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IN THE
COURT OF APPEALS OF INDIANA

Brooklyn Powers,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

June 22, 2022

Court of Appeals Case No.
21A-CR-1915

Appeal from the Hendricks
Superior Court

The Honorable Rhett M. Stuard,
Judge

Trial Court Cause No.
32D02-2102-F6-162

Brown, Judge.

[1] Brooklyn Powers appeals the trial court’s order denying her motion to suppress evidence. We reverse.

Facts and Procedural History

[2] At approximately 2:07 a.m. on February 7, 2021, Danville Police Sergeant Jeffery Slayback traveled east on US 36 with his canine, Zeke, and observed a vehicle with a broken taillight traveling east at a high rate of speed. He activated his front-facing radar and determined the vehicle was traveling sixty-seven miles per hour where the posted speed limit was forty-five miles per hour. He observed “how it was operating within it it’s [sic] lane it crossed over the center lines several times and . . . appeared to be struggling to maintain its lane of travel.” Transcript Volume II at 10. He activated his emergency lights because of “their speed . . . the crossing over the center line and the white light exposed to the rear of the vehicle.” *Id.* at 10-11.

[3] The vehicle stopped, and Sergeant Slayback noticed the vehicle was not in park and as he “got up about half way up to the vehicle from [his] vehicle it began to roll forward.” *Id.* at 11. The driver of the vehicle “hit the brakes again and then put the vehicle in park” *Id.*

[4] Sergeant Slayback walked up to the driver’s side, advised the driver of the reason for the traffic stop, and asked for his driver’s license and vehicle registration. Powers was seated in the passenger’s seat. Sergeant Slayback asked them where they were headed, and the driver indicated they were headed to a hotel in Plainfield. Sergeant Slayback observed that the driver “seemed

nervous,” his “hands were visibly trembling,” and he “was shaking” and “was kinda stumbling over some of his words on simple questions.” *Id.* at 11-12, 21. He also noticed that Powers’s hands were “visibly shaking” and she had “darkness under her eyes or dark eyes” and “open sores on her face” and arms. *Id.* at 12.

[5] Sergeant Slayback returned to his vehicle and “ran the driver through IDAC just to ensure he didn’t have any active warrants.” *Id.* He wrote a warning, returned to the vehicle, and spoke with the driver again briefly to “make sure [he] didn’t smell the odor of alcohol or notice any . . . further slurred speech or anything like that.”¹ *Id.* at 13. He did not smell any alcohol or notice any of these behaviors and went over to the passenger’s side and spoke with Powers because he “felt like [he] developed reasonable suspicion at that point just based on their . . . nervous behavior of both of the occupants.” *Id.*

[6] Sergeant Slayback had Powers exit the car. He asked her if there was anything illegal inside the vehicle, and she “stated no.” *Id.* He asked her if there was any reason a canine would alert to the odor of narcotics inside the vehicle, and she answered in the negative. At some point while Powers was out of the vehicle, Officer Travis Wilson arrived on the scene. Sergeant Slayback asked her again if there was any reason that the canine would alert to the odor of narcotics in

¹ On cross-examination, when asked if he took the warning up to the driver and gave him the warning, Sergeant Slayback answered: “I don’t recall if I actually took it to him, . . . I usually enter it in what we call e-ticket . . . if I print it out, usually sometimes I’ll print it out and take it up to them other times I just do it to document the actual traffic stop.” Transcript Volume II at 20.

the vehicle. Powers hesitated and stated that she had “go in her bra,” which Sergeant Slayback understood to mean that she had methamphetamine.² *Id.* at 14. Sergeant Slayback then gave Powers *Miranda* warnings.

[7] Sergeant Slayback deployed his canine to conduct an open-air sniff around the vehicle, and the canine gave a positive indication for the odor of narcotics inside the vehicle. Officers discovered a handgun inside a purse that was at Powers’s feet and a container in the center console with narcotics and paraphernalia. Powers admitted that the handgun was hers and she possessed it because she was fearful of her ex-boyfriend. She also admitted to owning the items in the center console.

[8] On February 17, 2021, the State charged Powers with: Count I, possession of methamphetamine as a level 6 felony; Count II, possession of cocaine as a level 6 felony; Count III, unlawful possession of a syringe as a level 6 felony; Count IV, possession of a controlled substance as a class A misdemeanor; and Count V, carrying a handgun without a license as a class A misdemeanor.

[9] On May 21, 2021, Powers filed a motion to suppress and argued that officers seized and searched the vehicle in which she was a passenger and seized alleged contraband without lawful authority.

