COURT OF APPEALS
DECISION
DATED AND FILED

April 17, 2018

Sheila T. Reiff
Clerk of Court of Appeals

Appeal No. 2017AP711-CR **Cir. Ct. No. 2015CF59**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

SHAWN A. BROWN,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Pierce County: JAMES J. DUVALL, Judge. *Affirmed*.

Before Stark, P.J., Hruz and Seidl, JJ.

¶1 PER CURIAM. Shawn Brown appeals a judgment convicting him of possession of methamphetamine and an order denying his postconviction motion. He contends the circuit court erred by denying his motion to suppress evidence obtained from a search of his vehicle. The suppression motion is based on his argument that the traffic stop was unreasonably prolonged to allow time for a drug-sniffing dog to arrive and complete its search. Because we conclude the circuit court properly denied the motion to suppress based on the good faith doctrine, we need not decide whether the officer had reasonable suspicion to detain Brown beyond the time required for the officer to complete the mission of the traffic stop or whether the brief detainer was lawful.

¶2 The officer first observed Brown's vehicle unoccupied with the motor running in an area known for drug trafficking. Later the officer stopped Brown's vehicle for a stop sign violation and issued citations and warnings for that violation, lack of insurance, and failure to notify the Department of Motor Vehicles of an address change. A canine unit arrived while the officer was processing the traffic citations, and the officer delayed giving Brown the citations for an unknown period of time in order to discuss with the dog handler why the officer suspected that Brown possessed drugs. The officer then returned to Brown's vehicle and handed Brown the citations, after which the dog signaled the presence of drugs within five seconds.

¶3 Brown's arguments are based on ***Rodriguez v. United States***, 135 S. Ct. 1609 (2015), which was released six weeks after Brown's traffic stop. In ***Rodriguez***, the Court overturned a decision of the Eighth Circuit Court of Appeals and resolved a division among lower courts on the question whether police may extend an otherwise completed traffic stop absent reasonable suspicion in order to conduct a dog sniff. The Eighth Circuit had upheld a delay of seven to eight

minutes to facilitate the dog sniff, labeling that delay a "de minimis intrusion on Rodriguez's personal liberty." ***United States v. Rodriguez***, 741 F.3d 905, 907-08 (8th Cir. 2014). The Supreme Court held the "tolerable duration of police inquiries in the traffic-stop context is determined by the seizure's 'mission'—to address the traffic violation that warranted the stop and attend to related safety concerns." ***Rodriguez***, 135 S. Ct. at 1614 (citation omitted). The stop may last no longer than necessary to effectuate the purpose of the traffic stop. ***Id.*** The Court concluded the officers' authority to seize the individual "ends when tasks tied to the traffic infraction are—or reasonably should have been—completed." ***Id.*** Therefore, the question is not whether the dog sniff occurred before or after the officer issued a ticket, but whether conducting the sniff prolonged the stop. ***Id.*** at 1616.

¶4 The ***Rodriguez*** Court clarified its earlier decisions in ***Arizona v. Johnson***, 555 U.S. 323 (2009), and ***Illinois v. Caballes***, 543 U.S. 405 (2005). In ***Caballes*** the Court found unlawful a search conducted after a traffic stop was prolonged beyond the time reasonably required to complete the stop's mission. ***Caballes***, 543 U.S. at 407. In ***Johnson***, the Court held the seizure of the driver remains lawful only as long as unrelated inquiries "do not measurably extend the duration of the stop." ***Johnson***, 555 U.S. at 333. The word "measurably" might have suggested that a brief detention was permissible, a notion the Court subsequently rejected in ***Rodriguez***.

¶5 Wisconsin, like other jurisdictions, had authorized a brief detention to facilitate a dog sniff. In ***State v. Arias***, 2008 WI 84, ¶2, 311 Wis. 2d 358, 752 N.W.2d 748, the court upheld a search that occurred approximately one minute and eighteen seconds after the traffic stop could have been completed. Under ***Arias***, an officer could extend a traffic stop for a canine sniff as long as the

extension was reasonable, which "depends on a balance between the public interest and the individual's right to personal security free from arbitrary interference by law officers." ***Id.***, ¶38 (quoting ***Pennsylvania v. Mimms***, 434 U.S. 106, 109 (1977)). The court held the officer did not unreasonably prolong his seizure of Arias, and the seventy-eight-second delay did not constitute an unreasonable incremental intrusion upon Arias's liberty. ***Id.***, ¶3. The court held, "A seizure becomes unreasonable when the incremental liberty intrusion resulting from the investigation supersedes the public interest served by the investigation." ***Id.***, ¶38.

¶6 Therefore, at the time the officer detained Brown, both Wisconsin law, and federal law, authorized a brief detention beyond the time needed to write the citations. As a result, regardless of whether the officer detained Brown beyond the time necessary to complete the traffic stop without reasonable suspicion, we nonetheless conclude the circuit court properly denied the motion to suppress the evidence obtained from the canine search based on the good faith exception to the exclusionary rule. *See* ***State v. Dearborn***, 2010 WI 84, ¶33, 327 Wis. 2d 252, 786 N.W.2d 97. The exclusionary rule does not apply where the officers relied in good faith on clear and settled law that was only subsequently changed. ***Id.***, ¶34. At the suppression hearing, the officer testified he was following department policy and training regarding canine sniffs. The officer had the right to follow the Wisconsin Supreme Court's decision in ***Arias*** and cannot be faulted for failing to anticipate the Supreme Court's clarification in ***Rodriguez*** to existing case law. Because the officer acted in the objectively reasonable belief that his conduct did not violate the Fourth Amendment, the exclusionary rule does not apply. ***Dearborn***, 327 Wis. 2d 252, ¶33.

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2015-16).