



**LGIT'S ROLL CALL REPORTER
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Even a brief traffic stop can be deemed unreasonably long and, as a result, violate the Fourth Amendment.

QUESTION: Is a traffic stop that lasts only fifteen minutes inherently reasonable under the Fourth Amendment?

ANSWER: No. A traffic stop must be reasonable both in scope and duration. Even a brief traffic stop will be deemed an unreasonable seizure if the officer failed to diligently pursue the purposes of the stop or failed to establish reasonable articulable suspicion or probable cause to prolong it.

**CASE: *United States v. Stephen Digiovanni*
United States Court of Appeals for the Fourth Circuit
Decided July 25, 2011**

In this case, the United States Court of Appeals for the Fourth Circuit closely analyzed a traffic stop to determine whether or not the Fourth Amendment had been violated. Since the time line of the stop was scrutinized, times have been bolded. The facts established that on July 28, 2009, at approximately **11:53 a.m.**, Trooper Christopher Conner of the Maryland State Police observed a vehicle traveling northbound on Interstate 95 (I-95), near the towns of North East and Perryville. Trooper Conner is a member of the Pro-Active Criminal Enforcement Team (PACE), a Maryland State Police task force that focuses on criminal traffic enforcement on Maryland roadways. In Trooper Connor's opinion, the car was traveling too close to the vehicle in front of it, in violation of Maryland law. Trooper Conner activated his emergency lights, which, in turn, activated his patrol car's video and recording equipment, and made a traffic stop. At **11:53:39**, Trooper Conner approached the driver in the stopped vehicle and identified himself as a Maryland state trooper. He asked the driver for his license and registration, and explained that the car had been following the vehicle in front of it entirely too close. In response, the driver, Stephen Digiovanni, said the car was a rental and he provided the rental contract and his Massachusetts driver's license. His hands were trembling as he handed the documents over. Trooper Conner then told Digiovanni to exit the car, which he did. This order was given at **11:54:09**. Trooper Conner ordered Digiovanni out of the car because he was going to issue him a warning ticket and he wanted to determine if any criminal activity was afoot.

While collecting the license and rental agreement, Trooper Conner noticed two shirts hanging in the rear passenger compartment and a hygiene bag on the back seat. He also noticed that the interior of the car was clean. These observations suggested to Trooper

Conner that Digiovanni might be involved in drug trafficking activity. This was because, in the trooper's experience, non-drug traffickers traveling on vacation would have clothing packed in a clothing bag. The hygiene bag attracted his attention because there was no other luggage in the car. As to the clean condition of the interior, this drew Trooper Conner's attention because there was nothing to indicate that the driver had been travelling for long stretches at a time. The rental contract also made Trooper Conner suspicious because it showed that the car was rented at Fort Lauderdale International Airport the previous day and was to be dropped off at Logan International Airport in Boston, at a cost of \$438.00. In the trooper's mind, the one-way rental was implausible. After exiting the car, Digiovanni stood near the guardrail. Trooper Conner retrieved his warning book and then asked Digiovanni numerous questions concerning his travel history and travel plans. In response to the questions, Digiovanni said that he was traveling from Florida, where he had spent the weekend with family, to Boston, where he lived. He also said that, on the way, he was going to stop at his sister's residence in New York to pick up some paintings and other items. Digiovanni also said that he had taken the Amtrak Auto Train from Florida to Virginia.

At **11:56:40**, or a little more than three minutes into the stop, Trooper Conner turned his questioning to drug trafficking. He did so because he believed he had reasonable articulable suspicion (RAS) of criminal activity. He asked Digiovanni if he had luggage in the car and if everything in the car belonged to him. Digiovanni answered "yes" to both questions, and then said "oh boy," as he tossed his cigarette over the guardrail. Trooper Conner found the remark to be suspicious. When he asked Digiovanni what was the matter, Digiovanni simply complained about the heat. Trooper Conner explained that I-95 was a known drug and weapons corridor and that a lot of good people agree to transport a box or package without knowing what's in it. He then asked if there was any marijuana in the car. Digiovanni answered, "no sir. I never smoked marijuana in my life. It puts me to sleep." The trooper found this nonsensical answer to be extremely suspicious. He then asked if there was cocaine, heroin, or methamphetamine in the car and Digiovanni said "no."

After one minute and thirty-five seconds of questioning concerning drug trafficking activity, Trooper Conner asked Digiovanni for consent to search the car. Before he did so, Trooper Conner explained that he routinely searched cars to make sure that no drugs or guns were in them. Digiovanni said, "if you want to, that's not a problem." This took place at **11:58:24**. For the next three minutes, Digiovanni tried to open the trunk but couldn't. Trooper Conner found this fact to be extremely suspicious because, at an earlier time, the driver had been able to load his luggage in it. He also knew that drug traffickers often disable the mechanism that opens the trunk.

Beginning at **12:01:41**, Trooper Conner asked more questions related to drug activity. He asked Digiovanni if he were sure that there was no marijuana in the car. Again, Digiovanni said that there was not. Trooper Conner then asked that if he brought a drug-detecting K-9 to the scene, there would be no reasons for the dog to alert? Digiovanni answered, "not at all." This second round of questions lasted about one minute.

