

NO. 2008-KA-01098-COA

**IN THE
COURT OF APPEALS
OF THE STATE OF MISSISSIPPI**

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**TYRONNE LEKEITH WADE
Defendant – Appellant**

v.

**STATE OF MISSISSIPPI
Plaintiff – Appellee**

**Appeal from the Circuit Court of Harrison County, Mississippi
First Judicial District**

BRIEF FOR APPELLANT

(Oral Argument is not Requested)

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CERTIFICATE OF INTERESTED PERSONS

TYRONNE LEKEITH WADE
Defendant – Appellant,

V.

NO. 2008-KA-01098-COA

STATE OF MISSISSIPPI
Plaintiff – Appellee

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. MR. TYRONNE LEKEITH WADE
2. STATE OF MISSISSIPPI
3. HARRISON COUNTY DISTRICT ATTORNEY; ATTORNEY FOR STATE
4. CHASE CHASE & ASSOCIATES, PLLC, and its members, ALVIN CHASE and NITA L. CHASE; ATTORNEYS FOR TYRONNE LEKEITH WADE



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STATEMENT REGARDING ORAL ARGUMENT

The appellant asserts that the facts and legal arguments in this appeal are adequately presented in the brief and record and therefore the decisional process would not be aided by oral argument.

Accordingly, the appellant does not request oral argument on the issues presented in this appeal unless the appellee is permitted to appear and argue before the Court.

TABLE OF CONTENTS

<u>CERTIFICATE OF INTERESTED PERSONS</u>	1
<u>STATEMENT REGARDING ORAL ARGUMENT</u>	2
<u>TABLE OF CONTENTS</u>	3
<u>STATEMENT OF ISSUES PRESENTED FOR REVIEW</u>	6
<u>STATEMENT OF CASE</u>	7
<u>SUMMARY OF THE ARGUMENT</u>	9
<u>ARGUMENT</u>	10
<u>ISSUE RESTATED:</u>	10
A. <u>STANDARD OF REVIEW</u>	10
B. <u>ARGUMENT OF ISSUE</u>	11
<u>CONCLUSION</u>	23

TABLE OF AUTHORITIES

CASES

<i>Carney v. State</i> , 525 So.2d 776 (Miss. 1988)	9, 10
<i>Carney v. State</i> , 525 So.2d 776, 785 (Miss. 1988).....	9
<i>Couldery v. State</i> , 890 So.2d 959 (Miss.App. 2004)	13, 14, 18, 19
<i>Dortch</i>	14, 15, 18
<i>Gonzales v. State</i> , 963 So.2d 1138, 1140 (Miss. 2007)	10
<i>Illinois v. Caballes</i> , 543 U.S. 405 (2005).....	18, 19, 20
<i>Jaramillo v. State</i> , 950 So.2d 1104 (Miss.App. 2007).....	20
<i>Terry v. Ohio</i> , 392 U.S. 1, (1968)	14
<i>United States v. Arvizu</i> , 534 U.S. 266, 273 (2002)	15
<i>United States v. Dortch</i> , 199 F.3d 193 (5 th Cir. 1999).....	14
<i>United States v. Grant</i> , 349 F.3d 192, 197, (5 th Cir. 2003).....	15
<i>United States v. Jacobsen</i> , 466 U.S. 109, 124 (1984).....	13
<i>United States v. Lopez-Valdez</i> , 178 F.3d 282, 287-89 (5 th Cir. 1999)	12
<i>United States v. Shabazz</i> , 993 F.2d 431, 435 (5 th Cir. 1993)	14

STATUTES

Miss. Code Ann. § 45-6-3(c).....	11
Miss. Code Ann. § 27-19-31	11
Miss. Code Ann. § 27-19-40(4)	11

STATEMENT OF ISSUES PRESENTED FOR REVIEW

**ISSUE: Whether the circuit court judge erred in denying
Wade's motion to suppress evidence and dismiss indictment
because the marijuana discovered following an illegal stop of
Wade's vehicle or after said stop turned into an unlawful detention
of Wade when the initial reason for the stop had concluded.**

