IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
January 4, 2023 Session

STATE OF TENNESSEE v. JUSTIN DARNAY GRAVES

Appeal from the Circuit Court for Madison County
No. 20-167 Donald H. Allen, Judge

No. W2021-01405-CCA-R3-CD

The Defendant-Appellant, Justin Darnay Graves, was convicted as charged by a Madison County jury of simple possession of cocaine, felon in possession of a firearm, and possession of drug paraphernalia, for which he received an effective sentence of six years' plus eleven months and twenty-nine days' imprisonment to be served consecutively to several unrelated convictions including case numbers 20-330 (sale and delivery of heroin), 20-331 (sale and delivery of heroin and sale and delivery of methamphetamine), 20-332 (sale and delivery of heroin and sale and delivery of methamphetamine),[1] 20-334 (possession of drugs; traffic offense; introduction of contraband into a penal facility; driving without a license; tampering with evidence), [2] and 20-335 (leaving the scene of accident resulting in death), two of which were committed while the Appellant was released on bond. Tenn. Code Ann. § 40-20-111(b). Prior to trial, the Appellant filed a motion to suppress the evidence obtained during the traffic stop which formed the basis of his convictions. As grounds for the motion to suppress, the Appellant argued that "the amount of time between the initial traffic stop and the arrival of the [canine] unit [was] unreasonable" and in violation of the Fourth Amendment of the United States Constitution and article I, section 7 of the Constitution of Tennessee. Following a hearing, the trial court denied the motion to suppress. In this appeal, the Appellant challenges the trial court's denial of his motion to suppress and the trial court's imposition of partially consecutive

[1] In a consolidated appeal, this Court affirmed the Appellant's total effective sentence of twenty-four years' imprisonment in case numbers 20-330, -331 and -332, but vacated the trial court's orders of restitution. See State v. Graves, No. W2021-01476-CCA-R3-CD, 2023 WL 1989587, at *1 (Tenn. Crim. App. Feb. 14, 2023).

[2] While the Appellant's convictions and sentence in case number 20-334 for possession of drugs, traffic offense (speeding), introduction of contraband into a penal facility, and driving without a license were also recently affirmed by this Court, we reversed the tampering with evidence conviction and remanded for a new sentencing hearing, noting the trial court's error in classifying introduction of contraband into a penal facility as a Class C Felony instead of a Class D Felony. See State v. Graves, No. W2021-01478-CCA-R3-CD, 2023 WL 1873379, at *1 (Tenn. Crim. App. Feb. 9, 2023).

sentencing. Because the State failed to establish that the otherwise lawful traffic stop was not unreasonably prolonged in time and scope, we reverse the judgment of the circuit court, vacate the judgments, and dismiss the case.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Reversed, Vacated, and Dismissed.

CAMILLE R. MCMULLEN, J., delivered the opinion of the court, in which J. ROSS DYER and JOHN W. CAMPBELL, SR., JJ., joined.

George Morton Googe, District Public Defender, M. Todd Ridley (on appeal), Joshua L. Phillips (at trial) Assistant District Public Defenders, for the Defendant-Appellant, Justin Darnay Graves.

Herbert H. Slatery III, Attorney General and Reporter; Katharine K. Decker, Senior Assistant Attorney General; Jody S. Pickens, District Attorney General; and Bradley F. Champhine, Assistant District Attorney General, for the Appellee, State of Tennessee.

OPINION

The facts of this case are neither complicated nor in dispute. The Appellant was a passenger in a car that was stopped for a traffic violation. After the driver of the car refused consent to search the car, the officer eventually asked the Appellant to step outside the car. The Appellant did not comply, and an altercation ensued. During the altercation, a half gram of cocaine, a black digital scale, and a handgun fell from the person of the Appellant.

Motion to Suppress. The Appellant subsequently filed a motion to suppress the contraband seized as a result of the traffic stop, arguing, inter alia, that the traffic stop violated the Fourth Amendment and citing, in support, Terry v. Ohio, 392 U.S. 1, 20 (1968) (a traffic stop must be "reasonably related in scope to the circumstances which justified the interference in the first place"), Florida v. Royer, 460 U.S. 491, 500 (1983) (detention during a traffic stop "must be temporary and last no longer than necessary to effectuate the purpose of the stop"), and Illinois v. Caballes, 543 U.S. 405, 409 (2005) (a dog sniff on the exterior of a defendant's car "while he was lawfully seized for a traffic violation" did not rise to the level of a constitutionally cognizable infringement). The Appellant averred that, upon being stopped, the driver of the car refused the officer's request for consent to search the car. Because the driver was stopped for a "very minor traffic infraction," the Appellant suggested that it was unnecessary for the officer to request the driver to step out of her car to answer "unrelated and extraneous questions about whether there were any weapons in her [car]." Finally, the Appellant contended that "the amount of time between the initial

traffic stop and the arrival of the [canine] unit [was] unreasonable, especially when compared to the proffered reason for the traffic stop of [the driver]." The Appellant insisted the "traffic stop could have been completed, and any necessary citations issued, in a relatively short amount of time" and claimed the "purpose of requesting the [canine] unit was to prolong the traffic stop in the hope that contraband would be found."

The State filed a written response asserting that the officer conducted a lawful traffic stop, and that the Appellant, as a passenger, did not have standing to contest the search of the driver's car. Alternatively, the State argued the proof would show that "the canine unit arrived to perform the sweep of the car within seven minutes of the [officer] activating his emergency equipment, which would have been far before he did or could have completed his traffic citation for the [driver]." The State argued the motion to suppress should, therefore, be denied because "the sniff did not prolong the stop so as to make the detention unreasonable."

