FILED
United States Court of Appeals
Tenth Circuit

February 27, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JORGE ALBERTO LARA,

Defendant - Appellant.

No. 21-8091
(D.C. No. 1:20-CR-00043-ABJ-1)
(D. Wyo.)

ORDER AND JUDGMENT*

Before **McHUGH**, **BALDOCK**, and **BRISCOE**, Circuit Judges.

As part of its protection against unlawful searches and seizures, the Fourth Amendment prohibits law enforcement officers from unduly delaying traffic stops to investigate other, unrelated crimes. *See Rodriguez v. United States*, 575 U.S. 348 (2015). Here, we consider whether an officer from the Wyoming Highway Patrol ("WHP") did just that. Exercising jurisdiction pursuant to 28 U.S.C. § 1291, we answer that question in the negative and **AFFIRM** the district court's judgment.

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

I.

The relevant historical facts of this case center around a traffic stop in Wyoming on the morning of March 4, 2020. That stop, however, was part of a larger investigation into drug trafficking. The investigation began when the Drug Enforcement Administration ("DEA") initiated a "hotel/motel interdiction"—an investigation where agents surveil hotels and motels in the hopes of catching drug traffickers—at the Day's Inn in Cheyenne Wyoming on Wednesday, March 4, 2020. DEA Agent Garylee McDermed ("McDermed") carried out the interdiction. Pursuant to his training, Agent McDermed identified a 2019 Dodge Ram with Texas license plates as a vehicle of interest. The vehicle bore several indicia of potential drug trafficking—it was a rental vehicle with out-of-state license plates and its driver—Defendant Jorge Lara—had checked in at the Day's Inn the previous night without a reservation.

Agent McDermed contacted the rental company and learned that the rental began in Oklahoma City on the previous day and was set to conclude in Oklahoma City in two days' time. Agent McDermed continued to surveil the vehicle until a man approached it and drove away. McDermed then followed the vehicle for a few minutes until it exited Interstate 25 South onto Interstate 80 West before returning to the Day's Inn to continue his investigation. There, hotel staff provided Agent McDermed with Defendant's telephone number and address, both of which indicated he lived in California. Agent McDermed knew from his training experience that California was a "source state" for drugs, and that the length of Defendant's trip and apparent absence of set travel plans were indicative of drug trafficking. Satisfied that the investigation was worth continuing, Agent

McDermed contacted WHP Trooper Joshua Gebauer and asked for assistance. In doing so, he provided Gebauer with the vehicle's description, registration, and direction of travel as well as the information that Defendant had stayed at the Days Inn without a reservation.

At this stage, Gebauer contacted another WHP trooper, Aaron Kirlin, and conveyed Agent McDermed's information to him. Gebauer instructed Trooper Kirlin to look for the vehicle but cautioned him that he would have to "make [his] own case" to stop Defendant. Trooper Kirlin understood that warning to mean he had to independently establish a reason to stop Defendant. Trooper Kirlin therefore positioned himself on a downhill section of Interstate 80 and waited for Defendant to drive past. Sure enough, when Defendant drove past Trooper Kirlin, he was speeding. Trooper Kirlin pulled Defendant over and approached his vehicle at approximately 10:00 a.m. He informed Defendant that he had pulled him over for speeding and would issue him a warning. Defendant provided Trooper Kirlin with his license and insurance but told him he would have to pull up his rental agreement on his phone. Trooper Kirlin noticed that Defendant's hands were shaking and that he had two phones—a fact that his training and experience told him was an indicator of drug activity. Trooper Kirlin asked Defendant to join him in his police cruiser while he filled out the warning. Defendant agreed and sat in the front seat unrestrained.

The two proceeded to discuss Defendant's travel plans. Defendant told Trooper Kirlin he was from California and had been in Oklahoma City visiting family for a week. Defendant also informed Trooper Kirlin he was heading to Idaho, though he did not know Idaho was a state and had to consult his phone to verify his destination. Defendant further stated that he had driven from California to Oklahoma in one rental car, only to rent another

car for his trip to Idaho. Defendant explained he did not like flying, but nevertheless represented to Trooper Kirlin that he intended to be home by the weekend. Trooper Kirlin testified that these plans made him suspicious. He thought Defendant's travel plans in Oklahoma did not tally with his rental agreement—Defendant was slated to return his car in Oklahoma City on a Friday but apparently intended to be back in California by the weekend without flying. Kirlin also testified that, in his experience, one-way car rentals were more expensive than round-trip rentals making Defendant's decision to rent to one-way cars inefficient and perplexing.

Throughout this conversation, Trooper Kirlin filled out the speed warning—a form that required him to input information pertaining to the driver and the vehicle including driver's license details and vehicle registration. Kirlin testified that it can take him anywhere from seven minutes to an hour to complete the form, and that in this case, it took him "a while to get the registration to pull up into my computer." Approximately eleven minutes into the stop, Kirlin stepped out of his vehicle to converse with a K9 officer who had arrived on scene to sweep Defendant's vehicle. Kirlin returned to his vehicle and continued conversing with Defendant and filling out the warning form while the K9 officer swept Defendant's vehicle. When the K9 officer completed his sweep—without an alert—Kirlin exited his vehicle yet again to discuss the situation with him. The traffic portion of the stop concluded seventeen minutes after the initial stop when Trooper Kirlin printed out Defendant's warning and returned his documents to him.

