

# Dog Sniff Didn't Unlawfully Prolong Traffic Stop

Daigle Law Group  
August 27, 2019

Traffic stops are the bread and butter of proactive patrol activities and often lead to more than just the original traffic violation. The most common problem officers face when dealing with a traffic stop is how do officers legitimately extend the stop when they believe there may be more to the situation than a simple speeding violation or other motor vehicle offense. The Supreme Court refers to this as the “Rodriguez moment”. That is to say, the point at which the original purpose of the traffic stop ended. At that point, prolonging the stop can only be supported by articulable facts that rise to the level of Reasonable Suspicion. More importantly, those facts must be known to the officer at the moment the stop is prolonged.

In the past, we have looked at cases from the 8<sup>th</sup>, 3<sup>rd</sup>, 6<sup>th</sup> and 9<sup>th</sup> circuits. In two of those cases, the extended stops were found to be reasonable and in the other two cases, the extended stops were found to be prohibited and the discovered evidence suppressed. Today, we look at a case out of the 7<sup>th</sup> Circuit. In *United States v Lewis*<sup>1</sup>, a traffic stop turned into a seizure of a half- pound of heroin. Let's take a look at how the officer fared in this case.

## **FACTS**

In January 2017, Illinois State Police Officer Timothy Sweeney observed the defendant, Arriba Lewis, driving southbound on Interstate 55 following another vehicle closely in front of him and sitting in a “stiff and ridged” manner, and ‘leaning back’ in the driver seat. Officer Sweeney was going to trail Lewis’ vehicle but pulled off to assist another trooper who had a vehicle pulled over. Upon learning that his assistance was not needed, Sweeney resumed his pursuit of Lewis and quickly caught up with the vehicle. The officer’s dashcam recorded the entire incident including the times as described by the court and Lewis’ Charger following a semitruck very closely.

Sweeney measured the distance between the semi-truck and Lewis's car by starting a stop-watch built into the radar unit and using a mile-marker to determine the time between the semi-truck passed the marker and the Charger passed the market. Sweeney then initiated a traffic stop after determining this time to be 1.2 seconds.

Sweeney advised Lewis he pulled him over for following the truck too closely. Sweeney then advised Lewis that he would need to sit in the back seat of the cruiser while the officer prepared the warning citation. While checking Lewis' license, the officer learned Lewis was on probation for a cocaine conviction. Sweeney then asked Lewis where he was headed, and Lewis replied that he was going to St. Louis to pick up his son at college. Less than a minute later, Lewis claimed he was headed to pick up his 26-year-old son at his work because he had a fight with his girlfriend. Lewis then asked Sweeney to explain the rules regarding following too closely. At this point the stop had lasted 5 minutes and, based on his observations and Lewis' conflicting stories and record, the officer asked for a drug detection dog. The officer and Lewis continued talking as the officer processed the warning in the mobile computer. Officer Sweeney testified that Lewis continued to appear nervous and was sweating profusely even though the officer advised him he would only be getting a warning.

Eleven minutes after the initial stop, Sweeney handed Lewis the warning and advised him that a dog would be walking around his car. At 12 minutes into the stop, the dog alerted to drugs in the car and the officers seized a half pound of heroin. Lewis' motion to suppress the heroin was denied by the trial court and he was subsequently sentenced to 20 years imprisonment. This appeal followed.

### **Seventh Circuit Findings**

The court first determined that the officer had probable cause to initiate the stop. The officer testified that he used a stop watch to determine that Lewis was less than 2 seconds behind the truck. The officer further testified that the Illinois guideline is that there should be at least a 3 second separation between the vehicles. Regardless of the guideline, the officer's own observations along with the calculation formed an ample basis to conduct the stop. Moreover, the dashcam video was reviewed by the justices and showed Lewis' car following closely behind the truck.

The court next addressed the dog sniff. Lewis claimed the video showed that the dog sniff took place 14 minutes into the video which was 4 minutes after Officer Sweeney issued the warning and, therefore was an improper extension of the stop. The court disagreed, finding that there was 4 minutes of video time BEFORE the stop was actually initiated. Lewis also argued that the officer spent 6 minutes talking to Lewis about irrelevant travel questions, thus prolonging the stop. Once again, the court dismissed Lewis' argument finding that officers may ask questions during the stop and continue to ask questions when Lewis' initial responses "objectively seem suspicious". The court wrapped up its review with a determination that the officer's observations and Lewis' responses to questioning supported the officer's reasonable suspicion that there may be drugs in the car. The court noted the following factors "gave rise to objective reasonable suspicion":

- Lewis seemed unusually nervous after hearing he would only get a warning;
- His breathing was heavy and labored;
- He was on probation for cocaine possession; and
- Lewis' travel plans were suspiciously inconsistent

The court then affirmed the conviction.

## **WRAP UP**

The most important lesson we can take away from this case, and one that we continue to see with a great deal of regularity, is that the courts are closely examining video footage to determine the facts of the case. As I am sure you have come to realize, every case has two basic parts: the facts of the case and the application of the law to those facts. As I have often said to recruit classes – change the facts and you change the outcome.

In this case, the court broke down the various segments of the video footage into seconds to determine whether the officer had impermissibly extended the stop. The court reviewed how long the initial stop took, how long it took to walk the operator back to the cruiser, how long the operator and officer engaged in discussion, and when exactly the drug dog conducted the car sniff.

As the court noted in this case, the video footage may have run for 14 minutes but the stop itself only lasted for 11. Most police video systems include video that was recorded before the video system was activated. It is

absolutely imperative that your report and testimony reflect the video footage. Be sure to review your video and be prepared to explain any discrepancies.

*<sup>1</sup>United States v Lewis, 2019 U.S. App. LEXIS 9843 (7<sup>th</sup> Cir. IL April 3, 2019)*

---

Learn more on our website at [DaigleLawGroup.com](http://DaigleLawGroup.com)

This publication is produced to provide general information on the topic presented. It is distributed with the understanding that the publisher (Daigle Law Group, LLC.) is not engaged in rendering legal or professional services. Although this publication is prepared by professionals, it should not be used as a substitute for professional services. If legal or other advice is required, the services of a legal professional should be sought.