

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Marshaum Givens,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

February 11, 2022

Court of Appeals Case No.
21A-CR-1411

Appeal from the St. Joseph
Superior Court

The Honorable Jane Woodward
Miller, Judge

Trial Court Cause No.
71D01-2003-F5-79

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant-Defendant, Marshaum Givens (Givens), appeals the trial court's interlocutory order denying his motion to suppress.

[2] We affirm.

ISSUE

[3] Givens presents this court with one issue, which we restate as: Whether the challenged evidence was seized following a traffic stop which he contends was unreasonably extended to permit a canine sweep.

FACTS AND PROCEDURAL HISTORY

[4] On March 25, 2020, the South Bend Police Department (SBPD) conducted surveillance of a home in South Bend suspected to be the location of narcotics activity. Givens drove away from the home in his black SUV and was observed driving forty-five miles per hour in a thirty-mile-per-hour zone. Officer Andrew Jackson (Officer Jackson) of the SBPD's Strategic Focus Unit, which investigates crimes of violence involving drugs, guns, and gangs, initiated a traffic stop of Givens' SUV in the 100 block of South Lake Street. Officer Jackson's body camera equipment was operational and recorded the traffic stop from its inception.

[5] Officer Jackson approached Givens' SUV, spoke with Givens, and obtained Givens' driver's license and registration. Officer Jackson returned to his cruiser and input Givens' information into his computer to check the validity of

Givens' driver's license and to determine if Givens had any outstanding warrants. Finding no issues, Officer Jackson decided to write Givens a warning rather than a citation. Officer Jackson was out of warning forms, so he had to obtain a warning form from another officer who had arrived to assist. As Officer Jackson was writing the warning, Officer Paul Strabavy (Officer Strabavy) arrived at the scene of the traffic stop with his canine partner, Officer Gary. After Officer Jackson finished writing the warning, he approached Givens' SUV. Officer Jackson asked Givens to step out of the SUV, at first explaining that he needed to explain the violation and warning to him and subsequently explaining that a canine sweep was to be performed on the SUV. Givens refused and, after several minutes of discussion, he was forcibly removed from the SUV. After Givens was removed from the SUV, Officers Strabavy and Gary performed an open-air canine sweep of the vehicle, and Officer Gary alerted for the presence of contraband. A subsequent search of the SUV yielded a handgun and suspected marijuana.

[6] On March 27, 2020, the State filed an Information, charging Givens with Class A misdemeanor carrying a handgun without a license and Level 5 felony carrying a handgun without a license having a prior conviction. On March 10, 2021, Givens filed a motion to suppress. On April 12, 2021, the trial court held an evidentiary hearing on Givens' motion. Officer Jackson's body camera recording of the traffic stop was admitted into evidence. Officer Jackson testified that after he had stopped a citizen several times for traffic infractions, he would issue a written warning rather than an oral warning so that the citizen

would have a physical reminder of the traffic rules. Because Officer Jackson had encountered Givens several times, the officer decided to issue Givens a written warning. Officer Jackson related that when he asked Givens to get out of the SUV, he had not yet returned Givens' driver's license and registration, nor had he explained the reason for the warning to Givens. It was Officer Jackson's practice to explain to the recipient the reason for the warning and to reiterate the posted speed limits and the need to slow down. Officer Jackson would provide this information whether he was issuing a written or oral warning. The area where Givens had been speeding was a residential, park-like setting. Officer Jackson confirmed that, before asking Givens to step out of the SUV, he had observed no additional circumstances leading him to believe that criminal activity was afoot and that he would not have asked Givens to exit the SUV unless he planned to have the canine sweep performed. It was SBPD official procedure to have the occupants of a vehicle that was to be subjected to a canine sweep exit the vehicle so that there was no danger of anyone being run over if the driver decided to flee.

[7] At the conclusion of the evidence, the trial court denied Givens' motion to suppress. The trial court found that Officers Strabavy and Gary had arrived on the scene before Officer Jackson approached the vehicle and asked Givens to get out of the SUV, the purpose of the traffic stop was not completed when Officer Jackson had simply finished writing the warning, and that Officer Jackson had not been delaying or "dawdling" while effectuating the purposes of the traffic stop. (Transcript p. 49). The trial court specifically found that

Officer Jackson’s explanation for why he decided to issue Givens a written warning, as opposed to an oral one, to be credible.

[8] Givens pursued this interlocutory appeal. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. *Standard of Review*

[9] Givens appeals the trial court’s denial of his motion to suppress. Our standard of review of a trial court’s ruling on a motion to suppress is well-settled. We give deference to a trial court’s findings of fact, which will not be overturned unless they are clearly erroneous. *Campos v. State*, 885 N.E.2d 590, 596 (Ind. 2008). We will not reweigh the evidence and will consider conflicting evidence most favorably to the trial court’s determination. *Id.* However, we will review *de novo* a trial court’s ruling on the constitutionality of a search or seizure. *Id.*

II. *Analysis*

[10] Givens contends that the challenged evidence was procured in violation of his Fourth Amendment rights. More specifically, Givens argues that the canine sweep impermissibly extended the duration of his traffic stop. In support of this argument, Givens maintains that the “arrival of the K-9 unit clearly came after the traffic stop had been completed.” (Appellant’s Br. p. 7).