STATEMENT OF CASE

On November 13, 2006, Appellant, Tyronne LeKeith Wade (hereinafter referred to as "Wade" or "Appellant"), was traveling from Texas to North Carolina. Wade was traveling alone and was driving a rental car, a Dodge Magnum, which had a temporary license tag from Alabama on it. Harrison County Deputy Sheriff William Senseney (hereinafter referred to as "Senseney") initiated a traffic stop on Wade, on eastbound Interstate 10 in Harrison County near the 23-mile marker on November 13, 2006, at about 1013 hours. The stop was initiated because Senseney did not see a tag displayed on the tag holder of the vehicle. Upon making the stop and exiting his patrol vehicle, Senseney walked toward Wade's vehicle and observed a temporary Alabama tag on the rear window of the Dodge Magnum. Senseney testified the original purpose of the stop was for the sole purpose of writing a warning citation for an improper display of a license tag. T.5, 7, 8.¹ He stated it took approximately five minutes to complete the warning citation (T.18) and upon completing it, he sought consent from Wade to search the vehicle. T.11. That consent was denied. Senseney then called for a canine unit, but the time of the call is not clear, even though he suggests it was done after Wade refused to consent to a search at 1027 hours. Senseney then detained Wade until a drug detecting dog could arrive on scene and conduct a sniff around the exterior of the vehicle.

Officer Tim Huguet ("Huguet"), the canine handler, arrived on the scene. He estimated he arrived about five minutes after receiving the call for assistance, but he

¹ The official record on appeal ("R") consists of three (3) volumes, two of which are transcripts of the motion hearing and the bench trial. References to the transcript is cited as "T.[page number]" and references to other portions of the record is cited as "R.[page number]". References to Records Excerpts are cited as "R.E. [tab number]".

wasn't sure. T.42-43. When he received the call he was at some other point in Harrison County on the day in question. T.42. Senseney testified that he believes he called for the canine assistance around 1027 hours after Wade exercised his constitutional right to refuse to consent to a search. Upon Huguet's arrival with his canine, Robby, until the time the sniff of the exterior started about two or three minutes passed.

Senseney had learned, observed, or concluded several things upon making contact with Wade after the traffic stop but before Robby, the drug-sniffing canine, arrived.

They are as follows: 1) he saw a temporary tag in the rear tinted and dirty window of the vehicle; 2) he saw Wade's hands shaking and he considered Wade to be nervous; 3) there was a Bible, rosary beads, and a military style dog tag in the vehicle; 4) he noticed what he considered to be a strong odor of air freshener in the vehicle; 5) that Wade was traveling from Beaumont, Texas to North Carolina, but had rented the car in Harlingen, Texas, thus causing Senseney to think this was odd; 6) Wade supposedly gave different statements about visiting his sick or dying uncle and where he (Wade) was traveling from; and 7) Wade had been arrested in June 2006 in Livingston Parish, Louisiana. T.6-11.

The canine sniff of Wade's vehicle resulted in a positive alert for the presence of a controlled substance. Upon further search of the vehicle, several bundles of marijuana were discovered in suitcases inside the vehicle. Senseney arrested Wade for the possession of marijuana with the intent to transfer or distribute the said controlled substance.

Wade was indicted on that charge by the Harrison County Grand Jury on June 11, 2007. On March 26, 2008, Wade filed a motion to suppress evidence and dismiss the indictment alleging his constitutional rights had been violated and the marijuana found in his vehicle was illegally seized. Wade also alleged he was unlawfully detained by Senseney and any statements obtained during the stop should also be suppressed. A hearing on the motion to suppress was held on April 1, 2008. The trial judge allowed the parties to submit letter briefs prior to making a final ruling on the motion. The State's letter brief is at (R.32-35) (R.E. 3) and Wade's letter brief is at (R.36-44) (R.E. 4). On April 23, 2008, the trial judge entered an order denying the motion to suppress the evidence and dismiss the indictment. A bench trial followed on May 1, 2008, and at the conclusion of the trial, the trial judge found Wade guilty of possession of controlled substance with intent to transfer or distribute. The trial judge sentenced Wade to twenty (20) years, with ten (10) suspended, leaving ten (10) years to serve in the custody of the Mississippi Department of Corrections, followed by five (5) years of post-release supervision.

