ORDER

By order filed October 15, 2021, the Court granted the application for permission to appeal of Defendant Corey Forest. The parties subsequently filed their respective briefs. Having carefully considered the briefs of the parties and the entire record, the Court concludes that review in this case was improvidently granted. Accordingly, this appeal is hereby DISMISSED.

In addition, the opinion of the Court of Criminal Appeals is designated "Not for Citation" in accordance with Supreme Court Rule 4, § E.

/s/ PER CURIAM

Filed: October 24, 2022

APPENDIX 2

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

STATE OF TENNESSEE
v.
COREY FOREST

No. M2020-00329-SC-R11-CD

Circuit Court for Maury County, Docket No. 24034

ORDER

Upon consideration of the application for permission to appeal of Corey Donnail Forest and the record before us, the application is granted.

In the briefs and at oral argument, the Court is particularly interested in the parties addressing the permissible scope of activity for a law enforcement officer acting as private citizen under Tenn. Code Ann. § 40-7-109.

The Clerk is directed to place this matter on the docket for oral argument upon the completion of briefing.

/s/ PER CURIAM

Filed: October 15, 2021

APPENDIX 3

IN THE COURT OF CRIMIINAL APPEALS OF TENNESSEE, AT NASHVILLE

STATE OF TENNESSEE
v.
COREY FOREST

No. M2020-00329-CCA-R3-CD

Circuit Court for Maury County, Docket No. 24034

Following a bench trial, the trial court judge convicted the Defendant, Corey Forest, of possession of over .5 grams of cocaine with intent to sell and possession of a firearm during the commission of a dangerous felony and imposed an effective sentence of eleven years in the Tennessee Department of Correction. On appeal, the Defendant asserts that the trial court erred when it denied his motion to suppress evidence found during a search of his vehicle. After review, we affirm the trial court's judgments.

Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Circuit Court Affirmed

ROBERT W. WEDEMEYER, J., delivered the opinion of the court, in which ROBERT L. HOLLOWAY, JR., and TIMOTHY L. EASTER, JJ., joined.

John S. Colley, III, Columbia, Tennessee, for the appellant, Corey Forest.

Herbert H. Slatery III, Attorney General and Reporter; T. Austin Watkins, Assistant Attorney General; Brent A. Cooper, District Attorney General; and Adam Davis, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

I. Facts

This case arises from a stop of the Defendant's vehicle on April 8, 2014, and the subsequent search of the Defendant's vehicle during which law enforcement officers found cocaine, marijuana, and a handgun. Consequently, a Maury County grand jury indicted the Defendant in February 2015 for possession of twenty-six grams or more of cocaine with intent to sell in a drug-free zone, simple possession of marijuana, and unlawful possession of a firearm during the commission of a dangerous felony. The Defendant filed a motion to suppress that is the subject of this appeal; however, this is the third time this case has been before this court, so we begin with a brief procedural history before summarizing the evidence relevant to the Defendant's appeal.

A. Procedural History

On April 29, 2015, the Defendant filed an unsuccessful motion to suppress that is the subject of this appeal and thereafter entered a guilty plea, reserving a certified question of law regarding the suppression issue. On appeal, this court dismissed the claim because the certified question of law was overbroad and lacked specificity. *State v. Corey*

Forest, No. M2016-00463-CCA-R3-CD, 2017 WL 416 290, at *5 (Tenn. Crim. App., at Nashville, Jan. 31, 2017), *no perm. app. filed*.

The Defendant then filed a successful petition for post-conviction relief, alleging that his attorney provided ineffective assistance by improperly reserving the certified question of law. The trial court found that the Defendant had received ineffective assistance of counsel and vacated the judgments from the guilty plea. The Defendant again entered a guilty plea, reserving a corrected certified question of law on his suppression issue. On appeal, this court vacated the trial court's order for failure to follow the postconviction procedures and dismissed the appeal for lack of jurisdiction. *State v. Corey Forest*, No. M2017-01126-CCA-R3-CD, 2018 WL 4057813, at *4 (Tenn. Crim. App., Nashville, Aug. 27, 2018), *no perm. app. filed*.