On September 14, 2020, the trial court held a hearing on the motion to suppress. Investigator Nathaniel Shoate of the Madison County Sheriff's Department testified and identified the Appellant as the person he arrested on August 29, 2019, during the instant traffic stop. Investigator Shoate explained that the driver of the car, Megan Baker, crossed over into his lane of traffic, which required Investigator Shoate to "immediately apply brakes and swerve to avoid a collision." Investigator Shoate then initiated a traffic stop of the driver by activating his blue lights and sirens. Once the driver pulled over, Investigator Shoate asked the driver to step out of her car, per his routine practice for officer safety, due to the high amount of passing traffic. Had he not done so, Investigator Shoate would have been standing "in" or "near" a busy roadway while conducting the traffic stop. The driver stepped out of her car, and Investigator Shoate explained the reason for the traffic stop was the improper lane change. Investigator Shoate agreed that his intent was to issue the driver a traffic citation; however, he also requested consent to search the car, which the driver denied.

Investigator Shoate then began preparing the traffic citation, and he simultaneously requested a canine unit. Investigator Shoate previously reviewed the communications event report for the day of the offense, admitted as an exhibit to the hearing, and confirmed at the hearing that "approximately six minutes, give or take," elapsed between his request for the canine unit and its subsequent arrival. The communications event report specifically showed the request for the canine unit was made at 7:08 p.m. and the canine unit arrived at 7:15 p.m. Investigator Shoate clarified that the report reflected the canine unit arrived approximately seven minutes after his request. Asked whether "seven or eight minutes is an amount of time that it might frequently take [him] to prepare a traffic citation[,]" Investigator Shoate responded, "oh, without a doubt." Asked whether it could take more than seven or eight minutes to prepare a traffic citation, Investigator Shoate said,

"Yes." Investigator Shoate confirmed that the "timestamp" of 7:08 p.m. is when he began to work on the citation and that he had not completed writing the traffic citation when the canine unit arrived. Asked whether "requesting the [canine unit] or waiting for the [canine unit] delay[ed] or prolong[ed] the traffic stop in any way, shape, or form[,]" Investigator Shoate responded, "[i]t prolonged me, and it prevented me from completing the citation." Asked whether he would have completed the citation at the time of the canine unit's arrival at 7:15 p.m., Investigator Shoate clarified, "I still would have been working on it either way." Ultimately, Investigator Shoate agreed that requesting the canine unit and waiting on the canine unit did not prolong the amount of time it took to complete the traffic citation. Once the canine unit arrived, the Appellant was asked to exit the car to initiate the canine sniff on the exterior of the driver's car, which prompted the instant offenses.

On cross-examination, Investigator Shoate agreed that he was alone in an unmarked car when he noticed the driver's car. He emphasized that the driver did not use a turn signal as she crossed into his lane of traffic. Investigator Shoate and the driver were traveling in different lanes, in the same direction, when the driver crossed over into his lane without using a turn signal. After the driver pulled over, Investigator Shoate proceeded to the driver's side of the car, asked the driver to step out of the car, and the two spoke about the citation near the bumper of the driver's car. Investigator Shoate noticed a passenger in the car, but he did not recognize the Appellant at the time. Investigator Shoate explained that "[the Appellant] never made any kind of eye contact like he wanted to distance himself from me." Investigator Shoate acknowledged that the Appellant was not required to speak to him because he had not spoken to the Appellant.

Investigator Shoate reaffirmed much of his direct examination testimony and testified that he spoke with the driver at the rear of her car, asked the driver whether she recalled crossing over into his lane of traffic, and then asked for her consent to search her car. Investigator Shoate agreed that he asked the driver if she had any weapons on her and for consent to search the car for weapons. He also confirmed that the driver denied each inquiry. Investigator Shoate denied that he issued the driver a traffic citation because the driver denied consent to search her car. He explained that "[he] was going to issue a citation regardless because [the driver] almost caused a collision."

Investigator Shoate had his copy of the traffic citation he issued to the driver at the hearing, but it was not exhibited to the hearing. He confirmed that the citation was signed on the day of the offense at 7:40 p.m. He further agreed that the initial traffic stop began at 6:58 p.m. When asked "[s]o, [it took] 42 minutes to complete the citation[?]," Investigator Shoate explained as follows:

> That's when the citation was completed, completely after everything was done. From the time that I made the traffic stop at [6:58 p.m.] . . . and

> again, keep in mind, I didn't finish the citation due to the [canine] arriving. Once the [canine] arrived, that's when I -- I started my citation, but when he arrived, I stopped and advised him what I had and what I was dealing with. Once he ran the dog around the car and got a positive alert on the vehicle, that's when I asked [the Appellant] to -- he had to exit the vehicle before he ran the dog.

Investigator Shoate reiterated that "all the parties" had to exit the car before the canine sniff could be conducted around the exterior of the car. In the seven-minute interval between requesting the canine unit and its subsequent arrival, Investigator Shoate clarified that he was standing outside of his car writing the traffic citation on the hood of his car. The driver continued to stand between the two cars, and the Appellant remained inside the driver's car until the canine unit arrived. Once the canine unit arrived, Investigator Shoate stopped writing the citation to advise the canine officer "what [he] had and what [he] was dealing with." Investigator Shoate agreed that the only offense he witnessed was a traffic violation for an improper lane change.