At **12:02:37**, Trooper Conner called for backup because he believed Digiovanni was engaged in drug trafficking. He began the process of checking the driver's license at **12:03:31**, over ten minutes after the stop began. While the license check was still in

progress, the trooper was informed that there were no warrants for Digiovanni. At **12:07:22**, Trooper Conner approached Digiovanni and told him he was waiting on the license check and that, otherwise, things looked good. At **12:08:15**, the trooper told the driver that he was preparing a warning and that there would be no fine and no points. At **12:08:25**, Trooper Conner gave Digiovanni the warning ticket and returned the license and rental contract. At the same time, he told Digiovanni that he was free to go. He then immediately reminded Digiovanni that they had been talking about drugs, and that drugs were a bad problem on the Interstate. He then asked, “may I search your car,” to which Digiovanni said, “yes.” Trooper Conner walked back to his car to retrieve his consent form and when he saw Digiovanni walking towards the stopped vehicle, he told him “to hold on a second.” At **12:09:03**, Trooper Conner gave Digiovanni the consent form, which he signed at **12:09:08**.

During the ensuing search, Trooper Conner and his backup recovered 34,091 Oxycodone pills and \$1,450 in U.S. currency. Digiovanni was arrested and subsequently confessed that he was supposed to be paid \$10,000 for transporting the pills and that he transported pills once before. He was indicted and, in advance of his trial, he moved to suppress the evidence. The federal district court granted the motion, concluding that the length of the traffic stop lasted longer than was necessary to issue a warning ticket, and that Trooper Conner did not proceed with diligence in pursuing the purpose of the stop. According to the court, the trooper “diverted from the ordinary purpose of the traffic stop and embarked on an unwarranted investigation into drug trafficking that was not supported by reasonable suspicion.” The court also found that the written consent was not freely or voluntarily given under the totality of the circumstances. In this regard, the court concluded that the trooper had falsely implied that Digiovanni was bound by his earlier verbal consent.

On appeal, the United States Court of Appeals agreed. In doing so, the court first noted that, in the context of traffic stops, police diligence involves requesting a driver’s license and vehicle registration, running a computer check, and issuing a ticket. The court further noted that while doing the tasks associated with a traffic stop, an officer’s questions need not solely and exclusively focus on the purpose of the stop. Rather, a police officer may ask questions unrelated to the stop “provided that the unrelated questioning does not extend the encounter beyond the period reasonably necessary to effectuate the purposes of the [stop].” To prolong a traffic stop, a police officer generally must establish reasonable articulable suspicion that other criminal activity is afoot or probable cause to believe that a crime has been or is being committed. Without these justifications, an unreasonably long traffic stop, as measured by the totality of the circumstances, becomes an unlawful seizure. Here, at the conclusion of the initial questions, the court found that Trooper Conner embarked on a sustained course of investigation into the presence of drugs in the car that constituted the bulk of the encounter. Finally, the court rejected the argument that Trooper Conner had established RAS to prolong the stop. Most, if not all of the factors found to be suspicious by the trooper were found by the court to not be suspicious at all, as all had innocent explanations, individually or collectively. In fact, the court found the trooper’s belief that the hanging shirts, the clean interior, and the hygiene bag were suspicious to be “absurd.” In sum, there was no RAS present that would have turned the traffic stop into a drug investigation. Other than the itinerary, there simply was nothing compellingly suspicious about the case that would have allowed the trooper to prolong the stop.

NOTE: The observations made by the trooper in this case simply didn't amount to RAS. To establish RAS, courts look for behaviors far more suspicious than what was observed here, which essentially consisted of nervousness, hanging shirts, a hygiene bag, a clean passenger compartment, and a somewhat questionable itinerary. To establish RAS, courts look for observations of far more "suspicious" behavior, such as evidence of flight, suspicious or furtive movements, suspicious odors (such as the smell of air fresheners, alcohol, or drugs), heavily tinted windows, the presence of numerous air fresheners in the car, inconsistencies or defects in ownership or rental documents, licenses, or registrations, *extreme* nervousness, and discrepancies in the itinerary given by the driver and/or passenger(s). **In other words, courts look for facts that eliminate a substantial portion of innocent travelers.** Finally, both the trial and appeals courts in this case agreed that the consent given by the driver was not given freely or voluntarily. Keep in mind that courts are generally skeptical when it comes to consent, especially in the context of traffic stops. Even saying "you are free to go" or the execution of a consent form may not be enough to establish consent. Here, the courts were disturbed by what they concluded to be a false implication made by the trooper that the driver was bound by his earlier consent. The courts also focused on the trooper's statement to the driver to "hold on a second," which they viewed as more of a command than a request. If you are trying to obtain consent to search, never use words or phrases that could be construed by a reasonable person as preventing the driver from leaving after the traffic stop is completed. Examples of things *not* to say include: "Stop," "Wait," "Just wait until I'm finished," or "the K-9 will be here in a minute or two."

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