On remand, the trial court appointed new counsel who filed an amended petition for post-conviction relief alleging that trial counsel was ineffective. After an evidentiary hearing, the trial court granted post-conviction relief. This time, the Defendant elected a bench trial where he was convicted of possession of over .5 grams of cocaine with intent to sell, and possession of a firearm during the commission of a dangerous felony.[1] The

[1] Before the trial began, the State announced that it would not be pursing the drug-free zone enhancement in Count 1 and entered a "noll[e]" as to the simple possession of marijuana in Count 2. After the evidence had been presented, the State moved to amend Count 1 of the indictment from

Defendant timely filed this appeal challenging the trial court's denial of his April 29, 2015 suppression motion.

B. Motion to Suppress

The Defendant's April 29, 2015 motion to suppress, contended, among other things, that the City of Columbia police officer lacked jurisdiction to act outside the City of Columbia, that police officers illegally stopped his vehicle, and that any evidence derived from the subsequent search of his vehicle should be suppressed. As relevant to this appeal, we summarize the evidence from the 2015 suppression hearing and the subsequent 2020 bench trial.

1. August 7, 2015 Suppression Hearing

Columbia Police Department Officer Neylan Barber testified that he stopped the Defendant's vehicle for speeding on April 18, 2014. Officer Barber followed the Defendant's vehicle as part of a drug investigation. The Narcotics Task Force had received information that drugs were being sold at an apartment complex located near Columbia State Community College, and law enforcement had observed suspicious patterns of activity at the identified residence. During the two-day surveillance of the apartment, police officers observed the Defendant at the residence multiple times and, each time he left the residence, there was a steady increase in the number of people to and from the residence.

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possession of 26 grams or more (Class A felony) to possession of over .5 grams or more (Class B felony).

The narcotics task force confirmed that narcotics were being sold from the particular residence the Defendant frequented over those two days, based upon stops of individuals leaving the residence.

Based upon these observations, law enforcement decided to stop the Defendant's vehicle. At the direction of Narcotics Task Force Lieutenant James Shannon, Officer Barber followed the Defendant's vehicle from the apartment complex. Officer Barber believed that he had reasonable suspicion to stop the Defendant at this point based upon the Defendant's suspected involvement in the drug operation; however, he waited for a traffic violation before stopping the Defendant. Officer Barber paced the Defendant, who was driving sixty miles per hour in a fifty-five mile per hour zone. The speed limit dropped to fifty miles per hour and the Defendant maintained his speed so Officer Barber initiated a traffic stop based upon speeding. A video recording of the stop indicated that the stop was initiated at 10:17 p.m. The Defendant provided Officer Barber with a driver's license and proof of insurance but was unable to provide his registration at that time.

Officer Barber testified that the Defendant also provided him with a handgun carry permit. When the Defendant retrieved these items from his wallet, Officer Barber observed what appeared to be a "couple hundred dollars" in twenty-dollar bills in the Defendant's wallet. Officer Barber described how, as shown in the video, he left the Defendant's vehicle and returned to his police vehicle to run the Defendant's license through the NCIC database and through the

Tennessee State Portal system to check for outstanding warrants. Officer Barber then returned to the Defendant's vehicle at 10:22 p.m. to get the Defendant's registration from him. As Officer Barber returned to his vehicle Trooper Kilpatrick arrived with a K-9 officer (narcotic drug dog). The time on the video recording indicated 10:23 p.m. Officer Barber stated that when another officer at the scene asked the Defendant where he was coming from, he stated that he had been at Buffalo Wild Wings prior to the traffic stop. Officer Barber knew this to be untrue because he had followed the Defendant from a "known drug house" at the apartment complex.

When Officer Barber returned the Defendant's paperwork to him, Officer Barber asked for consent to search the Defendant's vehicle. He suspected that the Defendant was in possession of illegal narcotics based on the following facts: the residence from which the Defendant had come, the amount of cash in lower denominations in his wallet, his frequenting the suspected residence over the course of the two-day surveillance period, the subsequent increase in traffic to and from the residence following the Defendant's presence, and the Defendant lying about where he had come from during the traffic stop. The Defendant refused to consent to a search, and Officer Barber informed him that the K9 officer was going to perform a search around his vehicle to check for illegal narcotics at 10:25 p.m. The K-9 officer approached the Defendant's vehicle at 10:25 p.m. and thereafter indicated the presence of drugs in the Defendant's vehicle. A subsequent search revealed five smaller bags of cocaine inside a larger bag, totaling 30.92 grams of cocaine, found inside the sunroof enclosure.