² On recross-examination of Sergeant Slayback, Powers’s counsel asked: “Now, after you got Ms. Powers out of the car you asked her again once did she have anything, no a second time did she say yes the second time or was it the third?” Transcript Volume II at 33. Sergeant Slayback answered: “I think it was, it would have been the second, maybe the second or third time.” *Id.*

[10] On July 6, 2021, the court held a hearing. Sergeant Slayback testified to the foregoing. Powers’s counsel asserted that “once the warning was issued any, any delayed beyond that if there’s not probable cause is a fourth amend[ment] violation.” *Id.* at 35.

[11] On July 8, 2021, the court denied Powers’s motion. The court found that “the officer had reasonable suspicion that criminal activity was afoot based on the appearance and actions of the driver of the vehicle and the Defendant.” Appellant’s Appendix Volume II at 36. On August 3, 2021, Powers filed a motion to reconsider and a Motion for Certification for Interlocutory Appeal. On August 4, 2021, the court denied the motion to reconsider and granted the motion certifying the July 8, 2021 order for appeal.

Discussion

[12] The issue is whether the trial court erred in denying Powers’s motion to suppress. The admission of evidence is entrusted to the trial court’s sound discretion. *Robinson v. State*, 5 N.E.3d 362, 365 (Ind. 2014). *See also Kelly v. State*, 997 N.E.2d 1045, 1050 (Ind. 2013) (addressing a denial of a motion to suppress and holding that the admission of evidence is a matter entrusted to the trial court’s sound discretion). “We review a trial court’s denial of a defendant’s motion to suppress deferentially, construing conflicting evidence in the light most favorable to the ruling, but we will also consider any substantial and uncontested evidence favorable to the defendant.” *Robinson*, 5 N.E.3d at 365. “We defer to the trial court’s findings of fact unless they are clearly erroneous, and we will not reweigh the evidence.” *Id.* “When the trial court’s

denial of a defendant’s motion to suppress concerns the constitutionality of a search or seizure, however, it presents a question of law, and we address that question de novo.” *Id.*

[13] Powers argues that the purpose of the traffic stop was complete prior to the canine sniff and there was no reasonable suspicion to extend the stop to conduct the canine sniff. She asserts that Sergeant Slayback “did not have reasonable suspicion to detain [her] beyond the reason for the stop, which was to issue a warning to the driver.” Appellant’s Brief at 17. The State acknowledges that an officer must have reasonable suspicion of criminal activity in order to detain an individual beyond what is necessary to complete a traffic stop related to the reason for that stop, but argues that Sergeant Slayback had reasonable suspicion and the dog sweep occurred in the time necessary to complete the officer’s work related to the traffic violation.³

[14] The Fourth Amendment provides, in pertinent part: “[t]he right of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated” U.S. CONST. amend. IV. Generally, “a warrantless search or seizure is per se unreasonable, and the State bears the burden to show that one of the ‘well-delineated exceptions’ to the warrant requirement applies.” *M.O. v. State*, 63 N.E.3d 329, 331 (Ind. 2016).

³ The State does not argue that Powers was released from the detention of the stop, voluntarily stayed at the scene, or consensually conversed with Sergeant Slayback.

[15] In *Rodriguez v. United States*, 575 U.S. 348, 135 S. Ct. 1609 (2015), the United States Supreme Court addressed dog sniffs in the context of traffic stops. The Court held that “a police stop exceeding the time needed to handle the matter for which the stop was made violates the Constitution’s shield against unreasonable seizures.” 575 U.S. at 350, 135 S. Ct. at 1612. The Court held that “[a] seizure justified only by a police-observed traffic violation, therefore, ‘become[s] unlawful if it is prolonged beyond the time reasonably required to complete th[e] mission’ of issuing a ticket for the violation.” *Id.* at 350-351, 135 S. Ct. at 1612 (quoting *Illinois v. Caballes*, 543 U.S. 405, 407, 125 S. Ct. 834 (2005)). The Court observed that it had “so recognized in *Caballes*” and “adhere[d] to the line drawn in that decision.” *Id.* at 351, 135 S. Ct. at 1612.

