



PRETEXTUAL STOPS, CANINE SNIFFS AND THE FOURTH AMENDMENT

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On December 28, 2016, the Eighth Circuit Court of Appeals of decided the *United States v. Fuehrer*, which serves as an excellent review of the law pertaining to pre-textual traffic stops and canine sniffs in light of the Fourth Amendment. The relevant facts of *Fuehrer*, taken directly from the case, are as follows:

In December 2014, Josh Mulnix, a Special Agent with the Iowa Division of Narcotics Enforcement, received information from a confidential informant that Fuehrer was distributing methamphetamine. The informant had seen Fuehrer with methamphetamine at his residence and told Agent Mulnix that Fuehrer's methamphetamine source was "Marty." After obtaining this information, Agent Mulnix obtained judicial authorization to affix a global positioning system ("GPS") tracking device to Fuehrer's vehicle.

While the GPS device was affixed to Fuehrer's vehicle, Fuehrer drove to the home of Martin Lawrence in Monticello, Iowa. Investigators learned that Lawrence was being investigated by the Drug Enforcement Administration in Cedar Rapids, which had conducted multiple controlled purchases of ice methamphetamine from Lawrence.

In January 2015, officers observed Fuehrer driving a second vehicle. Agent Mulnix obtained authorization to attach a GPS device to that vehicle and began tracking that vehicle as well. Investigators believed that Fuehrer would be transporting methamphetamine from Lawrence's home on January 11, 2015. Officers intended to attempt to conduct a traffic stop on Fuehrer's vehicle after he left Lawrence's home. Officers also believed that, even if Fuehrer committed no traffic violation, officers would make an investigatory stop based on the evidence gathered during the investigation.

Agent Mulnix coordinated with the Dubuque Drug Task Force to ensure that officers would be able to observe Fuehrer's vehicle after leaving Lawrence's home. Deputy Adam Williams was positioned to observe Fuehrer's vehicle and began running a stationary radar, which he had been trained to use and did, in fact, use nearly every day. Deputy

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Williams stopped Fuehrer's vehicle after observing Fuehrer driving 66 miles per hour in an area where the speed limit was 65 miles per hour.

During the traffic stop, Fuehrer was unable to provide a license. Deputy Williams asked Fuehrer to sit in the patrol car while he completed paperwork for the traffic violation. During this time, a second deputy, Deputy Kearney, arrived with a trained narcotics canine. Deputy Kearney conducted an open-air sniff of Fuehrer's vehicle and the canine alerted to the presence of narcotics. After the dog-sniff search was complete, Deputy Williams finished the tasks related to the traffic stop and wrote Fuehrer a warning for the traffic violation. Deputies Williams and Kearney then informed Fuehrer that the canine had alerted to the presence of narcotics, and Deputy Williams gave Fuehrer his Miranda warnings. Officers searched the vehicle and found 26.09 grams of methamphetamine.

Fuehrer was charged with possession with intent to distribute a controlled substance.ⁱⁱ

Fuehrer filed a motion to suppress and argued that the stop was pre-textual and the canine sniff unreasonably extended the length of the stop, both in violation of the Fourth Amendment. The district court denied the motion, and Fuehrer pled guilty with the right to appeal. He then filed a timely appeal with the Eighth Circuit Court of Appeals.

The issues we will discuss on appeal were (1) whether the traffic stop violated the Fourth Amendment because the officer only conducted the stop because he wanted to pursue a drug investigation, and (2) whether the canine sniff violated the Fourth Amendment because it extended the length of the detention.