After hearing closing arguments, the trial court made oral findings of fact, accrediting the testimony of Investigator Shoate. The trial court determined that while the Appellant had standing to challenge the constitutionality of the search of his person, "this was not a prolonged detention" because "the officer obviously has to prepare the citation, has to run whatever records check, driver's license check, things of that nature and, you know, seven minutes is really not a very prolonged, unreasonable detention in order to issue the traffic citation." On September 18, 2020, by written order, the trial court denied the motion to suppress. The order detailed the trial court's findings and provided, in relevant part, the following:

> [T]he detention of [the Appellant] . . . was not unreasonably prolonged and that the search was valid. Because [Investigator] Shoate had not finished preparing [the driver's] traffic citation and [seven] minutes is not an unreasonable amount of time to take preparing a citation, the detention was not unreasonably prolonged due to the canine sniff. Based on a totality of the circumstances, [Investigator] Shoate did not prolong the traffic stop by requesting the canine unit.

Trial. The Appellant does not contest the sufficiency of the evidence; accordingly, we will limit our recitation of the facts to the issues raised herein. The Appellant's one-day jury trial was conducted on September 14, 2021. Investigator Shoate testified consistently with his testimony at the motion to suppress. Additionally, he testified that he asked the driver to exit her car (1) "just to find out -- see if maybe she was drinking, [see] if she [could] keep her balance on her feet;" and (2) because the car was "twice" occupied,

and the passenger did not make eye contact with him when he spoke with the driver. Investigator Shoate found this to be suspicious and wanted to speak with the driver separately. Once Investigator Shoate and the driver were at the rear of her car, Investigator Shoate asked the driver for her license and whether she had weapons on her person. Investigator Shoate "believe[d]" the driver provided her license and denied having a weapon on her person or in the car. Once the driver denied Investigator Shoate consent to search her car, he advised the driver to "just hold tight, I'm going to issue a citation." While the driver remained standing at the rear of her car, Investigator Shoate walked back to his car, retrieved his ticket book, and requested a canine unit for assistance. When the canine unit arrived, Investigator Shoate stopped writing the traffic citation to explain to Officer Bray, the canine unit officer, the reason for the stop and that consent to search the car had been denied. Officer Bray testified and confirmed that he responded to the scene of the instant offense. Upon Officer Bray's arrival, he observed Investigator Shoate speaking with a female at the front of his car. After Investigator Shoate explained the situation, Officer Bray advised Investigator Shoate that he would perform a canine sweep of the exterior of the car. However, Officer Bray explained that per Jackson Police Department policy, he could not deploy his dog around the exterior of an occupied car. Officer Bray told Investigator Shoate that the passenger would have to exit the car.

At this point, Investigator Shoate approached the Appellant while he was sitting on the passenger side of the car and asked whether there were any weapons in the car. The Appellant told him no. Investigator Shoate then explained to the Appellant that a canine sniff around the exterior of the car was about to occur and that the Appellant needed to exit the car. Investigator Shoate described what happened next as follows:

> Well, [the Appellant] began reaching near the floorboard stating that he was putting his shoes on. The first time he -- I believe he did reach for -- I believe he had on some . . . slides, flip-flops or slides. He began reaching for them, but he didn't put them on. Then he started reaching more with his right hand towards the floorboard again, but it was not towards his shoes, and I advised [the Appellant] to stop reaching, what are you reaching for? He said he was reaching for his shoes, but his shoes [were] not in the direction where he was reaching.
>
> Well, the third time he reached again, and when he reached again, he still didn't reach towards his shoes; he was just reaching with his right hands towards the floorboard. The third time he reached that he was instructed to exit the vehicle, I reached in and physically removed [the Appellant] from the vehicle.

> As I began removing him from the vehicle, I believe it was Officer Bray and another county deputy arrived and see [sic] me with a struggle with [the Appellant] and attempted to help me get him out of the vehicle.
>
> While we was doing that, [the Appellant] started yelling that I have a gun, I have a gun, and but he was still fighting . . . at that point. So, we eventually got him to the ground. When we got him to the ground . . . a silver and black semiautomatic handgun slid out from his person.
>
> There was a fifty-dollar bill and a one-dollar bill and a set of digital scales . . . slid out as we were tussling.

Once the Appellant was in custody, Investigator Shoate searched his pockets and discovered "suspected" cocaine wrapped in a fifty-dollar bill and a one-dollar bill. Investigator Shoate also seized an estimated three hundred and thirty-nine dollars from the Appellant's possession because it was believed to be proceeds of illegal narcotic sales. Investigator Shoate said when the Appellant admitted to having the gun during the struggle, Investigator Shoate "still hadn't seen it." Investigator Shoate agreed that the Appellant was concerned that he would get shot by the gun during the struggle because the Appellant said, "let me get it, or I'm going to get shot[.]" Investigator Shoate said the contraband was not present in the area before the altercation began and no other person was present in the area at the time of the offense. All the contraband recovered from the Appellant was received as exhibits without objection.

Officer Bray confirmed that Investigator Shoate asked the Appellant to exit the car multiple times and that the Appellant only exited "[a]fter persistence" and assistance from the other officers in removing the Appellant from the car. Officer Justin Gross testified that he also responded to the instant traffic stop to assist Investigator Shoate. Officer Gross confirmed that, upon his arrival, Investigator Shoate was attempting to get the Appellant to exit the car. Officer Gross further confirmed that the Appellant had to be asked "multiple times" to exit the car and that the Appellant had to be physically removed from the car. He also heard the Appellant voice concerns over being shot during the altercation because the Appellant was in possession of a gun. Officer Gross observed the gun fall from the groin or crotch area of the Appellant.