[16] The Court held that, because addressing the infraction is the purpose of the stop, “it may ‘last no longer than is necessary to effectuate th[at] purpose.’” *Id.* at 354, 135 S. Ct. at 1614 (citing *Caballes*, 543 U.S. at 407, 125 S. Ct. 834). The Court further held that “[a]uthority for the seizure thus ends when tasks tied to the traffic infraction are—or reasonably should have been—completed.” *Id.* The Court observed that its decisions in *Caballes* and *Arizona v. Johnson*, 555 U.S. 323, 129 S. Ct. 781 (2009), heed these constraints. *Id.* The Court stated:

In [*Caballes* and *Johnson*], we concluded that the Fourth Amendment tolerated certain unrelated investigations that did not lengthen the roadside detention. *Johnson*, 555 U.S., at 327-328, 129 S. Ct. 781 (questioning); *Caballes*, 543 U.S., at 406, 408, 125 S. Ct. 834 (dog sniff). In *Caballes*, however, we cautioned that a traffic stop “can become unlawful if it is prolonged beyond the time reasonably required to complete th[e] mission” of

issuing a warning ticket. 543 U.S., at 407, 125 S. Ct. 834. And we repeated that admonition in *Johnson*: The seizure remains lawful only “so long as [unrelated] inquiries do not measurably extend the duration of the stop.” 555 U.S., at 333, 129 S. Ct. 781. See also *Muehler v. Mena*, 544 U.S. 93, 101, 125 S. Ct. 1465, 161 L.Ed.2d 299 (2005) (because unrelated inquiries did not “exten[d] the time [petitioner] was detained[,] . . . no additional Fourth Amendment justification . . . was required”). An officer, in other words, may conduct certain unrelated checks during an otherwise lawful traffic stop. But . . . he may not do so in a way that prolongs the stop, absent the reasonable suspicion ordinarily demanded to justify detaining an individual.

Id. at 354-355, 135 S. Ct. at 1614-1615. The Court held that, beyond determining whether to issue a traffic ticket, an officer’s mission includes ordinary inquiries incident to the traffic stop which typically include checking the driver’s license, determining whether there are outstanding warrants against the driver, and inspecting the automobile’s registration and proof of insurance.

Id. at 355, 135 S. Ct. at 1615. The Court held that the critical question is whether conducting the sniff prolongs or adds time to the stop. *Id.* at 357, 135 S. Ct. at 1616. This Court has previously held that the burden is on the State to show the time for the traffic stop was not increased due to a canine sniff. *Wells v. State*, 922 N.E.2d 697, 700 (Ind. Ct. App. 2010), *trans. denied*.

[17] During direct examination of Sergeant Slayback, the following exchange occurred:

Q So once you made these observations then he made the – the driver made the statement about trying to find their way to the hotel in Plainfield, what did you do next?

A Uh I went back and um ran the driver through IDAC just to ensure he didn't have any active warrants before I went back up to talk to him and also ensure that he had a driving status and issued him uh warning for his traffic violations.

Q And then what did you do next?

A Uh went back up and spoke with the driver again briefly.

Q About what?

A Um mainly his uh driving behavior, um to ensure that he wasn't impaired given the, you know time of night and that he was struggling to maintain his lane which is common with an impaired driver. When I went back up and spoke with him, I wanted to make sure I didn't smell the odor of alcohol or notice any uh further slurred speech or anything like that.

Q And did you notice any of those behaviors?

A I did not.

Transcript Volume II at 12-13. When asked what he did next, he testified that he went over to the passenger's side and spoke with Powers.

[18] During cross-examination of Sergeant Slayback, the following exchange occurred:

Q And you spoke to him about what whether you gave him a warning or told him –

A Yea, yea just to further, just to further speak with him and kinda do more investigation on the stop.

Q Ok, right and you said you didn't smell any alcohol?

A Did not.

Q Ok. [S]o at that point the purpose of giving him, the purpose of the stop was completed, correct? The for the speeding, the light out.

A Yes, I felt like I had more investigation to do on the stop though.

Q Um and that was because he was shaking?

A He was shaking and also his inability to correct, not correctly but cleanly answer questions I guess um he kinda stumbled over words and then also the passenger's demeanor as well.

Q Ok, so when you say to, he stumbled over words, what exactly do you mean by that?

A Uh like when I was asking where he was going to, it just seems like he was struggling to answer the questions, I mean most people if I ask where there [sic] going to its you know pretty clear and obvious, they know where they are going.

Id. at 20-21.