At that point, however, Kirlin continued the investigation. Over the course of the next hour, Kirlin called his supervisor to the scene and conferred with various law

enforcement officers and the county attorney's office. He also obtained Defendant's rental history from the rental car company. Approximately ninety minutes into the stop, Kirlin allowed Defendant to leave the scene but detained his vehicle pending receipt of a search warrant. When the vehicle was eventually searched pursuant to a warrant, officers discovered ten packages of methamphetamine in the spare tire. Thereafter, the Government sought and obtained an indictment charging Defendant with one count of possession of 500 or more grams of methamphetamine with intent to distribute in violation of 18 U.S.C. §§ 841(a)(1), (b)(1)(A).

Defendant moved to suppress the methamphetamine found in his vehicle. The district court held a suppression hearing and considered the parties' supplemental briefs. Defendant argued the stop was unconstitutionally prolonged. The main thrust of Defendant's argument was that Trooper Kirlin initiated the stop for the primary purpose of investigating him for criminal activity and that the Trooper impermissibly delayed issuing the speeding warning to conduct that investigation. The district court denied Defendant's motion to suppress. It concluded that Trooper Kirlin had reasonable suspicion to stop Defendant, that "[e]verything within the first ten minutes of the stop was reasonably within the scope of a traffic stop," and that "Trooper Kirlin had obtained reasonable suspicion criminal activity was afoot" by the time he extended the stop by speaking with the K9 officer approximately 12 minutes into the stop. Defendant pleaded guilty and this appeal followed.

II.

This case is shaped as much by the arguments Defendant waives as by the ones he raises.[1] Defendant does not challenge the district court's finding that Trooper Kirlin had reasonable suspicion to stop him for speeding. Nor does Defendant challenge the district court's finding that Trooper Kirlin had established reasonable suspicion to detain him further by the time the Trooper exited his vehicle to converse with the K9 officer approximately ten minutes into the stop.[2] Rather, Defendant only contends the stop was unjustifiably extended in violation of the Fourth Amendment.[3]

"When reviewing the denial of a motion to suppress, 'we view the evidence in the light most favorable to the government, accept the district court's findings of fact unless they are clearly erroneous, and review de novo the ultimate question of reasonableness under the Fourth Amendment.'" *United States v. Cortez*, 965 F.3d 827, 833 (10th Cir. 2020) (quoting *United States v. McNeal*, 862 F.3d 1057, 1061 (10th Cir. 2017)). Further,

[1] Defendant's opening brief leaves much to be desired. Although Defendant asserts Trooper Kirlin impermissibly extended the stop, he does not explain with any specificity when the stop became unlawful.

[2] The district court further found that Trooper Kirlin had reasonable suspicion to detain Defendant after the traffic portion of the stop concluded and "continued diligently investigating his reasonable suspicion throughout the rest of the stop." Thus, the district court found that every part of the investigation after the ten-minute mark was supported by reasonable suspicion and thoroughly explained the facts supporting that conclusion, notwithstanding the absence of a K9 alert. We do not disturb these findings because Defendant failed to specifically challenge them in his opening brief. *See Bronson v. Swenson*, 500 F.3d 1099, 1104 (10th Cir. 2007).

[3] Defendant asserts this argument in the context of challenging the warrant used to search his vehicle. But because this argument fundamentally turns on the constitutionality of the stop, we focus our analysis on the Fourth Amendment issue.

"[w]e defer to all reasonable inferences made by law enforcement officers in light of their knowledge and professional experience distinguishing between innocent and suspicious actions." *United States v. Pettit*, 785 F.3d 1374, 1379 (10th Cir. 2015) (citing *United States v. Winder*, 557 F.3d 1129, 1133 (10th Cir. 2009)).

Even the briefest traffic stop "constitutes a 'seizure' under the Fourth Amendment and is subject to review for reasonableness." *United States v. Mayville*, 955 F.3d 825, 829 (10th Cir. 2020) (quoting *Whren v. United States*, 517 U.S. 806, 809–10 (1996)). "A traffic stop must be justified at its inception and, in general, the officer's actions during the stop must be reasonably related in scope to 'the mission of the stop itself.'" *United States v. Cone*, 868 F.3d 1150, 1152 (10th Cir. 2017) (quoting *Rodriguez*, 575 U.S. at 356). Thus, officers should not stop vehicles for any "longer than is necessary" to resolve the traffic violation and handle "related safety concerns." *Rodriguez*, 575 U.S. at 354 (citations omitted). Further, officers may not "divert from the mission of the stop in order to conduct general criminal interdiction or investigate other crimes." *Cortez*, 965 F.3d at 838 (citing *Rodriguez*, 575 U.S. at 356).