Based on the above proof, the jury convicted the Appellant, as charged, of possession of cocaine, convicted felon in possession of a firearm, and possession of drug paraphernalia.

Sentencing. On October 25, 2021, the trial court conducted a sentencing hearing. There was no proof offered at the hearing other than the presentence report and the

Appellant's bond paperwork. The presentence report showed that the Appellant, age twenty-nine, was removed from school in the eleventh grade and completed his high school while in custody at Wilder Youth Facility. The Appellant reported that his mother passed away from cancer when he was young, and that his grandmother, aunt, and cousin were involved in his life. The security threat group affiliation section of the report showed the Appellant was a Vice Lord. The Appellant reported that he had never been employed, was not married, and had no children. The Appellant reported to be in a relationship with Brittany Harris, a co-defendant in case number 20-334. At the time of the report, the Appellant had entered guilty pleas in case numbers 20-330, -331, and -332 (all felony drug convictions), and was scheduled to be sentenced on the same day. However, the trial court continued sentencing in those cases to a later date. In addition to those three felony drug convictions, the criminal history section of the report showed the Appellant had five felony convictions, including leaving the scene of an accident involving death, contraband in a penal facility, tampering with evidence, sale or delivery of cocaine, and possession of a firearm/dangerous felony. The Appellant also had several misdemeanor convictions, including failure to appear in court, simple possession of drugs, traffic offenses for speeding and driving on a suspended license, assault, evading arrest, resisting arrest, simple possession of marijuana, and failure to use child restraint/safety belt. The Appellant received a score of "very high-risk level" on the Strong-R assessment.

The presentence report showed that the Appellant was arrested in the instant case on August 29, 2019. The Appellant's bond paperwork indicated that the Appellant executed a $10,000 bond on August 31, 2019. The presentence report further indicated that the Appellant committed the offenses underlying case number 20-334 on November 4, 2019, and the offense underlying case number 20-335 on November 22, 2019. The State asserted that the Appellant remained in custody after the November 22, 2019 offense date because the Appellant had an active bench warrant for failing to appear for a November 14, 2019 court date in a different case.

Based on the proof presented at the hearing, the trial court determined that the Appellant was a Range I, standard offender and imposed a concurrent term of eleven months and twenty-nine days for the convictions of possession of cocaine and possession of drug paraphernalia, along with the $2500 fines imposed by the jury. The concurrent term was ordered to be served consecutively to a six-year term of imprisonment for the conviction of felon in possession of a firearm, for an effective sentence of six-years' and eleven months and twenty-nine days' imprisonment. The trial court also ordered the sentence imposed in the instant case to be served consecutively to the sentences in case numbers 20-330, -331, -332, -334, and -335 based on the Appellant's extensive criminal history and the fact that these offenses were committed while the Appellant was released on bond in the instant case. The Appellant filed a motion for a new trial which was denied

by the trial court. The Appellant filed a timely notice of appeal, and this case is now properly before this Court.

ANALYSIS

I. Motion to Suppress. The Appellant argues that the trial court erred when it denied his motion to suppress because the State failed to establish that its warrantless detention of the Appellant was not unreasonably prolonged. Because this alleged improper detention led to the discovery of the central evidence in this case, the Appellant contends the trial court ruling should be reversed. In response, the State contends that the trial court properly denied the motion to suppress because the officer's request for the canine unit did not prolong the Appellant's detention, and the evidence, therefore, does not preponderate against the determination of the trial court.

When evaluating a trial court's ruling on a motion to suppress, this court may consider the proof presented at both the suppression hearing and at trial. State v. Williamson, 368 S.W.3d 468, 473 (Tenn. 2012) (citing State v. Henning, 975 S.W.2d 290, 297-99 (Tenn. 1998)). The standard of review applicable to suppression issues involves a mixed question of law and fact. State v. Garcia, 123 S.W.3d 335, 342 (Tenn. 2003). "A trial court's findings of fact in a suppression hearing will be upheld unless the evidence preponderates otherwise." State v. Williams, 185 S.W.3d 311, 314 (Tenn. 2006) (citing State v. Odom, 928 S.W.2d 18, 23 (Tenn. 1996)). In Odom, the Tennessee Supreme Court explained this standard:

> Questions of credibility of the witnesses, the weight and value of the evidence, and resolution of conflicts in the evidence are matters entrusted to the trial judge as the trier of fact. The party prevailing in the trial court is entitled to the strongest legitimate view of the evidence adduced at the suppression hearing as well as all reasonable and legitimate inferences that may be drawn from that evidence. So long as the greater weight of the evidence supports the trial court's findings, those findings shall be upheld.

928 S.W.2d at 23. However, this court's review of a trial court's application of the law to the facts is de novo. State v. Day, 263 S.W.3d 891, 900 (Tenn. 2008) (citing Williams, 185 S.W.3d at 315; State v. Yeargan, 958 S.W.2d 626, 629 (Tenn. 1997)).