On cross-examination, Officer Barber agreed that, although he observed increased foot traffic to and from the apartment while the Defendant's vehicle was present, he did not observe any drug transactions during the two-day surveillance of the apartment. Lieutenant Shannon instructed Officer Barber, who drove a marked police car, to follow the Defendant from the apartment complex and "find a traffic stop" on him. Officer Barber testified that he left the Columbia city limit in Maury County at some point while he was following the Defendant. Officer Barber testified that he was less than a mile from crossing into Lawrence County when he activated his emergency lights.

Officer Barber testified that he measured the Defendant's speed by "pacing" his vehicle, gauging the Defendant's vehicle's speed against his own. Officer Barber stated that he stopped the Defendant's vehicle with no intention of writing him a speeding ticket, and that it was a "pre-textual stop" based on Officer Barber's belief that the Defendant's vehicle contained illegal narcotics. When he stopped the Defendant's vehicle, Officer Barber knew that the K-9 officer was en route to the scene. Officer Barber agreed that, before he stopped the Defendant, he received a radio transmission informing him that the Defendant's driver's license was "clear," but no mention was made about the Defendant's registration or whether he had any outstanding warrants.

Officer Barber agreed that when the K-9 officer arrived at the scene, he "abandoned" the pretext of writing the Defendant a speeding ticket and furthered the investigation into the narcotics instead.

Officer Barber clarified that confirmation of drugs being sold from the identified residence in the apartment complex came from statements given to police by people who were stopped after leaving the apartment and who were also in possession of drugs.

On redirect-examination, Officer Barber stated that he was "confident" that the Defendant was traveling sixty miles per hour in a fifty mile per hour zone when Officer Barber initiated the traffic stop. Trooper Michael Kilpatrick testified that he worked for the Tennessee Highway Patrol and that his K-9 performed a "drug sniff" on the Defendant's vehicle.

Trooper Kilpatrick testified that he received the call to bring the K-9 to the traffic stop before the Defendant's vehicle was actually stopped. He was on the scene for less than a minute before the K-9 drug sniff was performed.

On cross-examination, Trooper Kilpatrick stated that he was not sure how long it took him to arrive at the scene after he received the call to assist. He denied that other officers were "waiting around" for him; he stated Officer Barber and the Defendant were "conducting business" when he arrived. On redirect-examination, Trooper Kilpatrick stated that he received the call to assist in a traffic stop of the Defendant's vehicle "in case" a stop was made. He denied that there was any "definiteness" to the call.

The trial court questioned Officer Barber further about the traffic stop. Officer Barber stated that he had the paperwork available to write the Defendant a speeding ticket but that he gave him a

warning to slow down in order to be "lenient" on him. The trial court denied the Defendant's motion making the following findings:

> The Court does find this is the most extreme example of a pre-textual stop that this Judge has ever seen where an officer in a marked car along with one or two additional city officers follows the suspect 15 or 20 miles beyond the municipal limits of the City of Columbia and finally stops the car within a quarter of a mile of leaving the county. And I've had a case where an off-duty officer stopped a car north of Pulaski when that officer was maybe on his way home. But it was a car weaving all over the road, a DUI stop, and one that did result in an arrest.
>
> . . . .
>
> The Court noted in the video that the vehicle was stopped at about [10:17 p.m.]. That the dog arrives at the driver's side of the vehicle at [10:26 p.m.]. . . . But you can actually see [Trooper Kilpatrick] and the dog within nine minutes or so after the stop. There is less expectation of privacy in a vehicle situation. And as the State argues, the Court's not impressed with the separate indicia of suspicion relied upon by Officer Barber, but may be taken together along with what he knew about

> the Columbia [apartment complex] residence and other circumstances. The nine minute period of detention [of the Defendant] was not unreasonable.
>
> Again, it's a borderline case, because the Court is not impressed with the [drug] dog's conduct in indicating any sort of certainty of [drug] scent. . . . The Court finds that Tennessee cases would permit it and that [*Rodriguez v. U.S.*, 135 S. Ct. 1609 (2015)] does not seem to prohibit such officer conduct. Therefore, the Court finds the period of detention was reasonable and not constitutionally defective under both the State and Federal Constitutions. But like I say, it's the most extreme pre-textual stop I've ever seen.