[19] Based upon the record, we conclude that the purpose of the traffic stop was complete when Sergeant Slayback did not observe any indications of an impaired driver and issued the driver the warning for the traffic violations. Thus, continuing the traffic stop for any additional period of time required reasonable suspicion. *See Rodriguez*, 575 U.S. at 355, 135 S. Ct. at 1615 (“An officer . . . may conduct certain unrelated checks during an otherwise lawful traffic stop. But . . . he may not do so in a way that prolongs the stop, absent the reasonable suspicion ordinarily demanded to justify detaining an individual.”); *Wells*, 922 N.E.2d at 700 (“Although a dog sniff is not a search, an officer must have reasonable suspicion of criminal activity in order to detain

an individual beyond what is necessary to complete a traffic stop related to the reason for that stop.”); *see also* *Bush v. State*, 925 N.E.2d 787, 791 (Ind. Ct. App. 2010) (holding that, when the canine sniff was not part of the traffic stop, the court “must determine whether the officers had reasonable suspicion Bush or his passenger were engaged in criminal activity so as to justify prolonging Bush’s detention”), *clarified on reh’g*, 929 N.E.2d 897 (Ind. Ct. App. 2010).

[20] Accordingly, we must determine whether Sergeant Slayback had reasonable suspicion of criminal activity. Reasonable suspicion must be comprised of more than hunches or unparticularized suspicions. *Clark v. State*, 994 N.E.2d 252, 263 (Ind. 2013). “In other words, the stop ‘must be justified by some objective manifestation that the person stopped is, or is about to be, engaged in criminal activity.’” *Id.* at 263-264 (quoting *United States v. Cortez*, 449 U.S. 411, 417, 101 S. Ct. 690 (1981)). “[T]he totality of the circumstances—the whole picture—must be taken into account. Based upon that whole picture the detaining officers must have a particularized and objective basis for suspecting the particular person stopped of criminal activity.” *Id.* at 264 (quoting *Cortez*, 449 U.S. at 417-418, 101 S. Ct. 690). In assessing the whole picture, we must examine the facts as known to the officer at the moment of the stop. *Id.* We review findings of reasonable suspicion *de novo*. *Id.* This is necessarily a fact-sensitive inquiry. *Id.*

[21] To the extent Sergeant Slayback testified that he “felt like [he] developed reasonable suspicion at that point just based on their . . . nervous behavior of both of the occupants,” Transcript Volume II at 13, we note that the Indiana

Supreme Court has observed that “[s]ome courts have found nervousness on the part of the occupants is a factor leading an officer to form reasonable suspicion of criminal activity” but the Court placed “little weight on that fact alone.” *Finger v. State*, 799 N.E.2d 528, 534 (Ind. 2003). The Court observed that “nervousness is of limited significance when determining reasonable suspicion . . . it is common for most people ‘to exhibit signs of nervousness when confronted by a law enforcement officer’ whether or not the person is currently engaged in criminal activity.” *Id.* (quoting *United States v. Salzano*, 158 F.3d 1107 (10th Cir. 1998) (quoting *United States v. Wood*, 106 F.3d 942, 948 (10th Cir. 1997))). We also note that the record does not reveal any evidence regarding whether Sergeant Slayback had experience observing people under the influence or whether persons under the influence or in possession of illegal substances have sores on their face or arms. It also does not reveal furtive movements by the driver or Powers or reveal any indication that Sergeant Slayback had safety concerns. Under the totality of the circumstances and in light of the State’s burden, we cannot say that Sergeant Slayback had reasonable suspicion of criminal activity. Accordingly, we conclude that the actions of having Powers exit the vehicle, questioning her, and performing the canine sniff were improper under the Fourth Amendment. *See Wilson v. State*, 847 N.E.2d 1064, 1068 (Ind. Ct. App. 2006) (holding that a person’s nervousness when stopped by the police at 2:00 a.m. is understandable and concluding that an officer did not have reasonable suspicion to detain a defendant after the traffic stop was concluded and until the arrival of a drug-sniffing dog that was summoned only after the defendant declined to consent to

a search and reversing the trial court's denial of the defendant's motion to suppress); *Tumblin v. State*, 736 N.E.2d 317, 322-323 (Ind. Ct. App. 2000) (observing that the record did not disclose specific facts that caused an officer to entertain a reasonable fear for his safety in issuing a citation or making an arrest, the officer fully concluded the routine traffic stop without any indication of illegal activity beyond traffic infractions, the officer admitted that the purpose of his initial stop had been completed and the vehicle occupants were "free to go" before he inquired as to drugs or weapons, and the officer's testimony did not indicate that either the driver or the defendant who was a passenger evinced hostility or threatened him in any way or that their "fidgeting" included furtive hand movements toward any area where a weapon could have been secreted; holding that a vague and general characterization of demeanor, such as "nervousness," does not rise to the level of reasonable suspicion; and concluding that the defendant and the vehicle in which he was a passenger were unlawfully detained beyond the parameters of a routine traffic stop), *trans. denied*.

[22] For the foregoing reasons, we reverse the denial of Powers's motion to suppress.

[23] Reversed.

Mathias, J., and Molter, J., concur.