Defendant argues these principles counsel in favor of reversing the district court. We begin with Defendant's argument that the stop was pretextual. Defendant claims Trooper Kirlin did not stop him for a traffic violation but rather "to investigate and interrogate [him]." Br. of Appellant at 20. Pretext stops are nothing new in Fourth Amendment jurisprudence. Both the Supreme Court and an en banc panel of our court have recognized that the subjective intent of an officer in making a stop is irrelevant to the question of whether the officer had reasonable suspicion to do so. *See, e.g.*, *Whren*, 517

U.S. at 813; *United States v. Botero-Ospina*, 71 F.3d 783, 787 (10th Cir. 1995) (en banc). But giving Defendant's brief its most charitable reading, he does not rely on the allegedly pretextual nature of the stop to challenge Kirlin's reasonable suspicion to stop him for speeding. Instead—at least as we understand Defendant's position[4]—Defendant argues Kirlin's questioning diverted from the traffic stop's mission and impermissibly extended it beyond the time needed to issue Defendant a warning because Kirlin intended to investigate Defendant for other crimes when he initiated the traffic stop.

This argument must fail. Defendant relies on *Rodriguez* to support his position and highlights the Supreme Court's statement "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. The question becomes, then, whether Trooper Kirlin's questioning of Defendant deviated from the scope of his mission. Defendant implicitly relies on the Supreme Court's admonition that "[o]n-scene investigation into other crimes, however, detours from that mission." *Id.* at 356 (citation omitted). But unlike Defendant, *Rodriguez* says nothing about the subjective intent of police officers in performing their duties. Rather, *Rodriguez* addresses the issue solely in objective terms.

[4] Defendant's opening brief only provides minimal legal argumentation. *See* Appellant's Br. at vi. Both the opening brief and Defendant's presentation at oral argument largely focus on the allegedly pretextual nature of the stop. Our analysis reflects what we view as the only possible argument that can be inferred from Defendant's opening brief. And of course, we have the right to "affirm a lower court's ruling on any grounds adequately supported by the record." *Elwell v. Byers*, 699 F.3d 1208, 1213 (10th Cir. 2012) (citing *Dummar v. Lummis*, 543 F.3d 614, 618 (10th Cir. 2008)).

Applying an objective standard, we see no basis for concluding that Trooper Kirlin's questions regarding Defendant's travel plans impermissibly deviated from the stop's primary mission. Officers may "attend to related safety concerns" without exceeding the scope of a traffic stop's mission. *Id.* at 354. The "safety concerns" ordinarily related to a traffic stop are listed in *Rodriguez* and 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 (citations omitted). And we have long "held that during the stop, an officer may ask routine questions about the driver's travel plans" especially here, where Defendant was driving a rented vehicle. *United States v. Bradford*, 423 F.3d 1149, 1156 (10th Cir. 2005) (citing *United States v. Williams*, 271 F.3d 1262, 1267 (10th Cir. 2001)); *see, e.g.*, *United States v. Alcaraz-Arellano*, 441 F.3d 1252, 1259 (10th Cir. 2006); *Cortez*, 965 F.3d at 839–40. Such questions are related to the stop's mission—"ensuring that vehicles on the road are operated safely and responsibly." *Rodriguez*, 575 U.S. at 355 (citation omitted). Inquiring about a driver's travel plans clearly qualifies as such a precaution because it enables the officers to ascertain who they are dealing with on a traffic stop. We therefore have little difficulty concluding that Trooper Kirlin's line of questioning was objectively reasonable conduct for a traffic stop. Accordingly, we agree with the district court's conclusion that Trooper Kirlin's "questioning and actions were well within the parameters of an ordinary traffic stop."

Similarly, we are unpersuaded by Defendant's argument regarding the length of time Trooper Kirlin spent filling out the speeding warning. Defendant suggests Trooper Kirlin could have completed the speeding warning in seven minutes. This contention is

based upon Trooper Kirlin testifying he "could take seven, nine minutes, [or] . . . up to an hour" to complete the form. Trooper Kirlin also explained the stop lasted longer than seven minutes because "[i]t did take [him] a while to get the registration to pull up into my computer." At bottom, we generally avoid drawing bright line rules governing the length of time officers may take to complete a traffic stop "because reasonableness—rather than efficiency—is the touchstone of the Fourth Amendment." *Mayville*, 955 F.3d at 827. Defendant points us to no case establishing a specific threshold after which a traffic stop is unreasonably delayed in violation of the Fourth Amendment and nothing he presents us in his brief demonstrates that the district court erred when it found "[e]verything within the first ten minutes of the stop was reasonably within the scope of a traffic stop." In any event, Trooper Kirlin continued to complete the traffic warning form throughout the relevant part of his conversation with Defendant. Accordingly, we conclude Trooper Kirlin did not impermissibly extend the length of the stop by taking more than seven minutes to complete the speeding warning. *See Illinois v. Caballes*, 543 U.S. 405 (2005).

III.

For the foregoing reasons we **AFFIRM** the district court's ruling.

Entered for the Court

Bobby R. Baldock
Circuit Judge