

# Police Prosecutor Update

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A recent Court of Appeals case looked at traffic stops and canine sweeps. A state trooper observed the defendant driving a rented car at 77 m.p.h. in a 55 m.p.h. zone on Interstate 65 in Marion County. The trooper made a traffic stop and asked the defendant for his driver's license and registration. He supplied his Wisconsin driver's license and the automobile rental agreement. When asked where he was coming from and where he was going, the defendant replied he was returning to Wisconsin from Georgia after visiting his girlfriend, was in Georgia for only two days, and decided to leave Georgia following an argument with his girlfriend. The trooper regarded these responses as "contradictory" and began to suspect the defendant might be carrying illegal substances. However, he did not make any furtive movements or any "officer safety movements."

The trooper then turned his attention to the passenger in the car and asked him for identification. The trooper returned to his police car to check the validity of the information provided by the defendant and his passenger. The information from the defendant's driver's license matched the return the trooper received from the State of Wisconsin. Based on the passenger's identifying information, the trooper found that he had an outstanding arrest warrant, apparently for a cocaine-related offense. The trooper decided to arrest the passenger and called for an additional unit to help with the arrest. Another trooper, who was also a canine officer, responded because he "was the closest and the first responder." While waiting for the responding trooper to arrive, the first trooper wrote a traffic ticket for the defendant. The responding trooper arrived on the scene as the first trooper was completing the traffic ticket for the defendant. The troopers arrested the passenger and asked the defendant to step outside of the car, but he was not arrested or handcuffed. At this point, the canine trooper directed his canine to perform a "free air sniff" around the exterior of the car. The Court of Appeals made a point of noting that the first trooper testified that at this time he had no reason to hold the defendant or place him under arrest. The canine circled the automobile and thereafter gave a positive indication for the odor of narcotics coming from the passenger side. The troopers then searched the car and, aside from a small amount of marijuana residue underneath the passenger seat, found no drugs or contraband. However, they did find a .40 caliber handgun in the glove compartment. The defendant admitted the gun was his and could provide no license to carry it.

The Fourth Amendment does not require reasonable suspicion of criminal activity to justify using a drug-detection dog to sniff an automobile during a legitimate traffic stop. However, the Fourth Amendment would be violated if a traffic stop was unreasonably prolonged in order for a canine sniff to be carried out because absent reasonable suspicion of criminal activity in addition to the traffic violation, the driver would be unlawfully detained at that point. It is important to note that the burden is on the State to show the time for the traffic stop was not increased due to the canine sniff. In this case, the State failed to present sufficient evidence to support a finding "that the duration of the stop was entirely justified by the traffic offense and the ordinary inquiries incident to such a stop." The trooper testified that at the time the canine began circling the car, he did not have any reason to detain the defendant or place him under arrest. Thus, the purpose of the traffic stop was complete as to the defendant. Otherwise, there would have been an ongoing reason for his detention.