2. February 24, 2020 Bench Trial

Columbia Police Department Officer[2] Jeff Seagroves testified about his involvement in this case. After receiving information about narcotics being sold out of a specific apartment in Jackson Manor apartment complex, the Narcotics Unit conducted surveillance. During the surveillance, law enforcement observed the Defendant's vehicle, a Cadillac Escalade, arrive at the apartment. After the Defendant left, "traffic" increased to the apartment

[2] Officer Seagroves worked as a Narcotics Investigator at the time of the traffic stop but had been since reassigned as a Task Force Officer for the Drug Enforcement Administration

and people who were stopped by law enforcement leaving the apartment "had purchased illegal narcotics." Law enforcement witnessed the Defendant's arrival and departure several times with the same resulting activity. Based upon this activity, investigators believed the Defendant was supplying the apartment with narcotics.

Officer Barber also testified at the Defendant's trial. His testimony was largely consistent with his testimony from the suppression hearing. He clarified that in the area where the Defendant was driving and ultimately arrested, there was a posted sixty-five mile per hour zone that changed to a fifty-five mile per hour zone and then to a fifty mile per hour zone. The Defendant drove sixty miles per hour in the fifty-five mile per hour zone and continued to do so in the fifty mile per hour zone. Officer Barber additionally testified that when he approached the Defendant's vehicle, the Defendant, who was alone, appeared nervous and had "labored breathing." Officer Barber requested the Defendant's license, registration, and insurance; however, the Defendant could only produce his license and insurance. As the Defendant opened his wallet to get his license, Officer Barber noted numerous twenty-dollar bills, later determined to be $382 in US currency, in the Defendant's wallet, which further raised suspicion. While the Defendant continued to search for his registration, Officer Barber returned to his police car to "run [the Defendant's] information." When he returned to the Defendant's vehicle, the Defendant produced his registration. As Officer Barber walked back to his car to check the registration, Trooper Kilpatrick arrived with the K-9 officer. Also, Officer Barber learned from

another officer that the Defendant had told him that "he had just come from Buffalo Wild Wings." Officer Barber knew this information to be untrue because he had followed the Defendant from the Jackson Manor Apartments. Officer Barber checked the Defendant's vehicle registration and then returned to the Defendant's vehicle and asked for consent to search. The Defendant declined to give consent, and the K-9 officer conducted a "drug sniff" search.

Following the bench trial, the trial court found the Defendant guilty of possession of over .5 grams of cocaine with intent to sell and possession of a firearm during the commission of a dangerous felony. The trial court imposed an effective sentence of eleven years in the Tennessee Department of Correction. It is from these judgments that the Defendant appeals.

II. Analysis

On appeal, the Defendant asserts that the trial court erred when it denied his motion to suppress. Specifically, he argues that there was not probable cause for the traffic stop and that the traffic stop was unreasonably prolonged due to the arrival of the K-9 officer. The State responds that the officer initiated the traffic stop based upon the Defendant exceeding the posted speed limit, providing probable cause for the stop and that the duration of the stop was reasonable. We agree with the State.

Our standard of review for a trial court's findings of fact and conclusions of law on a motion to suppress evidence is set forth in *State v. Odom*, 928 S.W.2d 18 (Tenn. 1996). Under this standard, "a trial court's findings of fact in a suppression hearing will be upheld unless the evidence preponderates otherwise." Id. at 23. As is customary, "the

prevailing party in the trial court is afforded the 'strongest legitimate view of the evidence and all reasonable and legitimate inferences that may be drawn from that evidence.'" *State v. Carter*, 16 S.W.3d 762, 765 (Tenn. 2000) (quoting *State v. Keith*, 978 S.W.2d 861, 864 (Tenn. 1998)). Nevertheless, this Court reviews de novo the trial court's application of the law to the facts, without according any presumption of correctness to those conclusions. *See State v. Walton*, 41 S.W.3d 75, 81 (Tenn. 2001); *State v. Crutcher*, 989 S.W.2d 295, 299 (Tenn. 1999). The trial court, as the trier of fact, is able to assess the credibility of the witnesses, determine the weight and value to be afforded the evidence, and resolve any conflicts in the evidence. *Odom*, 928 S.W.2d at 23. In reviewing a trial court's ruling on a motion to suppress, an appellate court may consider the evidence presented both at the suppression hearing and at the subsequent trial. *State v. Henning*, 975 S.W.2d 290, 299 (Tenn. 1998).