SUMMARY OF THE ARGUMENT

The issue presented in this case is whether the circuit court judge erred in denying Wade's motion to suppress evidence and dismiss the indictment the stop was an illegal stop because Wade had not violated any Mississippi traffic laws in Senseney's presence. If the stop initially was legal, once Senseney concluded the reason for the stop, Wade was illegally detained and thus the marijuana discovered after the traffic stop was

obtained during an unlawful detention. Sufficient time had elapsed after the issuance of the warning ticket to Wade until the start of the canine sniff to transform the stop to an illegal detention and thus an illegal search and seizure. Holding or detaining Wade beyond the issuance of the warning ticket without any legitimate reasons for suspecting Wade then and there had possession of controlled substances constituted an illegal detention and all subsequent search and seizure of controlled substances in Wade's vehicle was illegal requiring the evidence to be suppressed.

ARGUMENT

ISSUE RESTATED:

Whether the circuit court judge erred in denying Wade's motion to suppress evidence and dismiss indictment because the marijuana discovered following an illegal stop of Wade's vehicle or after said stop turned into an unlawful detention of Wade when the initial reason for the stop had concluded.

A. STANDARD OF REVIEW

This Court must reverse the lower court's ruling on Wade's motion to suppress if the Court finds the marijuana was discovered during an illegal search, rendering its seizure illegal and inadmissible during a trial.

Carney v. State, 525 So.2d 776, 785 (Miss. 1988). Thus, this Court should examine carefully "the legality of the particular intrusions which enabled

the police to see this marijuana to determine if these intrusions were outside the legitimate scope [of the police's authority]." *Gonzales v. State*, 963 So.2d 1138, 1140 (Miss. 2007), (citing, *Carney v. State*, 525 So.2d 776, 785 (Miss. 1988)).

B. ARGUMENT OF ISSUE

1. Legality and propriety of the initial stop

The initial stop of Wade's vehicle was improper and illegal. The vehicle Wade was driving had a tag in plain view in the rear window of the vehicle and therefore Senseney had no reasonable suspicion that the vehicle had no tag. Senseney could have, as a practical matter, determined the car had a tag on it by merely driving behind and to the left of the vehicle as they both traveled along the interstate. There was no necessary reason to stop the vehicle. Because of this lack of probable cause to believe Wade had violated rules of the road that are also recognized as a legal basis to stop a motorist, the marijuana subsequently seized as a result of the illegal stop should have been suppressed.

The evidence shows this stop was made in the daylight hours at about 1013 hours. Senseney testified he could see the tag displayed in the rear window of the car when he approached it from the rear. T.5. He recognized the car had an Alabama tag on it. T.5. Senseney had no authority to enforce Alabama license tag laws as the car was apparently properly registered in Alabama and not in Mississippi. Under the Mississippi Driver License Compact Law, the State of Mississippi is required to report violations of Mississippi traffic laws and ordinances committed in Mississippi by out-of-state

motorists to those motorists' home state. Miss. Code Ann. § 63-1-101 *et seq.* The interstate compact can not be interpreted in a manner to render Wade's failure to comply with Mississippi's license plate requirements on the rental car he drove which was apparently properly registered in Alabama as a violation of Mississippi law².

Mississippi license plate statute does not apply to the vehicles registered in another state; however, that statute does apply to vehicles registered in Mississippi. Miss. Code Ann. § 27-19-31. Wade's rental vehicle was not registered in Mississippi, but was apparently properly registered in Alabama. Even the special in-transit tags for rental vehicles described in the Mississippi laws pertain to vehicles purchased by a rental company from a dealer in Mississippi. Miss. Code Ann. § 27-19-40(4). There is nothing to suggest the vehicle Wade was driving had been purchased by the car rental company from an automobile dealer in Mississippi.

Simply put, Wade did not violate any Mississippi statute or regulation as pertaining to the display of the license tag on the rental vehicle. Senseney, as a sheriff deputy, undoubtedly had authority as a law enforcement officer to enforce the criminal and traffic laws of this state and ordinances of the county, but that does not give him authority to enforce the laws of Alabama pertaining to license plates on vehicles registered in Alabama. Miss. Code Ann. § 45-6-3(c). Wade did not violate any Mississippi traffic law warranting and authorizing a stop of his vehicle. Even if Senseney mistakenly believed Wade violated Mississippi law, that mistake was not reasonable.