The Fourth Amendment of the United States Constitution and article I, section 7 of the Tennessee Constitution protect against unreasonable searches and seizures. U.S. Const. amend. 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 . . ."); Tenn. Const. art. I, § 7 ("That the people shall be secure in their persons, houses, papers and possessions,

from unreasonable searches and seizures . . ."). It is well established that "article I, section 7 is identical in intent and purpose to the Fourth Amendment." State v. Reynolds, 504 S.W.3d 283, 312 (Tenn. 2016); State v. McCormick, 494 S.W.3d 673, 683-84 (Tenn. 2016). A police officer's stop of a vehicle and the detention of its occupants constitutes a seizure within the meaning of the Fourth Amendment and article I, section 7, implicating protection from both the federal and state constitutions. Whren v. United States, 517 U.S. 806, 809-10 (1996); State v. Binette, 33 S.W.3d 215, 218 (Tenn. 2000). The Supreme Court has held that "the ultimate touchstone of the Fourth Amendment is reasonableness." Lange v. California, 141 S. Ct. 2011, 2017 (2021) (quoting Brigham City v. Stuart, 547 U.S. 398, 403 (2006)). "Reasonableness, in turn, is measured in objective terms by examining the totality of the circumstances." Ohio v. Robinette, 519 U.S. 33, 39 (1996). "[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. The State bears the burden of proof when a search or seizure is conducted without a warrant. State v. Berrios, 235 S.W.3d 99, 105 (Tenn. 2007).

Individuals do not lose their constitutional protections against unreasonable searches and seizures by getting into an automobile. State v. Smith, 484 S.W.3d 393, 400 (Tenn. 2016) (citing Delaware v. Prouse, 440 U.S. 648, 662-63 (1979); see also Troxell, 78 S.W.3d at 870-71. In order to stop a vehicle, a law enforcement officer must have probable cause or reasonable suspicion, supported by specific and articulable facts, to believe an offense has been or is about to be committed. State v. Randolph, 74 S.W.3d 330, 334 (Tenn. 2002). In this case, the propriety of the initial stop is not at issue as the Appellant concedes that Investigator Shoate's initial stop of the car was legally justified based on a traffic infraction. See Whren v.United States, 517 U.S. 806 (1996); State v. Vineyard, 958 S.W.2d 730, 731 (Tenn. 1997). In addition to the constitutional parameters set out for a routine traffic stop, under Tennessee's "cite and release" statute, see Tenn. Code Ann. § 55-10-207, when an officer observes certain misdemeanors, such as an improper lane change, the officer shall issue a citation in lieu of arresting the defendant. Tenn. Code Ann. § 55-8-142, -143; State v. Morelock, 851 S.W.2d 838, 840 (Tenn. Crim. App. 1992). Violating the "cite and release" statute infringes upon a defendant's right against unreasonable searches and seizures. State v. Walker, 12 S.W.3d 460, 467 (Tenn. 2000); State v. Nicholas Ryan Flood, No. M2019-00525-CCA-R3-CD, 2020 WL 1888905, at *4 (Tenn. Crim. App. Apr. 16, 2020).

"A seizure for a traffic violation justifies a police investigation of that violation." Rodriguez v. United States, 575 U.S. 348, 354 (2015) (holding that an officer may not extend a traffic stop to conduct a dog sniff unless there is reasonable suspicion of criminal activity beyond the traffic violation and rejecting *deminis* intrusion on the driver liberty rule). However, "[l]ike a Terry stop, 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." Id. at 354 (internal citations omitted); Caballes, 543 U.S. at 407 (cautioning that a traffic stop "can become unlawful if it is prolonged [by a dog sniff] beyond the time reasonably required to complete the mission" of issuing a warning ticket). As such, the lawful seizure "ends when tasks tied to the traffic infraction are—or reasonably should have been—completed[.]" Id.; see also United States v. Stepp, 680 F.3d 651, 662 (6th Cir. 2012) (noting that "[b]ecause a crafty officer, knowing this rule, may simply delay writing a ticket for the initial traffic violation until after she has satisfied herself that all of her hunches were unfounded, we also treat the unreasonable extension of a not-yet-completed traffic stop as a seizure"); State v. Donaldson, 380 S.W.3d 86, 93 (Tenn. 2012) (citing Arizona v. Johnson, 555 U.S. 323, 333 (2009) and Brendlin v. California, 551 U.S. 249, 258 (2007)). A detention that is reasonable at the outset "can become unreasonable and constitutionally invalid 'if the time, manner[,] or scope of the investigation exceeds the proper parameters.'" State v. Montgomery, 462 S.W.3d 482, 487 (Tenn. 2015) (citing Troxell, 78 S.W.3d at 871 and quoting United States v. Childs, 256 F.3d 559, 564 (7th Cir. 2001)). The Rodriguez Court made clear that determining "[t]he reasonableness of a seizure . . . depends on what the police in fact do[,]" and that "[t]he critical question . . . is not whether the dog sniff occurs before or after the officer issues a ticket, . . . but whether conducting the sniff prolongs—i.e., adds time to—the stop." Rodriguez, 575 U.S. at 357 (internal quotation marks omitted); see also State v. Jimenez, 308 Kan. 315, 325 (2018) (noting "tension between the constitutional imperative to diligently process a traffic infraction and the law enforcement opportunity to perform general criminal investigation" and urging officers to be "especially careful to ensure nonconsensual inquiries occur concurrently with the tasks permitted for such stops so they will not measurably extend the time it would otherwise take").

"Beyond determining whether to issue a traffic ticket, an officer's mission includes 'ordinary inquiries incident to [the traffic] stop.'" Rodriguez, 575 U.S. at 355 (citing Caballes, 543 U.S. at 408). Inquiry into matters such as "'requests for driver's licenses and vehicle registration documents . . . 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. Harris, 280 S.W.3d 832, 840 (Tenn. Crim. App. 2008). Such inquiries are permissible during the traffic stop because they serve the traffic stop's ultimate objective of ensuring roadway safety. Rodriguez, 575 U.S. at 355. A dog sniff, however, is a measure aimed at detecting evidence of general criminal wrongdoing and not considered one of the "ordinary inquiries incident to" the mission of a traffic stop. Id. While reasonable suspicion is unnecessary to conduct a dog sniff during a lawful traffic stop, Caballes, 543 U.S. at 409, a dog sniff may violate the Fourth Amendment if it extends the traffic stop beyond the time necessary to conduct the "ordinary inquiries incident to such a stop." Id. at 408; Rodriguez, 575 U.S. at 355 (2015).