The Fourth Amendment to the United States Constitution provides that "[t]he right of the people to be secure in their persons . . . against unreasonable searches and seizures, shall not be violated, and no [w]arrants shall issue, but upon probable cause." U.S. Const. amend. IV. "The purpose of the prohibition against unreasonable searches and seizures under the Fourth Amendment is to 'safeguard the privacy and security of individuals against arbitrary invasions of government officials.'" *State v. Yeargan*, 958 S.W.2d 626, 629 (Tenn. 1997) (quoting *Camara v. Municipal Court*, 387 U.S. 523, 528 (1967)).

Likewise, Article I, Section 7 of the Tennessee Constitution provides that "the people shall be secure in their persons . . . from unreasonable searches and seizures." Tenn. Const. art. I, § 7. This Court has stated that the Tennessee Constitution's search and seizure provision "is identical in intent and purpose with the Fourth Amendment." *Sneed v.*

State, 423 S.W.2d 857, 860 (Tenn. 1968); *see also, e.g.*, *State v. Scarborough*, 201 S.W.3d 607, 622 (Tenn. 2006). Accordingly, "under both the federal and state constitutions, a warrantless search or seizure is presumed unreasonable, and evidence discovered as a result thereof is subject to suppression unless the State demonstrates that the search or seizure was conducted pursuant to one of the narrowly defined exceptions to the warrant requirement." *Yeargan*, 958 S.W.2d at 629 (citing *Coolidge v. New Hampshire*, 403 U.S. 443, 454-55 (1971); *State v. Bartram*, 925 S.W.2d 227, 229-30 (Tenn.1996)).

There are three levels of police-citizen interactions: (1) a full-scale arrest, which must be supported by probable cause in order to be valid; (2) a brief investigatory detention, which must be supported by a reasonable suspicion, based upon specific and articulable facts, of criminal wrong-doing; and (3) a brief "encounter" which requires no objective justification. *State v. Day*, 263 S.W.3d 891, 901 (Tenn. 2008). Moreover, the distinction between a stop based on probable cause and a stop based on reasonable suspicion is not simply academic. Reasonable suspicion will support only a brief, investigatory stop. *See Terry v. Ohio*, 392 U.S. 1, 27-29 (1968); *see also United States v. Bentley*, 795 F.3d 630, 633 (7th Cir. 2015) (noting the necessity to "distinguish between stops based on reasonable suspicion and those based on probable cause [because] [t]he latter are not subject to the scope and duration restrictions of *Terry*").

A reasonable basis for a stop is something more than an "inchoate and unparticularized suspicion or 'hunch.'" *Terry*, 392 U.S. at 27. "The evaluation [of reasonable suspicion] is made from the perspective of the reasonable officer, not the reasonable person." *State v. Smith*, 484 S.W.3d 393, 402 (Tenn. Feb. 11, 2016) (citing *United States v. Quintana-Garcia*, 343 F.3d 1266, 1270 (10th Cir. 2003); and *United States v. Valdez*, 147 Fed. Appx. 591, 596 (6th Cir.