² Senseney did not cite Wade for any traffic violation, *i.e.*, any moving violations. The citation issued was a warning citation according to Senseney. This fact alone (issuing only a warning violation) strongly indicates Senseney knew he had no authority to enforce Alabama laws pertaining to the proper display of license plate on an automobile registered in Alabama.

Senseney should have exercised proper discretion upon recognizing the vehicle had an Alabama tag on it and immediately allowed Wade to leave, even without giving him a warning citation³.

The Fifth Circuit rejected the notion that although a detained motorist had not actually violated any law, the evidence of contraband seized should be admissible as a good faith exception. *See, United States v. Lopez-Valdez*, 178 F.3d 282, 287-89 (5th Cir. 1999). The court in *Lopez-Valdez* reasoned that allowing officers to stop vehicles on the basis of their subjective belief that a traffic violation has occurred, when in fact there was no violation, creates the potential for abuse of traffic violations as pretext for making stops to the point of being uncontrollable. *Id.* at 289. It is much more egregious to allow a law enforcement officer stop a vehicle apparently properly displaying a license tag issued by another state when there is no traffic violation to serve as the probable cause for the stop. Allowing such conduct by police officers opens the door for serious abuse of license plate violations as a pretext for making stops to the point that any motorists driving a vehicle with an out-of-state tag could be stopped without any moving or traffic violation. It can hardly be said with a straight face that stopping a motorist for an alleged license tag violation of another state constitutes a good-faith exception to the laws and case law concerning stopping motor vehicles. The Court, in the case under review,

³ Wade should have been allowed to continue his travel without any undue delay. This is similar to an inadvertent whistle blown by a referee in the game of basketball. In that instance, the referee admits the whistle was inadvertent and the play resumes immediately. Likewise, Senseney should have merely told Wade that he initially could not see the tag, but saw it upon approaching the vehicle. He could have perhaps suggested Wade dust the window and then allowed Wade to leave and continue his travel.

should declare the initial stop illegal and without probable cause and suppress the illegally seized evidence.

2. **Assuming the stop was legal, it transformed into an illegal detention**

Despite the legality of the initial stop, once the purpose of the stop concluded Wade should have been allowed to leave because no probable cause or reasonable suspicion existed to further detain Wade. At the least, the Court should hold that any time beyond what was necessary and reasonable to issue a warning ticket from the time of the stop was and an illegal and unlawful detention and seizure of Wade's person and the evidence of the contraband should be held inadmissible at a trial. Wade's conviction should be reversed and rendered.

The United States Supreme Court has held a seizure (detention of the person) that is lawful at its inception can violate the Fourth Amendment if its manner of execution unreasonably infringes interests protected by the Constitution. *United States v. Jacobsen*, 466 U.S. 109, 124 (1984). In *Couldery v. State*, 890 So.2d 959 (Miss.App. 2004), the Mississippi Court of Appeals held that, in a situation where the totality of the circumstances were much similar to the instant case,

[E]ven if the stop was proper, Officer Vincent should have ticketed Couldery and left him to journey home. Nothing in the record supports a finding that Vincent was justified in further detaining Couldery beyond the ordinary scope of a brief traffic stop. Accordingly, the trial court erred in denying Couldery's motion to suppress all contraband discovered as a result of the search.

Id. at 968. That case, as does the case at bar, involved a dog sniff and subsequent search. The important principle gleaned from that case is once the reason for a lawful stop has concluded, officers can not legally detain the defendant to conduct an illegal search or to obtain reasonable suspicion or probable cause for a warrantless search such as allowing a drug-detecting dog to sniff the exterior of the defendant's vehicle. *Couldery v. State*, 890 So.2d 959 (Miss.App. 2004). The reasonable suspicion must exist before the illegal detention or seizure begins, *i.e.*, the reasonable suspicion must exist during the lawful detention.

The Fifth Circuit Court of Appeals has addressed Fourth Amendment challenges to searches following a traffic stop and analyzes "the legality of traffic stops for Fourth Amendment purposes under the standard articulated in *Terry v. Ohio*, 392 U.S. 1, (1968)." *See, United States v. Dortch*, 199 F.3d 193 (5th Cir. 1999). In *Dortch*, the Fifth Circuit held that the legality of an investigatory stop turns on "whether the officer's action was justified at its inception, and whether it was reasonably related in scope to the circumstances which justified the interference in the first place." *Id.* at 198 (*citing, United States v. Shabazz*, 993 F.2d 431, 435 (5th Cir. 1993)). The court in *Dortch* noted that during a valid traffic stop officers are permitted to check the driver's license, vehicle registration and rental agreement. *Dortch* at 198. The trial judge must make the reasonable-suspicion determination after evaluating the "totality of the circumstances" of each case to determine if the detaining officer has a "particularized and objective basis" for suspecting legal wrongdoing. *United States v. Grant*, 349 F.3d 192, 197, (5th Cir.