A police officer's prolonged detention of a vehicle beyond the mission of the traffic stop, even if it is slight, is unlawful, unless it is supported by a reasonable suspicion of criminal activity independently sufficient to justify a seizure. Rodriguez, 575 U.S. at 355. As one court has aptly described this rule, once the police officer detours from the mission of the traffic stop, "the officer has for all intents and purposes initiated a new seizure with a new purpose; one which requires its own reasonableness under the Fourth Amendment. This new seizure cannot piggy-back on the reasonableness of the original seizure." State v. Linze, 161 Idaho 605, 609 (2016). To meet the reasonable-suspicion requirement, an officer must have "a particularized and objective basis" for suspecting the persons detained of breaking the law. Heien v. North Carolina, 574 U.S. 54, 60 (2014) (internal citation omitted). "The level of reasonable suspicion required to support an investigatory stop is lower than that required for probable cause." State v. Smith, 484 S.W.3d 393, 401 (Tenn. 2016) (internal citation omitted). Nevertheless, "[r]easonable suspicion is a particularized and objective basis for suspecting the subject of a stop of criminal activity," and must be "something more than the officer's 'inchoate and unparticularized suspicion or hunch." Id. (internal citation and quotation omitted).

This case involves the detention of a passenger, and while the Tennessee Supreme Court has held that a driver of a vehicle lawfully stopped for a traffic offense can be required to exit the vehicle without that being a constitutional violation, see Donaldson, 380 S.W.3d at 88 (citing Pennsylvania v. Mimms, 434 U.S. 106, 111 n.6 (1977)), the Court has yet to squarely resolve whether the same is true for passengers. In Johnson v. State, this court reviewed the issue upon a police officer having stopped a motor vehicle for a misdemeanor traffic offense. 601 S.W.2d 326 (Tenn. Crim. App. 1980). The driver voluntarily exited the vehicle and spoke with the police officer near the patrol car. Id. at 327. The officer then approached the stopped vehicle to "check the passengers." Id. In reversing the trial court and dismissing the case, this court held that the police officer provided no explanation as to why he went over to the vehicle to check out the passengers other than curiosity. Id. at 329. The Johnson court stated, "[t]he narrow question we face is whether a police officer, after having stopped a motor vehicle for a traffic violation, has the right to 'check the passengers' who happen to be in the vehicle, nothing else appearing amiss. We hold that officers have no such right." Id. at 328. However, in the years since Johnson was decided, this court has repeatedly declined to expand its ruling beyond its particular facts. State v. Austin, No. M2018-00591-CCA-R3-CD, 2020 WL 6277557, at *12 (Tenn. Crim. App. Oct. 27, 2020) (citing State v. Frierson, No. M2009-01544-CCA-R3-CD, 2010 WL 5140674, at *5 (Tenn. Crim. App. Dec. 14, 2010) (distinguishing that case from Johnson by discussing the passenger's suspicious behavior); State v. Moffatt, No. W2008-01048-CCA-R3-CD, 2009 WL 1643432, at *5 (Tenn. Crim. App. June 12, 2009) (distinguishing that case from Johnson by discussing the driver's suspicious behavior, namely "pulling his shirt down as if to conceal something near his waist" and failing to respond to the officer's asking if he had a weapon); State v. Perry, No. M2007-

00903-CCA-R3-CD, 2008 WL 1875165, at *5 (Tenn. Crim. App. Apr. 28, 2008) (distinguishing that case from Johnson by discussing the driver's "acting funny" and evading the officer's questions, as well as giving a different name for a passenger than the passenger gave)).

The United States Supreme Court extended its holding in Mimms to a police officer ordering a passenger to exit a car during a traffic stop in Maryland v. Wilson, 519 U.S. 408, 415 (1997) (per curiam) (holding categorically that "an officer making a traffic stop may order passengers to get out of the car pending completion of the stop"); see also State v. Joyner, No. W2019-00106-CCA-R3-CD, 2020 WL 413373, at *5 (Tenn. Crim. App. Jan. 24, 2020) (citing Wilson and holding that it is constitutionally permissible for officers, after making a traffic stop, to also require passengers to exit the vehicle). In rejecting the *'de minimis'* rule, the Rodriguez Court cited Mimms and Wilson, and noted that while "the government's 'legitimate and weighty' interest in officer safety outweighs the '*de minimis*' additional intrusion of requiring a driver [or passenger], already lawfully stopped, to exit the vehicle[,]" Rodriguez, 575 U.S. at 356, the government's officer safety interest stems from the mission of the stop itself, and not a general interest in criminal law enforcement. Id. In other words, an exit order to the occupants of a vehicle during a lawful traffic stop would only be reasonable if the exit order were based on the inherent safety concerns associated with the mission of the traffic stop. If the exit order was for some reason other than officer safety associated with the mission of the traffic stop, then the officer would need independent reasonable suspicion to justify the new seizure.