2005)). Moreover, because a court reviews the validity of a stop from a purely objective perspective, the officer's subjective state of mind is irrelevant, *see Brigham City, Utah v. Stuart*, 547 U.S. 398 (2006), and the court may consider relevant circumstances demonstrated by the proof even if not articulated by the testifying officer as reasons for the stop, see Smith, 484 S.W.3d at 402 (citing *City of Highland Park v. Kane*, 372 Ill. Dec. 26, 991 N.E.2d 333, 338 (Ill. App. Ct. 2013) (recognizing that, "[i]n analyzing whether a stop was proper, a court is not limited to bases cited by the officer for effectuating the stop" (citing *Whren v. United States*, 517 U.S. 806, 813 (1996)); *see also State v. Huddleston*, 924 S.W.2d 666, 676 (Tenn. 1996) (recognizing that an officer's subjective belief that he did not have enough evidence to obtain a warrant is irrelevant to whether or not probable cause actually existed")). Additionally, if the defendant attempts to suppress evidence collected during the challenged stop, the state is not limited in its opposing argument to the grounds ostensibly relied upon by the officer if the proof supports the stop on other grounds. *Smith*, 484 S.W.3d at 402 (citing *State v. Tague*, 676 N.W.2d 197, 201 (Iowa 2004)).

Furthermore, it is well settled that: "Probable cause"—the higher standard necessary to make a full-scale arrest - means more than bare suspicion: "Probable cause exists where 'the facts and circumstances within their [the officers'] knowledge, and of which they had reasonably trustworthy information, [are] sufficient in themselves to warrant a man of reasonable caution in the belief that' an offense has been or is being committed." *Brinegar v. United States*, 338 U.S. 160 (1949) (quoting *Carroll v. United States*, 267 U.S. 132 (1925)). "This determination depends upon 'whether at that moment the facts and circumstances within [the officers'] knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the petitioner had committed or was committing an offense.'" *Goines v. State*, 572 S.W.2d 644, 647 (Tenn.

1978) (quoting *Beck v. Ohio*, 379 U.S. 89 (1964)). "In dealing with probable cause, . . . we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." *Brinegar*, 338 U.S. at 175; *see Day*, 263 S.W.3d at 902-03.

Here, Officer Barber had reasonable suspicion to stop the Defendant based upon evidence gathered during the two-day surveillance of an apartment that the Defendant had frequented; however, Officer Barber chose to wait and make a traffic stop. Officer Barber observed the Defendant driving sixty miles per hour in both a fifty-five mile per hour zone and a fifty-mile per hour zone. It is an offense for a motorist to exceed the applicable speed limit. *See* T.C.A. § 55-8-152 (2012). This court has held that a police officer's traffic stop will pass constitutional muster if the officer has "probable cause" to believe that the motorist has committed a traffic offense. *See State v. Vineyard*, 958 S.W.2d 730, 736 (Tenn. 1997) (holding that officers' observation of defendant's violations of traffic laws created probable cause to stop defendant); *see also United States v. Barry*, 98 F.3d 373, 376 (8th Cir. 1996) (recognizing that even minor traffic violations create probable cause to stop the driver). Accordingly, Officer Barber had probable cause for the traffic stop.

The Defendant complains that the stop was merely a pretext for a narcotics investigation. An officer's subjective motivation for making a traffic stop, however, does not invalidate a stop. *See Whren*, 517 U.S. at 813 (a traffic violation arrest is not rendered invalid by the fact the stop was a pretext for a narcotics investigation). Officer Barber had probable cause to believe the Defendant was violating the laws against speeding.

The Defendant also complains that the stop and subsequent search were illegal because Officer Barber was

outside of his municipal jurisdiction at the time of the stop. Tennessee Code Annotated section 40-7-109 (2018), provides authority for a private person to make an arrest. This court has determined that officers have the authority to arrest defendants under the private arrest statute, noting that a "police officer does not give up the right to act as a private citizen when he is off duty or out of his jurisdiction." *State v. Donnie Alfred Johnson*, No. 02C01-9707-CC-00261, 1998 WL 464898, at *2 (Tenn. Crim. App., at Jackson, Aug. 11, 1998), no perm. app. filed. Although this Court had repeatedly cautioned that when an officer acts under the private arrest statute, they do so at their own peril. *See State v. Horace Durham*, No. 01C01-9503-CC-00056, 1995 WL 678811, at *2 (Tenn. Crim. App., at Nashville, Nov. 16, 1995), *no perm. app. filed*.