2003), (citing, *United States v. Arvizu*, 534 U.S. 266, 273 (2002)). In *Dortch*, the court found the defendant's Fourth Amendment rights were violated when the detention extended beyond the completion of the computer check. The basis for the initial traffic stop had concluded and the officers lacked reasonable suspicion to detain the defendant beyond the scope of the traffic stop. *Dortch*, at 198. The court went on to say that once the law enforcement purposes of ensuring a rental vehicle was not stolen and that there were no outstanding warrants for the driver, the continued or "extended detention became an unreasonable seizure, because it was not supported by probable cause. To hold otherwise would endorse police seizures that are not limited to the scope of the officer's reasonable suspicion and that extend beyond a reasonable duration." *Dortch*, at 199. The gist of Wade's argument is not that the time (however short or long) from the expiration of the reason for the initial stop to the arrival of the canine was an unreasonable delay, but it was instead an **illegal detention and seizure** of Wade's person which started the moment the reason for the initial stop was completed assuming the initial stop was legal, *i.e.*, to write a warning ticket because Senseney could not see the tag. The reasonableness of a delay or detention in terms of length of time can always vary, but the illegality of an unlawful detention or seizure based on expiration of the reason for the initial stop starts at a definite moment. There is no gray area in when the illegal seizure begins in such a case. In fact, there's a burning bright line between the expiration of the reason for the initial stop and the start of the illegal seizure in such a case.

In completing the analysis of whether Senseney detained Wade beyond the scope of the traffic stop and without reasonable suspicion or probable cause, the Court should

realize “the critical event is the time the officer developed reasonable suspicion to turn the initial traffic stop into a search for contraband.” *Grant*, at 197. Wade contends Senseney never developed reasonable suspicion even though he turned the initial traffic stop into a search for contraband almost immediately after the stop. Senseney accused Wade of being nervous; hiding drugs because he had a Bible, rosary beads, air freshener, and a rental agreement showing he rented the vehicle in Harlingen, Texas but had stated he was traveling from Beaumont, Texas to North Carolina; and giving what Senseney considered different statements about visiting his sick uncle. Senseney never received information that the car was stolen or that there were active warrants for Wade’s arrest. He did, however, receive information that Wade had an arrest in Louisiana in June 2006, (some five months prior to the date of the stop by Senseney). Senseney had already gathered his intelligence from the criminal history check before he sought consent to search, but yet, no probable cause existed to seize Wade and, accordingly, Senseney should have allowed Wade to go on his way.

Perhaps Senseney thought he developed reasonable suspicion when he got the last bit of information that Wade had a previous arrest. Nothing singularly or combined with other bits of information gave rise to or constituted reasonable suspicion or probable cause to further detain Wade. Senseney did not make objective reasonable inferences from the information he had. Possessing a Bible and rosary beads while traveling on an interstate highway is not indicative that one is trafficking in drugs. Wade has a right under the freedom of religion clause of the First Amendment to travel with such items—they are not contraband items. If they were contraband and were in plain view, that

would have satisfied the reasonable suspicion or probable cause requirement. It is not reasonable to infer Wade's possession of the Bible and rosary beads means he had drugs in his car. Additionally, the presence of the air freshener in the vehicle does not support reasonable suspicion or probable cause to seize Wade. Plenty of car owners and drivers enjoy the freshened air an air freshener can provide. Reasonable suspicion is not established simply because Wade had rented the car in one city but was coming from a different city at the time Senseney stopped him. The evidence presented at the hearing does not support that Wade was trying to hide something by renting the car from the city he did. Further, the evidence doesn't show that Harlingen and Beaumont, Texas are drug supplying cities. The rental arrangement and where Wade was coming from does not logically lead to the conclusion Wade was trafficking drugs. Each bit of information Senseney claimed he considered in concluding further detention was necessary, standing alone and taken together, including alleged rental agreement issue⁴, under the totality of circumstances did not give rise to reasonable suspicion that Wade was trafficking drugs. Senseney improperly focused his investigation on detecting the presence of drugs even before being denied consent to search Wade's vehicle. He violated Wade's constitutional rights after reasonable time expired in which to issue the warning citation because he had failed to establish legal probable cause to further detain and seize Wade. Senseney had only mere suspicion and not reasonable suspicion.