Regarding the first issue, the court first examined the law pertaining to pre-textual traffic stops. The court stated

Pretextual traffic stops are a violation of the Fourth Amendment. United States v. Eldridge, 984 F.2d 943, 947 (8th Cir. 1993). However, **if police observe a traffic violation, no matter how minor, there is probable cause to stop the vehicle.** United States v. Mendoza, 677 F.3d 822, 827 (8th Cir. 2012); Eldridge, 984 F.2d at 948. "**Subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis.**" Whren v. United States, 517 U.S. 806, 813 (1996). "**Once an officer has probable cause, the stop is objectively reasonable and any ulterior motivation on the officer's part is irrelevant.**" United States v. Frasher, 632 F.3d 450, 453 (8th Cir. 2011) (quotation omitted). "**Similarly, it is irrelevant that the officer would have ignored the violation but for his ulterior motive.**" Id.ⁱⁱⁱ [emphasis added]

Thus, even if an officer has an ulterior motive to investigate some offense other than the traffic violation, the traffic stop is not a violation of the Fourth Amendment as long as the officer has probable cause to stop the vehicle for a traffic violation. This is so even if the officer would not have made the traffic stop absent the ulterior motive, such as the drug investigation.

When applying the facts of Fuehrer's case to the rules above, the court noted that the officer testified that he observed Fuehrer's vehicle traveling 66 in a 65 mph zone. The court stated, "Such probable

cause existed regardless of any motivation to search for drugs.”^{iv} The officer further testified that he checked the accuracy of the radar that day, and had no reason to believe it was not functioning properly. Fuehrer argued that turning fork accuracy checks have one mph standard deviation; however, the court noted that the officer checked accuracy by matching his patrol car speed and the radar speed, rather than using the tuning forks.

As such, the officer had an objectively reasonable basis to stop the car and no Fourth Amendment violation occurred, even though the officer had an ulterior motive to conduct a drug investigation.

The court then examined the second issue, particularly whether the canine sniff violated the Fourth Amendment. The court first examined the law pertaining to when it is reasonable to expand the scope of a traffic stop beyond the original purpose of the stop. The court stated

"[I]f a defendant is detained incident to a traffic stop, the officer does not need reasonable suspicion to continue the detention until the purpose of the traffic stop has been completed." United States v. Ovando-Garzo, 752 F.3d 1161, 1163 (8th Cir. 2014) (alteration in original) (quoting United States v. Bueno, 443 F.3d 1017, 1025 (8th Cir. 2006)). An officer may complete routine tasks during a traffic stop, which "can include 'a computerized check of the vehicle's registration and the driver's license and criminal history, as well as the preparation of a citation or warning.'" Id. (quoting United States v. Quintero-Felix, 714 F.3d 563, 567 (8th Cir. 2013)). "However, once an officer finishes the tasks associated with a traffic stop, 'the purpose of the traffic stop is complete and further detention . . . would be unreasonable unless something that occurred during the traffic stop generated the necessary reasonable suspicion to justify further detention[.]'" Id. at 1163-64 (alterations in original) (quoting United States v. Flores, 474 F.3d 1100, 1103 (8th Cir. 2007)).

The Supreme Court has held that "the use of a well-trained narcotics-detection dog . . . during a lawful traffic stop, generally does not implicate legitimate privacy interests." Illinois v. Caballes, 543 U.S. 405, 409 (2005). "A seizure that is justified solely by the interest in issuing a warning ticket to the driver can become unlawful if it is prolonged beyond the time reasonably required to complete that mission." Id. at 407. Thus, as long as a traffic stop is not extended in order for officers to conduct a dog sniff, the dog sniff is lawful."^v [emphasis added]

The court then considered Fuehrer's case in light of the above law. The court noted that that canine officer arrived within two minutes of the initiation of the traffic stop. Further, the officer had Fuehrer sit in the patrol car because he did not have license on his person; while he worked on the driver's license check and paperwork, the canine officer conducted the canine sniff of the exterior of the vehicle. The officer did not complete the citation and tasks related to the traffic stop until after the canine alerted on the vehicle and the sniff was complete. As such, the court held there was no evidence that the canine sniff extended the length of the traffic stop or prolonged it in any way. Therefore, the canine sniff did not violate the Fourth Amendment.

The court of appeals then affirmed the denial of the motion to suppress.

ⁱ No. 16-1248 (8th Cir. Decided December 28, 2016)

ⁱⁱ Id. at 2-3

ⁱⁱⁱ Id. at 5

^{iv} Id. at 6

^v Id.

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