We now apply the above law to the facts and circumstances of this case. As an initial matter, we acknowledge that the trial court credited the testimony of Investigator Shoate and determined that "this was not a prolonged detention" because "the officer obviously has to prepare the citation, has to run whatever records check, driver's license check, things of that nature and, you know, seven minutes is really not a very prolonged, unreasonable detention in order to issue the traffic citation." However, the record does not show that Investigator Shoate "r[a]n" any relevant records or driver's license checks, and it appears that the trial court simply assumed Investigator Shoate did so. Our review of the trial court's order is also complicated by the fact that the trial court did not make any specific findings concerning the chronology or timeline of events pertaining to the instant traffic stop and determined, without support, that the detention was not prolonged because it was seven minutes. In contrast, the record shows that the entirety of the traffic stop herein was forty-two minutes. While we do not disagree with the credibility determination attributed to Investigator Shoate, given the trial court's limited findings, we are unable to conclude that the record supports the determination of the trial court in denying the Appellant's motion to suppress.

Viewed in the light most favorable to the State, the record shows that the initial traffic stop began at 6:58 p.m. After the driver pulled over, Investigator Shoate proceeded to the driver's side of the car and asked the driver to step out of the car. Investigator Shoate noticed the passenger in the car, but he did not recognize the Appellant. The extent of Investigator Shoate's involvement with the Appellant at this point was the Appellant's decision to decline eye contact, which Investigator Shoate acknowledged was the Appellant's prerogative. When the driver and Investigator Shoate proceeded to the rear, bumper area of her car, Investigator Shoate asked the driver for her license and whether she had weapons on her person. The driver provided her license and denied having a weapon on her person or in the car. Investigator Shoate testified that the driver was compliant and provided her driver's license to him.

At trial, Investigator Shoate said one of the reasons he stopped the driver was to determine if she was impaired. However, there was no testimony that Investigator Shoate evaluated the driver for impairment or that the driver was in any way impaired. Investigator Shoate also alluded to an unspecified need to separate the driver from the passenger. At this point, Investigator Shoate had the information needed to determine the cause of the improper lane change. See e.g., United States v. Blair, 524 F.3d 740, 752 (6th Cir. 2008) (because the purpose of a tag-light stop was fulfilled as soon as the officer obtained all the information necessary to write a citation for the violation, the remainder of the stop required reasonable suspicion and was in violation of the Fourth Amendment). Rather than immediately issuing a traffic citation, Investigator Shoate requested consent to search the driver's car.

When the driver denied the request to search, Investigator Shoate advised the driver to "just hold tight, I'm going to issue a citation." Ten minutes after the initial stop, Investigator Shoate walked back to his car, retrieved his ticket book, and simultaneously requested a canine unit for assistance. The communications event report specifically showed the request for the canine unit was made at 7:08 p.m., ten minutes after the initial 6:58 p.m. stop for the traffic infraction. We acknowledge that Investigator Shoate's testimony concerning when he began to work on the traffic citation varied. He ultimately confirmed that the "timestamp" of 7:08 p.m. is when he began to work on the citation and that he had not completed writing the traffic citation when the canine unit arrived at 7:15 p.m., seventeen minutes after the initial stop.

We note here that the testimony concerning the amount of time it ordinarily took for Investigator Shoate to issue a traffic citation was also inconsistent. At one point, Investigator Shoate said "seven or eight minutes is an amount of time that it might frequently take [him] to prepare a traffic citation[.]" He also agreed that "requesting the [canine unit] or waiting for the [canine unit] delay[ed] or prolong[ed] the traffic stop" such that "[i]t prolonged [him], and it prevented [him] from completing the citation." To

rehabilitate Investigator Shoate, the prosecutor asked whether it could take more than seven or eight minutes to prepare a traffic citation, and Investigator Shoate said, "yes." Investigator Shoate eventually clarified that requesting the canine unit and waiting on the canine unit did not prolong the amount of time it took to complete the traffic citation in this case.

When the canine unit arrived some seventeen minutes into the traffic stop, Investigator Shoate stopped working on the traffic citation to explain to the canine unit officer "what he had," even though he agreed that he had nothing more than an improper lane change. We consider this moment to be significant. When Investigator Shoate stopped writing the traffic citation for the driver, he detoured from the mission of the traffic stop. Following this discussion, the canine unit officer instructed Investigator Shoate that prior to deploying his canine around the exterior of the car, the Appellant had to exit the car per the Jackson Police Department policy. At least seventeen minutes into the stop, the Appellant was asked to exit the car for the sole purpose of deploying the canine. There is no question that a dog sniff is a measure aimed at detecting evidence of general criminal wrongdoing and not considered part of the "mission" of the traffic stop. Rodriguez, 575 U.S. at 355. As previously discussed, measures aimed at detecting evidence of general criminal wrongdoing detour from the mission of the traffic stop, represent a new seizure, and require independent reasonable suspicion to justify the seizure.

Investigator Shoate did not articulate any suspicion that the driver or the Appellant possessed drugs or was otherwise engaged in criminal activity. To the extent that Investigator Shoate required the Appellant to exit the car as a safety precaution for the canine officer as the dog was deployed around the car, the "safety" concern meriting the exit order was not associated with the traffic stop. Rather, the safety concern stemmed from a general interest in criminal law/drug enforcement, for which there was no reasonable suspicion. As the safety precaution was not to promote the mission of the traffic stop, the order to exit the car was an unconstitutional extension of the traffic stop. Because the State failed to establish that the detention was reasonable and not prolonged beyond the time and scope necessary to effectuate a traffic stop for an improper lane change, the trial court erred in denying the Appellant's motion to suppress.

