

lights, the defendant suddenly exited the interstate at mile marker 84 (Joe B. Jackson Parkway). Deputy Wrather then activated his blue lights and pulled the defendant over.

Upon approaching the defendant's vehicle, Deputy Wrather noticed a "strong masking odor," which piqued his suspicion regarding potential drugs in the vehicle. There were two occupants in the defendant's vehicle, namely the defendant and a female passenger.¹ There was a significant language barrier, as the defendant spoke little English, and the female passenger spoke even less. Deputy Wrather cannot speak Spanish (aside from a few words), so he called dispatch and requested a Spanish-speaking officer. Meanwhile, the deputy asked the defendant to exit the vehicle, at which time the defendant produced his Georgia driver's license. The vehicle was registered to a third party, which the deputy believed was indicative of possible criminal activity. Since it was a very cold day, the deputy had the defendant sit in the back of his police cruiser with the heat on. The deputy asked the defendant why he exited the interstate at Joe B. Jackson Parkway, and the defendant indicated that he needed to use the rest room; this was suspicious to the deputy, as there is no sign for public restrooms at that particular rural exit, while the previous exit did have signs for public restrooms. The deputy asked the defendant his destination, reason for traveling, and expected duration of the trip, to which the defendant replied that he was going to Kentucky for one to two weeks for work; however, when the same question was subsequently posed to the female passenger, she indicated that the trip was only expected to last two days. This inconsistency further piqued the deputy's suspicions. Additionally, the only visible piece of luggage in the passenger compartment of the defendant's truck was one small overnight bag, which the

¹ Deputy Wrather was uncertain whether the female passenger was the defendant's wife or girlfriend. Based on the evidence presented, the Court is likewise unable to determine the nature of this relationship.

deputy believed to be too small for a two-week trip. Deputy Wrather wrote the defendant a warning for following too closely, but he was unsure whether the defendant understood. Likewise, the deputy asked the defendant for consent to search the vehicle, but he was unsure whether the defendant understood; the deputy radioed his colleagues to see if anyone had a Spanish consent form, but Lieutenant Haynes (who speaks Spanish) arrived on the scene shortly thereafter.

Lieutenant Haynes testified that he was on duty on February 2, 2011, and heard Deputy Wrather over the radio asking for a translator. Accordingly, the lieutenant drove to the scene and asked the defendant (in Spanish), “May we search your car?” The defendant responded, “Si,” and pointed to his vehicle. The lieutenant was standing 3-4 feet away from the defendant during this exchange.² The three³ officers then began searching the defendant’s vehicle, during which time the defendant somehow managed to retrieve his driver’s license from the dashboard of Deputy Wrather’s cruiser and abscond from the scene.⁴ The video recording of the stop reveals that the defendant removed his driver’s license from Deputy Wrather’s cruiser approximately 36 minutes after the initial stop.

Sergeant Applegate arrived on the scene with his canine partner, Jett, after the defendant had fled the scene. Sergeant Applegate has been with the Sheriff’s Office for 6-7 years, and trains weekly with Jett, who is certified annually to detect the odor of cocaine, marijuana, amphetamines, and heroine. The sergeant walked Jett around the defendant’s truck, and Jett made a “positive alert” at the driver’s side door. The vehicle

² Prior to Lt. Haynes’ arrival, the defendant had asked to use the bathroom, and Deputy Wrather readily consented. The defendant was therefore not in the police cruiser during his conversation with Lt. Haynes.

³ Another non-Spanish speaking deputy had arrived on the scene before Lt. Haynes arrived.

⁴ The defendant was eventually apprehended in Houston, Texas.

was then transported to the Rutherford County Sheriff's Office, where cocaine was recovered from the vehicle.