Finally, the Defendant argues that the duration of the traffic stop was unreasonably prolonged due to the use of a K-9 officer. If an officer's initial stop of an individual is justified, then it must next be determined whether the seizure and search of the individual are "reasonably related in scope to the circumstances which justified the interference in the first place." *Terry*, 392 U.S. at 20. The detention "must be temporary and last no longer than is necessary to effectuate the purpose of the stop." *Florida v. Royer*, 460 U.S. 491, 500 (1983). "[T]he proper inquiry is whether during the detention, the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly." *State v. Simpson*, 968 S.W.2d 776, 783 (Tenn. 1998). If "the time, manner or scope of the investigation exceeds" the ambit of reasonableness, a constitutionally permissible stop may be transformed into one which violates the Fourth Amendment and article 1, section 7 of the Tennessee Constitution. *State v. Troxell*, 78 S.W.3d 866, 871 (Tenn. 2002) (quoting *United States v. Childs*, 256 F.3d 559, 564 (7th Cir. 2001)). However, "no hard-and-fast time limit exists beyond which a detention is automatically considered too long and, thereby

unreasonable." *State v. Justin Paul Bruce*, No. E2004- 02325-CCA-R3-CD, 2005 WL 2007215, at *7 (Tenn. Crim. App., Knoxville, Aug. 22, 2005), *no. perm. app. filed*.

In Tennessee, "requests for driver's licenses and vehicle registration documents, inquiries concerning travel plans and vehicle ownership, computer checks, and the issuance of citations are investigative methods or activities consistent with the lawful scope of any traffic stop." *State v. Gonzalo Garcia*, No. M2000-01760-CCA-R3-CD, 2002 WL 242358, at *21 (Tenn. Crim. App., Nashville, Feb. 20, 2002) (citations omitted), *overruled on other grounds by State v. Garcia*, 123 S.W.3d 335 (Tenn. 2003).

After hearing the evidence presented at the suppression hearing, the trial court concluded that "the period of detention was reasonable." The record supports the trial court's finding. Officer Barber testified that he approached the Defendant, informed him of the reason for the stop, and asked for his license and registration. He said that the Defendant appeared to be nervous in his movement and breathing pattern. Officer Barber also noticed a large amount of cash in smaller denominations in the Defendant's wallet. Initially the Defendant could not find his vehicle registration. The Defendant continued searching for his registration while Officer Barber returned to his vehicle to check the Defendant's license and insurance information. When Officer Barber returned the documentation to the Defendant, the Defendant had found his registration. Officer Barber took the registration and as he returned to his vehicle, Trooper Kilpatrick spoke to him. Another officer also informed Officer Barber that the Defendant had lied about where he had come from, adding to Officer Barber's suspicions about illegal activity. After confirming the Defendant's registration, he returned the document to the Defendant, issued a warning, and then asked for consent to search the vehicle. The Defendant declined, and Officer Barber informed him that the K-9 officer

would circle his vehicle. The dog indicated that there were illegal drugs inside the vehicle providing probable cause for a search that revealed cocaine, marijuana, and a handgun.

We conclude that the circumstances in this case did not create an unreasonable detention. Officer Barber did not detain the Defendant any longer than necessary to conduct the stop. The stop concluded once Defendant received the warning, at which time the K-9 officer circled the vehicle and the request to search the Defendant's vehicle was appropriate under the circumstances. *See State v. Winford McLean*, No. E2010-02579- CCA-R3-CD, 2011 WL 5137177, at *6 (Tenn. Crim. App., at Knoxville, Oct. 28, 2011) (Defendant's overall nervous demeanor and criminal history as a "known drug violator" justified officer's request for consent to search after the traffic stop lasted 26 minutes), *no perm. app. filed*; *State v. Kenneth L. Davis*, No. W2008-00226-CCA-R3-CD, 2009 WL 160927, at *4 (Tenn. Crim. App., at Jackson, Jan. 23, 2009) ("The actual issuance of the citation occurred almost simultaneously with [the officer's] request to search. The Defendant's detention was not unreasonable."), *perm. app. denied* (Tenn., June 15, 2009).

Accordingly, we conclude that there was probable cause for the traffic stop and that the Defendant was not unreasonably delayed due to the use of the K-9 officer. The Defendant is not entitled to relief.

III. Conclusion

Based on the foregoing, we affirm the trial court's judgments.

/s/ Robert W. Wedemeyer, Judge

Filed: May 18, 2021