Accordingly, based on the totality of the circumstances, we hold that Investigator Shoate did not possess the reasonable, articulable suspicion of criminal activity necessary to extend the scope and duration of the stop. Consequently, Investigator Shoate's prolonged detention of the Appellant violated the Fourth Amendment, and all evidence seized as a result of the stop must be suppressed. We therefore reverse the judgment of the trial court's denial of the Appellant's motion to suppress the evidence, vacate the judgments, and dismiss the case.

II. Sentencing. In the event of further appellate review, we will consider the Appellant's sentencing issue. The Appellant does not contest imposition of consecutive sentencing in the present case to case numbers 20-334 (possession of drugs; traffic offense; introduction of contraband into a penal facility; driving without a license; tampering with evidence) and 20-335 (leaving scene of accident resulting in death), because the Appellant concedes he was released on bond in the instant case when he committed those offenses. Rather, the Appellant argues, and the State agrees, that the trial court erred in ordering the sentence in the present case to be served consecutively to the offenses in case numbers 20-330, -331, -332 (all felony drug convictions), because they were not committed while the Appellant was released on bond, and thus, not statutorily mandated to be imposed consecutively. The State nevertheless insists that the trial court's imposition of partial consecutive sentencing was supported by the trial court's dual finding that the Appellant had a record of extensive criminal activity. The Appellant argues that the record does not support the trial court's finding of an "extensive criminal record," and even if we so hold, the Appellant argues that the trial court abused its discretion in failing to make "'any meaningful findings suggesting that the total, and at the time undetermined, sentence was 'justly deserved' or 'the least severe measure necessary.'"

Where a defendant is convicted of one or more offenses, the trial court has discretion to decide whether the sentences shall be served concurrently or consecutively. Tenn. Code Ann. § 40-35-115(a). We apply "the abuse of discretion standard, accompanied by a presumption of reasonableness, [] to consecutive sentencing determinations." State v. Pollard, 432 S.W.3d 851, 860 (Tenn. 2013). A trial court may order multiple offenses to be served consecutively if it finds by a preponderance of the evidence that a defendant fits into at least one of seven categories enumerated in Tennessee Code Annotated section 40-35-115(b). As relevant here, these categories include a determination that the defendant is a professional criminal who has knowingly devoted the defendant's life to criminal acts as a major source of livelihood or the determination that the defendant is an offender whose record of criminal activity is extensive. Tenn. Code Ann. § 40-35-115(b)(1), (2). An order of consecutive sentencing must be "justly deserved in relation to the seriousness of the offense." Tenn. Code Ann. § 40-35-102(1); see Imfeld, 70 S.W.3d at 708. In addition, the length of a consecutive sentence must be "no greater than that deserved for the offense committed." Tenn. Code Ann. § 40-35-103(2); see Imfeld, 70 S.W.3d at 708.

Based on our review of the record, the trial court imposed consecutive sentencing based on the Appellant's extensive criminal history and the fact that the Appellant "committed [case numbers 20-330, -331, and -332] while he was out on bond in this case." At the sentencing hearing, the trial court expressed concern regarding whether the Appellant was indeed released on bond on "those offenses," because neither the "court file" nor the pre-sentence report included this information. The trial court stated, "it would certainly appear that he was out on bond in this case when those new arrests occurred . . .

but I want to make sure[.]" The court allowed the State to take a break in the sentencing hearing to provide evidence that the Appellant was released on bond in this case when the "new" felony drug arrests occurred in case numbers 20-330, -331, and -332. After the break, the State returned and offered into evidence exhibit two which appears to be a power of attorney from Britt Bail Bond Company showing that the Appellant had a $10,000 bond in the instant case, a September 9, 2019 court date, and an execution date of August 31, 2019. Based on exhibit two, the trial court determined that the Appellant was arrested on August 29, 2019, posted a $10,000 bond two days later, and that the Appellant was released on bond when case numbers 20-330, -331, and -332 were committed. However, the record reflects that case numbers 20-330, -331, and -332 were committed between July 25, 2019, and August 7, 2019, well before the August 29, 2019 offense date in this case. The State concedes, and we agree, that the trial court erroneously believed that consecutive sentencing was statutorily mandated and erred in imposing partial consecutive sentencing on this ground.

However, the trial court also determined that consecutive sentencing was appropriate based on the Appellant's extensive criminal history. See Tenn. Code Ann. § 40-35-115(b)(2). The trial court found that the Appellant had several prior felony convictions, multiple prior misdemeanor convictions, and that the Appellant had admitted to a history of drug abuse and drug usage. The trial court relied heavily on the information in the presentence report, which showed that the Appellant had at least eight prior felony convictions and six prior misdemeanor convictions, not including three traffic offenses. The trial court also noted that the Appellant was a confirmed member of the Vice Lords, a criminal gang. Upon our review, we conclude that the record fully supports the trial court's imposition of partial consecutive sentencing based on the Appellant's extensive criminal history. Finally, the Appellant argues that the trial court abused its discretion in failing "to make any meaningful findings suggesting that the total, and at the time undetermined, sentence was 'justly deserved' or the 'least severe measure necessary.'" We disagree. While the trial court did not explicitly so find, we conclude that the record in its totality established that the trial court considered the above sentencing principles. The Appellant is not entitled to relief on this issue.

CONCLUSION

Based on the above authority and analysis, we reverse the circuit court's denial of the motion to suppress, vacate the judgments, and dismiss the case. In the event of further appellate review regarding the motion to suppress, we affirm the trial court's imposition of consecutive sentencing but conclude that a remand is necessary for entry of corrected judgments to replace case number "20-344" with "20-334," as stated in the trial court's oral findings and the presentence report.

_____
CAMILLE R. MCMULLEN, JUDGE