

# Police Prosecutor Update

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A seizure that is lawful at its inception may violate the Fourth Amendment if its manner of execution unreasonably infringes interests protected by the Constitution. A seizure that is justified solely by the interest in issuing a warning ticket to the driver of a vehicle can become unlawful if it is prolonged beyond the time reasonably required to complete that purpose. Where a vehicle is searched and contraband is discovered after a dog sniff of the vehicle, discovery of the contraband may be the product of an unconstitutional seizure if the sniff occurred during an unreasonably prolonged traffic stop. Although a dog sniff is not a search, an officer must have *reasonable suspicion of criminal activity* in order to detain an individual beyond what is necessary to complete a traffic stop related to the reason for that stop. A recent case illustrates a dog sniff during an unreasonably prolonged traffic stop without reasonable suspicion of criminal activity.

Two officers (one a new, probationary officer) were driving along a street, and they saw a pickup truck driving down an interstate exit ramp at a high rate of speed. The officer applied his brakes heavily, thinking the truck was going to collide with the police car. However, the truck did stop at the end of the ramp before proceeding onto the street. As the officers drove by, they noticed a crack in the truck's windshield. They decided to initiate a traffic stop because of the windshield and the high rate of speed on the exit ramp.

The stop commenced at 11:45 a.m. As the officers approached the truck, they noticed the driver (the defendant) appeared very nervous and fidgety, which the officer, based on his experience, believed was "consistent with" methamphetamine use. The defendant gave the officer his driver's license but explained he did not yet have the vehicle registration because he had just recently purchased the truck. While entering the defendant's license and plate information into the computer, the officer saw the defendant lean down entirely onto the passenger side of the truck. He removed the defendant from the truck and performed a pat-down frisk, which uncovered no contraband. When asked about weapons, the defendant said there was a shotgun in the truck but refused permission to have it removed. The officer then had the defendant sit nearby and did not allow him back into the truck.

At 12:01 p.m., the officer verified that the truck was not stolen and that the defendant was not wanted on any warrants. At 12:04 p.m. the officer instructed the probationary officer to call for a K-9 unit. That unit arrived at 12:23 p.m. The drug dog sniffed the truck and alerted to it. A search of the truck found meth. The defendant was arrested and a tow truck called at 12:45 p.m. At 1:00 p.m. the defendant was given a ticket for the cracked windshield.

The court of appeals had no difficulty finding that the traffic stop was substantially lengthened by the K-9 call and dog sniff. Shortly after noon, the officer knew the defendant and the truck were clean, and it would have been quick and easy to write the traffic ticket. The dog sniff occurred 20 minutes after the traffic stop could have been completed and 40 minutes after it began.

As far as reasonable suspicion, nervousness and fidgetiness alone are not enough. Also, the officer testified there are a number of behaviors exhibited by persons under the influence of meth, but he only noted the defendant's extreme fidgetiness. The court did note that when the defendant was observed leaning over in the truck and when he admitted there was a shotgun in the truck, officer safety concerns allowed the officers to remove the defendant from the truck and not permit him to reenter the truck. However, once these legitimate concerns were alleviated, there was no reasonable suspicion to detain the defendant until the arrival of the K-9 unit. In fact, the officer testified that if no K-9 unit had been available, the defendant would have been given a ticket and permitted to drive away.