



**LGIT'S ROLL CALL REPORTER  
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**Reasonable suspicion of other criminal activity allows an officer to detain the driver for a reasonable period after a traffic stop is completed to await the arrival of a K-9.**

**QUESTION:** Does an officer unreasonably extend a traffic stop by detaining the driver for several minutes after the traffic stop is completed to await the arrival of a K-9?

**ANSWER:** Not necessarily. If the officer has reasonable suspicion that the driver or occupants are engaged in criminal activity, the officer can detain the driver for a brief period to await the arrival of the K-9.

**CASE:** *United States v. Victor Eugene Mason*, United States Court of Appeals for the Fourth Circuit, decided December 8, 2010

In this case, the United States Court of Appeals for the Fourth Circuit analyzed the legality of a traffic stop that ultimately resulted in the seizure of narcotics, a conviction, and a mandatory term of life imprisonment for the defendant. The facts established that at 11:40 a.m. on August 12, 2005, Georgia State Patrol Trooper Blake Swicord observed a vehicle being driven by Victor Eugene Mason on Interstate 20 in Morgan County, Georgia. Interstate 20 is a common route for drug traffickers. In Trooper Swicord's opinion, the windows on the vehicle were excessively tinted. Trooper Swicord activated his emergency lights and attempted to make a traffic stop. The activation of the lights automatically activated audio and video recording equipment in Trooper Swicord's car. According to the trooper, "it took a while" for Mason to pull over and he saw Mason conversing with his passenger. Mason did pull over and Trooper Swicord approached. He immediately observed that Mason was nervous and sweating. He also smelled an "extreme odor" of air freshener coming from the car. According to the trooper, the odor was strong enough to give an occupant a headache. Trooper Swicord also observed that there was only one key on the key ring in the ignition and no luggage inside the car. He saw a newspaper on the backseat which identified the addressee as "Radisson Hotel." These factors led Trooper Swicord to conclude that Mason and his passenger were on a "turn-around" trip to Atlanta, a known source city for drugs.

Trooper Swicord asked Mason for his driver's license and registration and then asked him to step out of the car. He asked Mason who owned the car and Mason said his daughter did. The trooper then asked Mason his daughter's name, his passenger's name, and the purpose of the trip. Mason said that he had been to Atlanta to see a relative about a deed. Trooper Swicord then moved to the passenger side of the car and asked the

passenger, Nathaniel Govan, what was the purpose of the trip. Govan said they had driven to see a friend, giving two different names for the friend. Trooper Swicord's questioning of Mason lasted just over two minutes (11:41 a.m. to 11:43 a.m.). His questioning of the passenger lasted just over one minute (11:43 a.m. to 11:44 a.m.) By this time, Trooper Swicord believed both Mason and Govan were lying about their itinerary and were involved in criminal activity. Consequently, he returned to his patrol car and radioed Sergeant Michael Kitchens, a member of the K-9 unit, and asked him to come to the scene with a drug-detection dog. Trooper Swicord then returned to the car and tested the tint on the windows. He determined that the windows were illegally tinted. Trooper Swicord returned to his car to begin writing a warning ticket and to relay Mason's and Govan's names, as well as the registration and insurance information to the dispatcher. This practice was routine to verify information and to check for outstanding warrants.

Trooper Swicord exited his car and handed the warning ticket to Mason regarding the illegal tint. He did so at 11:50 a.m., less than 11 minutes after he had activated his emergency lights. The trooper then asked Mason for permission to search the car. Mason refused. Trooper Swicord told Mason that he believed there were drugs in the car and that he was going to have a drug-detecting dog sniff the car. He ordered Mason out of the car when Sergeant Kitchens arrived. The canine scan of the car began at 11:55 a.m. On the first lap around the car, the dog alerted at both the passenger-side and driver-side doors. On a second lap, the dog jumped into the vehicle through the open driver-side window and gave a positive indication of the presence of drugs by pointing her nose next to the speaker in the back seat and sitting down on the seat. Sergeant Kitchens coaxed the dog out of the car. Trooper Swicord then searched the car. In the trunk, he found approximately 10 kilograms of cocaine powder in a black gym bag. Mason was indicted for conspiracy to possess with intent to distribute five kilograms or more of cocaine in violation of federal law. After the denial of his motion to suppress, Mason was convicted and sentenced to a mandatory life sentence. Mason appealed.

On appeal, the federal appeals court affirmed the conviction. The court concluded that Trooper Swicord had reasonable articulable suspicion (RAS) to detain Mason after the traffic stop was completed. The collective factors giving rise to RAS were: (1) Mason's failure to immediately pull over, (2) Mason's conversation with the passenger during this delay, (3) the extreme odor of air fresheners, a common masking agent, (4) the single key on the key ring, (5) travel from Atlanta, a known drug hub, on a known drug route, (6) Mason's extreme sweating and nervousness, which did not subside, (7) the conflicting responses concerning the purpose of the trip, (8) and the hotel address on the newspaper. When viewed individually, none of the factors gave rise to RAS, but when viewed as a whole, they did. So, the five minute delay from the conclusion of the traffic stop to the arrival and alert by the K-9 was not unreasonable under the Fourth Amendment.

**NOTE:** Another issue in this case concerned the K-9's jumping into the car through the open window. Mason argued that there was no probable cause to allow this and also that the dog's handler coaxed the dog to jump in. The court pointed out, however, that the dog had already alerted several times on the first lap, giving rise to probable cause to

believe that there were drugs in the car. Also, the video seemingly showed that the dog jumped into the car of its own accord and was not commanded or prompted to do so. Obviously, if there had been no alerts during the first scan and the dog had jumped during the second, the outcome in this case could well have been different. The court would have focused much more on the conduct of the handler. As a general rule, when a K-9 officer handling a dog does not prompt the dog's entrance into the vehicle, the dog's entrance in response to the plain smell of narcotics does not violate the Fourth Amendment. Finally, the court observed in this case that brief questioning of occupants during a traffic stop on matters unrelated to the stop does not necessarily violate the Fourth Amendment. The key is to limit questioning so that it does not measurably extend the duration of the stop. So, for purposes of the Fourth Amendment, the more brief the questioning, the better.

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