LAW

Probable cause is not required for an investigatory stop. Terry v. Ohio, 392 U.S. 1 (1968). An officer may make a brief investigatory stop if the officer has reasonable suspicion that a criminal offense has been, is being, or is about to be committed. Id. The reasonable suspicion must be based upon specific and articulable facts. Id. Reasonable suspicion is a less demanding standard than probable cause not only in the sense that reasonable suspicion can be established with information that is different in quantity or content than that required to establish probable cause, but also in the sense that reasonable suspicion can arise from information that is less reliable than that required to show probable cause. State v. Teargan, 958 S.W.2d 626, 632 (Tenn. 1997), *citing* Alabama v. White, 496 U.S. 325, 330 (1990); State v. Pulley, 863 S.W.2d 29, 32 (Tenn. 1993). Moreover, whether reasonable suspicion exists is determined by examining the totality of the circumstances surrounding the stop. White, 496 U.S. at 330; State v. Smith, 21 S.W.3d 251, 256 (Tenn. Crim. App. 1999).

An officer's subjective intention for stopping a vehicle is irrelevant, as long as independent grounds exist for the detention. State v. Hudson, 2005 WL 639129 at *3 (Tenn. Crim. App. 2005), *citing* Whren v. United States, 517 U.S. 806 (1996). An officer's observation of a violation of a traffic law provides an objective basis for stopping a vehicle. *See, e.g.*, State v. Vineyard, 958 S.W.2d 730, 734 (Tenn. 1997); State v. Levitt, 73 S.W.3d 159, 173 (Tenn. Crim. App. 2001). Once a vehicle has been lawfully detained, an officer may, as a matter of course, order the driver to step out of the vehicle. State v. Donaldson, 380 S.W.3d 86, 92 (Tenn. 2012), *citing* State v. Hanning,

296 S.W.3d 44, 54 (Tenn. 2009). “Requests for driver’s licenses and vehicle registration documents, inquiries concerning travel plans and vehicle ownership, computer checks, and the issuance of citations are investigative methods or activities consistent with the lawful scope of any traffic stop.” State v. Harris, 280 S.W.3d 832, 840 (Tenn. Crim. App. 2008). The duration of an investigative detention should last no longer than necessary and should generally end when there is no further reason to control the scene or the driver of the vehicle. Donaldson, *supra*, at 93, *citing* Arizona v. Johnson, 555 U.S. 323, 333 (2009). “Similarly, the investigative methods employed should be the least intrusive means reasonably available to verify or dispel the officer’s suspicion in a short period of time.” Donaldson, *supra*, at 93, *citing* Florida v. Royer, 460 U.S. 491, 500 (1983).

In order for consent to search a vehicle to pass “constitutional muster,” it must be “unequivocal, specific, intelligently given, and uncontaminated by duress or coercion.” State v. Brown, 294 S.W.3d 553, 562-63 (Tenn. 2009), *quoting* State v. Simpson, 968 S.W.2d 776, 784 (Tenn. 1998). The existence of consent and whether it was voluntarily given are questions of fact which require examining the totality of the circumstances. Brown, *supra*, at 563, *quoting* State v. Cox, 171 S.W.3d 174, 184-85 (Tenn. 2005). When determining voluntariness, factors to consider include: (1) time and place of the encounter; (2) whether the encounter was in a public or secluded place; (3) the number of officers present; (4) the degree of hostility; (5) whether weapons were displayed; (6) whether consent was requested; and (7) whether the consenter initiated contact with the police. Id., *quoting* Cox, *supra*, at 185.

When an individual flees from a vehicle, he is deemed to have abandoned the vehicle, thereby losing any expectation of privacy in that vehicle. State v. Rubert, No.

M2000-00914-CCA-R3-CD, 2001 WL 1285939 at *3 (Tenn. Crim. App. 2001), *citing* Campbell v. State, 469 S.W.2d 506 (Tenn. Crim. App. 1971); Prock v. State, 455 S.W.2d 658 (Tenn. Crim. App. 1969). *See also* State v. Godsey, No. 52, 1991 WL 50180 at *1 (Tenn. Crim. App. 1991).