[11] In *Illinois v. Caballes*, 543 U.S. 405, 407-10, 125 S.Ct. 834, 836-38, 160 L.Ed.2d 842 (2005), the Supreme Court considered the constitutionality of a dog sniff that was performed during a valid traffic infraction stop and concluded that the

officer was not required to have independent reasonable suspicion of criminal activity to justify the dog sniff because “any intrusion on respondent’s privacy expectations does not rise to the level of a constitutionally cognizable infringement.” However, the Court noted that a traffic stop based on the need to write a warning ticket “can become unlawful if it is prolonged beyond the time reasonably required to complete that mission.” *Id.* at 407, 837. Therefore, the Court found that, if the officer had “unreasonably prolonged” the traffic stop to perform the dog sniff, Caballes would have been unlawfully detained, absent any reasonable suspicion of criminal activity other than the traffic violation. *Id.* at 407-08, 837.

[12] We find the facts of *Myers v. State*, 839 N.E.2d 1146 (Ind. 2005), to be instructive in addressing Givens’ claim. An officer stopped Myers’ vehicle after observing him commit two traffic infractions. *Id.* at 1148. The officer procured Myers’ driver’s license and registration, returned to his patrol car, verified Myers’ information, requested a canine unit, and began filling out a warning ticket for the traffic violations. *Id.* Thirteen minutes later, another officer arrived with his canine partner, who performed an open-air sweep of Myers’ vehicle which ultimately resulted in a warrantless search that netted contraband. *Id.* At a subsequent hearing on Myers’ motion to suppress evidence garnered from the traffic stop, the parties disputed the timing of the canine sweep. *Id.* However, the officer who conducted the stop testified that he had called Myers out of his car and was discussing the traffic violation and warning ticket with him as the dog sniff occurred. *Id.* In upholding the trial

court's denial of Myers' motion to suppress, our supreme court noted the trial court's factual findings that the officer conducting the stop had not delayed in executing the traffic stop, at the time of the canine sweep the officer was in the process of explaining the citation to Myers, and that the officer had not completed the traffic stop prior to the canine sweep of Myers' vehicle. *Id.* at 1149-50. The court deferred to those factual findings and, relying on *Caballes*, observed that the trial court "properly determined that the canine sweep was conducted before the traffic stop was completed." *Id.* at 1149.

[13] Givens does not dispute that he was validly stopped for a traffic infraction, nor does he contend that a canine sweep of his SUV implicated his Fourth Amendment rights. In addition, Givens cites *Caballes* and acknowledges that a traffic stop to issue a warning ticket only violates constitutional requirements "if it is prolonged beyond the time reasonably required to complete that task." (Appellant's Br. p. 8). Givens contends that his traffic stop was unconstitutionally extended because Officers Strabavy and Gary only arrived as Officer Jackson approached the SUV to give him the written warning and to ask him to step out of the vehicle. Givens further contends that the traffic stop was already complete at that time because Officer Jackson had finished writing the warning and all Officer Jackson had to do to complete the stop was to return his documentation. In light of these facts, Givens argues that "since the purpose of the traffic stop was complete[,] it would be unreasonable to allow officers to arbitrarily extend the time of the stop by merely holding onto documents owned by the driver[.]" (Appellant's Br. p. 11).

[14] However, the trial court specifically found that Officers Strabavy and Gary were present at the scene before Officer Jackson approached the SUV to explain the written warning and to ask Givens to step out of his vehicle, and it further found that Officer Jackson did not delay or dawdle in effectuating the purposes of the traffic stop. Therefore, to credit Givens' arguments about the timing of the arrival of Officers Strabavy and Gary and Officer Jackson's arbitrarily retaining his documentation would be to ignore our standard of review which requires us to defer to the trial court's factual findings and to refrain from reweighing the evidence. *See Campos*, 885 N.E.2d at 596. In addition, inasmuch as Givens argues that a traffic stop is complete for purposes of a *Caballes*-based analysis once an officer has finished preparing a written warning, *Myers* illustrates that an officer's additional act of explaining to the defendant the reasons for the traffic stop and the warning are a valid part of a traffic stop which do not impermissibly extend the stop. Here, Officer Jackson, who still had to return Givens' documentation, had not even begun his explanation of the violation and written warning when he asked Givens to step out from the SUV.

[15] Givens does not address *Myers*, let alone distinguish its holding from the facts of his case. Following *Caballes* and *Myers*, we conclude that the traffic stop at issue was not impermissibly extended for the canine sweep because the purposes of the traffic stop were still ongoing when Officer Jackson asked Givens to exit his

SUV. Therefore, we uphold the trial court’s determination that the challenged evidence was not obtained in violation of Givens’ Fourth Amendment rights.¹

CONCLUSION

[16] Based on the foregoing, we conclude that the trial court properly denied Givens’ motion to suppress.

[17] Affirmed.

[18] Robb, J. and Molter, J. concur

¹ Givens also cites Article I, Section 11 of the Indiana Constitution, but he fails to develop any separate argument based on that authority applying the three-factor balancing test announced in *Litchfield v. State*, 824 N.E.2d 356, 361 (Ind. 2005). However, for the same reasons relied upon in our Fourth Amendment analysis, we conclude that the challenged evidence was procured in a manner that was reasonable under the “totality of the circumstances.” *Id.* at 359-60.