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TWENTY-FIVE MINUTES TAKEN BY OFFICER TO ISSUE A TRAFFIC WARNING PRIOR TO ARRIVAL OF NARCOTICS DETECTING K-9 UNIT JUDGED UNREASONABLE UNDER THE FOURTH AMENDMENT

QUESTION: Did the trial court err in granting a motion to suppress where it found that the twenty-five minutes that elapsed between a traffic stop and the positive “alert” by a narcotics detecting K-9 was an unreasonable delay under the Fourth Amendment?

ANSWER: No. The trial court was correct in suppressing the evidence because the officer unduly extended the length of time to issue a traffic warning to await the arrival of the K-9 unit. Such delay is not tolerated under the Fourth Amendment.

CASE: *STATE V. MASON*, Court of Special Appeals of Maryland, Decided March 27, 2007

In *State v. Mason*, the Court of Special Appeals considered whether the trial judge was correct in suppressing evidence seized from a defendant who was initially detained as a result of a traffic stop. In upholding the ruling of the trial judge, the Court of Special Appeals reaffirmed the important principles governing traffic stops made pursuant to *Whren v. United States*.

The facts in the *Mason* case established that the Narcotics Unit of the Maryland State Police, along with the Cumberland Police Department, made a traffic stop of a Dodge Caravan being driven by Paul Andrew Mason, Jr. The traffic stop, which was made by a Cumberland officer, was a *Whren* stop, because the officers had information that Mason was engaged in transporting narcotics. The basis for the traffic stop was strained, namely that Mason “cruised through a stop sign” and made a left-hand turn without having come to a complete stop. This occurred in a quiet neighborhood at a time when there were no pedestrians or other vehicles about, except for the surveilling police car. The officer pulled Mason over for the stated purpose of issuing a warning for the stop sign violation. Once the stop was made, the officer called for the K-9 unit to respond. Approximately twenty-five minutes passed before the K-9 arrived and alerted.

While awaiting the arrival of the K-9, the officer removed Mason from his vehicle before radioing his information back to the barracks. The officer’s subsequent questioning of Mason was wholly unrelated to the underlying traffic stop. Once the K-9 arrived and alerted, Mason’s vehicle was searched and a large quantity of cocaine was seized. Mason

was arrested, charged, and subsequently indicted for the possession of cocaine with the intent to distribute and related charges.

Prior to his trial, Mason moved to suppress the evidence. Following a hearing, the trial court granted Mason's motion. The judge suppressed the evidence because the State had failed to meet its burden that Mason's detention was justified under the *Whren* doctrine or that some other independent constitutional justification for the detention existed.

Because the State offered no justification for the detention apart from the traffic stop, the judge found that the length of the stop, which, again, lasted approximately 25 minutes, was unreasonable under the Fourth Amendment.

On appeal, the Court of Special Appeals affirmed the ruling of the trial judge. In doing so, the Court pointed out that the reasonableness of the length of a traffic stop in which a K-9 unit is called to the scene depends on two critical facts: (1) the duration of the detention (*i.e.*, how much time elapses from the initial stop until the K-9 alert?); and (2) how diligently the stopping officer works in processing the traffic citation or warning. The Court of Special Appeals found that twenty-five minutes to write a warning that consisted of 22 words or numbers and 5 check marks was unreasonable, and provided clear evidence that the officer was merely stalling to await the arrival of the K-9 unit. This led the Court to sarcastically observe that, “[i]n the time that elapsed, the officer could have written the warning in cuneiform.” This was especially true because Mason's license and registration had already been checked by the police team before the traffic stop was even made. In short, the Court deemed this as nothing more than “a narcotics investigation, under the guise of a traffic stop.” As such, the delay of twenty-five minutes to issue a single traffic warning was unconstitutional.

NOTE: In the *Mason* case, the Court of Special Appeals warned that if officers engaged in a narcotics investigation “choose to bring their action in the traffic law arena, they are, absent the appearance of some supervening rationale, bound by the rules that govern in that arena.” Consequently, if there is another rationale for stopping the vehicle, apart from any traffic violation, it must be articulated to the judge hearing the motion to suppress. In *Mason*, the State failed to argue until the case was on appeal that the stop of Mason's vehicle was based on information received from an anonymous informant, and that the information had been corroborated through police observation. If this information had been given to the trial judge it could have established a *Terry*-level suspicion, which, on its own, would have justified the stop and allowed the officers a longer period of time in which to await the arrival of the K-9. So, when testifying at a suppression hearing, officers must be prepared to articulate any and all reasons that led to a vehicle stop and the detention of the driver. If the basis for a continued detention occurs during or after the traffic stop, it is just as important for the officer to articulate all of the reasons for the continued detention.

Prepared by John F. Breads, Jr., Director of Legal Services

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