⁴ Senseney's testimony on cross-examination during the motion hearing clearing defeats the contention that Wade gave different stories concerning where he was coming from. Senseney simply improperly concluded Wade was lying because Wade told Senseney he was coming from Beaumont and did not state he rented the car in Harlingen. T.22-23. Wade answered the question Senseney asked: where are you coming from. T.8.

Wade reiterates that Senseney could not establish reasonable suspicion based on his personal observation, but could have established it if, *e.g.* he had smelled the odor of marijuana coming from the vehicle or if Wade had told him that he had smoked marijuana in the vehicle or a narcotics-detecting canine confirmed his otherwise mere suspicion; however, the performance of that sniff occurred after Wade had been illegally seized and while his Fourth Amendment right to unreasonable seizure of his person was occurring. The inferences drawn by Senseney were not reasonable and did not justify further detention. Combining all Senseney observed with the knowledge of Wade's arrest some five months prior does not amount to reasonable suspicion that he was trafficking drugs on November 13, 2006. To allow that to be the determining factor in developing reasonable suspicion or probable cause would make every person previously arrested subject to being detained on a mere subjective basis for suspecting trafficking drugs. The taint of a prior arrest is not a reasonable basis to suspect drug trafficking. The only logical way to establish probable cause to search the vehicle was to detain Wade until a canine sniff indicated the presence of narcotics. But the canine was not already on the scene and thus, Wade should have been allowed to go on his way without further detention, just as the courts held in the *Dortch* and *Couldery* cases. Even assuming a search of the vehicle is legal after a drug-detecting canine indicated the presence of narcotics, the fact that the dog sniff occurred while Wade was illegally detained or seized makes the marijuana discovered the fruit of the poisonous tree.

A recent U.S. Supreme Court case also illustrates that Wade's motion to suppress the marijuana should be sustained. In *Illinois v. Caballes*, 543 U.S. 405 (2005) the

Supreme Court held that “[a] seizure that is justified solely by the interest in issuing a warning ticket to the driver can become unlawful if it is prolonged beyond the time reasonably required to complete that mission.” *Illinois v. Caballes*, Id. at 407 (2005). Justice Stevens, in writing for the Court, did not focus on the reasonableness of the delay from the time of the initial stop until the time of the arrival of the drug dog. Neither did he focus on the length of time of the illegal detention, but the focus was on the fact that the initially lawful detention was reasonable but became unreasonable once the mission of issuing the warning citation was completed. Even though the outcome for the defendant in the *Caballes* case was to his detriment, the principle enunciated there, when applied to the facts in Wade’s case, logically supports the conclusion that the illegally seized marijuana in the instant case should be suppressed. The Supreme Court applies this principle when the defendant is being unlawfully detained⁵. Thus, an otherwise lawful detention and seizure can become illegal if the initial seizure and purpose of the stop have expired and the stop becomes unreasonably prolonged as when the lawful seizure is concluded and the subsequent seizure becomes an unlawful detention. See, *Couldery v. State*, 890 So.2d 959 (Miss.App. 2004). *Arguendo* the initial stop was a lawful one, it became an extended detention that turned into an illegal seizure once a reasonable time had expired in which to write and issue the warning citation and when there were no reasonable inferences supporting the Senseney’s guessing and conclusion

⁵ In *Caballes*, the U.S. Supreme Court stated “[in] an earlier case involving a dog sniff that occurred during an unreasonably prolonged traffic stop, the Illinois Supreme Court held that use of the dog and the subsequent discovery of contraband were the product of an unconstitutional seizure. *People v. Cox*, 202 Ill. 2d 462, 782 N.E. 2d 275 (2002). We may assume that a similar result would be warranted in this case if the dog sniff had been conducted while respondent was being unlawfully detained.” *Caballes*, 543 U.S. 405, 4-7-408 (2005).