Finally, a canine sweep is not a “search” under the Fourth Amendment and is reasonable if performed during the time necessary to effectuate a traffic stop. State v. England, 19 S.W.3d 762, 766-68 (Tenn. 2000). Once a reliable canine alerts positive for the presence of drugs in a vehicle, probable cause exists to conduct a search of the inside of the vehicle. *See Id.* At 768-69.

ANALYSIS

In the case at bar, Deputy Wrather observed the defendant following another vehicle too closely on the interstate, thereby providing an objective basis for stopping the defendant’s vehicle. The duration of the traffic stop was reasonable, considering the language barrier and Deputy Wrather’s efforts to locate a Spanish-speaking officer and/or an officer with a Spanish consent form. Moreover, when the deputy’s reasonable questions regarding the ownership of the vehicle and the travel plans of the defendant and his passenger were met with answers that piqued his suspicion of possible illegal activity, it was reasonable for the duration of the stop to be prolonged for further investigation.

Once Lieutenant Haynes arrived on the scene, he was able to communicate with the defendant in Spanish and obtain his consent to search the vehicle. The defendant’s consent was unequivocal and voluntarily given, insomuch as: the encounter occurred in the mid-morning just off a busy interstate; the exchange occurred outside of the police cruiser; three officers were present; there was no indication of hostility on the video recording of the exchange; and weapons were not displayed.

The defendant's reliance on State v. Berrios, 235 S.W.3d 99 (Tenn. 2007) and State v. Garcia, 123 S.W.3d 335 (Tenn. 2003) is misplaced, as the case at bar is distinguishable from both of those cases. In Berrios, the defendant was placed in the back of the police car, where he remained for the duration of the encounter, including when the officer requested and received his consent to search the vehicle. In the case at bar, while Deputy Wrather did initially place the defendant in the back of the cruiser due to the cold weather, when the defendant asked permission to use the bathroom, Deputy Wrather readily consented, allowing the defendant to exit the police cruiser. The defendant then remained outside of the cruiser for the remainder of the encounter, including when his consent to search his vehicle was sought and granted in Spanish. In fact, the defendant in the case at bar enjoyed such a great degree of freedom during the traffic stop that he was able simply to walk away and disappear without any of the officers noticing. In Garcia, the Supreme Court determined that there was no reasonable suspicion to stop the defendant in the first place. Clearly, the case at bar is distinguishable in that the defendant herein was following another vehicle too closely on the interstate, as demonstrated on the video and through Deputy Wrather's testimony. An officer's observation of a violation of a traffic law provides an objective basis for stopping a vehicle. *See, e.g., State v. Vineyard*, 958 S.W.2d 730, 734 (Tenn. 1997).

Even assuming *arguendo* that the defendant's assertions concerning the duration of the stop and the lack of consent to search are well-founded, it is apparent to the Court that the defendant abandoned his vehicle when he absconded from the scene, thereby losing any expectation of privacy that he had in the vehicle. Rubert, *supra*, at *3.

Finally, once Jett the canine officer (who is found by this Court to be reliable) alerted positive for the presence of drugs in the defendant's vehicle, probable cause existed to conduct the further search of the vehicle. England, supra, at 768-69.

CONCLUSION

This Court holds, based on a totality of the circumstances, that the police did have reasonable suspicion articulated by specific facts to stop the defendant, and that the defendant's consent to search his vehicle was voluntarily given. Further, this Court holds that the defendant abandoned his vehicle during the search, thereby losing any expectation of privacy that he had. Finally, this Court holds that the canine officer's positive alert provided probable cause to conduct the further search of the defendant's vehicle. For the reasons stated above, the defendant's Motion to Suppress is hereby DENIED.

IT IS SO ORDERED.

/s/ [Original Signature on File at Clerk's Office]
M. KEITH SISKIN
CIRCUIT JUDGE

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the foregoing Order has been

- hand-delivered
- mailed (to last address on file), postage prepaid

to the parties and their counsel (if any) on this the _____ day of _____, 20____.

Deputy Clerk