that Wade was trafficking in illegal narcotics. The evidence shows it only took five minutes to write and issue the warning citation and after that was completed, even if only three minutes elapsed until the arrival of the canine unit, the detention during that time was illegal because it was based on suspicion and not probable cause. It's not illegal to conduct the dog sniff **during the lawful stop**, but it crosses the constitutional limits once the reason for the initial stop has ended without probable cause to seize having been established. The police is not allowed to prolong Wade's otherwise legal detention/seizure for the sole purpose of awaiting the arrival of a drug detection dog to conduct a sniff of the exterior of his vehicle unless probable cause to seize Wade existed at the time the illegal detention began which was the at the conclusion of the reason for the initial stop.

The State, in its letter brief, relies upon *Jaramillo v. State*, **950 So.2d 1104** (Miss.App. 2007) to support the proposition that performance of a dog sniff of Defendant's vehicle by a trained narcotics-detecting canine during a valid traffic stop does not violate Defendant's Fourth Amendment rights against unreasonable searches and seizures. The Mississippi Court of Appeals' decision in *Jaramillo* hinges on the U.S. Supreme Court's decision in *Illinois v. Caballes*, **543 U.S. 405** (2005). *See, Jaramillo v. State*, **950 So.2d 1104, 1107**. But factually, *Jaramillo* is distinguishable from the case at bar. In the instant case, the narcotics-detecting canine was not on the scene until the stop became an illegal detention but in *Jaramillo*, the canine was already on the scene **during the valid stop**. Thus, the detention in *Jaramillo* never became an illegal one. The fact that the Fourth and Eighth U.S. Circuit Courts of Appeals have held a fifteen-minute and

a one-hour periods of time of waiting for a canine sniff were reasonable is immaterial because the issue is not whether the defendant was illegally detained for a reasonable time, but whether the narcotics-detecting canine arrived *during* a valid traffic stop and seizure versus arriving after the legal detention became an illegal seizure.

Further, the State considers the requesting of consent to search after the warning citation was completed to be proper and not illegal. We certainly do not allege that it was improper or illegal. The Defendant's position is that there was no probable cause or reasonable suspicion to further detain Wade after the computer check had been completed and the warning or courtesy citation had been completed. However, the fact that consent was requested, is a very strong indicator that Senseney knew he lacked reasonable suspicion or probable cause to detain Wade. Thus, it is important that in the analysis of the totality of circumstances, the Court consider the fact that Senseney requested consent to search after he had all the information available which he claims gave him reasonable suspicion. The Court should consider the reasonable inference to be drawn from the fact that Senseney requested consent. That inference is that, despite all circumstances, reasonable suspicion or probable cause to seize and detain Wade did not exist. The marijuana should be suppressed and the conviction should be reversed.

CONCLUSION

The Appellant, TYRONNE LEKEITH WADE, submits that the circuit court judge erred by denying his motion to suppress the marijuana seized from Wade's vehicle.

The initial stop was illegal because Senseney had no authority to enforce Alabama license tag laws and regulations in Mississippi. Stopping Wade constituted a violation of his rights and the marijuana should be suppressed. Even if the initial stop is considered by the Court to be reasonable and valid, it became an unlawful detention and seizure of Wade when Senseney exceeded the parameters of the initial stop by starting an investigation into whether Wade was trafficking drugs. There was no probable cause to detain Wade because reasonable suspicion that he was trafficking drugs was lacking. The conviction should be reversed and the trial judge's denial of Wade's motion to suppress the marijuana should be overturned.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Alvin Chase, certify on December 31, 2008, I mailed via United States Postal Service, postage prepaid, a copy of the brief for appellant to Judge Jerry O. Terry, the trial judge in this matter, at Post Office Box 1461, Gulfport, Mississippi 39502; and Christopher L. Schmidt, Esquire, Assistant District Attorney, Attorney for Appellee, at his usual mailing address of Post Office Box 1180, Gulfport, Mississippi 39502. I further certify that on January 14, 2009, I mailed via United States Postal Service, postage prepaid, a copy of the brief for appellant to the Honorable Jim Hood, Attorney General, Attorney for Appellee, 450 High Street, P.O. Box 220, Jackson, Mississippi 39205-0220.

SO CERTIFIED, this the 14th day of January, 2009.



ALVIN CHASE