



# DOES A MINIMAL DELAY AFTER CONCLUSION OF A TRAFFIC STOP MANDATE EVIDENCE SUPPRESSION?



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©2010 Brian S. Batterton, Attorney, Legal & Liability Risk Management Institute (llrmi.com), **United States v. Norwood (8th Cir. Decided May 28, 2010 Unpub)** Law enforcement officers are tasked with ferreting out criminal activity in the community in which they police. One such tactic used toward this goal is traffic enforcement. Traffic violations are an excellent, *legal reason to stop a person* (\*LG) and check their driver's license status and whether they have any outstanding warrants, all the while speaking with the vehicle occupants. Additionally, officers can often obtain consent to search a vehicle after converting the traffic stop into a "*consensual encounter*." (\*LG) However, if an officer unreasonably detains a person after the conclusion of the traffic stop, without additional reasonable suspicion of criminal activity, any evidence obtained will often, but not always, be suppressed. The recent Eighth Circuit Court of Appeals case of the *United States v. Norwood*<sup>1</sup>, illustrates this point.

\*LG [2010 Legal Guide Reference](#)  
"legal reason to stop a person" - see  
"*Whren v. United States*" p90

\*LG [2010 Legal Guide Reference](#)  
"Consent Search of Vehicle" - see  
"*Schneckloth v. Bustamonte*" p99,  
and "*FL v. Jimeno*" p100

The facts of *Norwood* are as follows:

Sergeant Edward Joseph Van Buren of the Douglas County (Nebraska) Sheriff's Department pulled Norwood over for following too closely and not traveling the minimum speed. Norwood said he was heading back home to Ohio after attending his brother's wedding over the weekend in California. This made Van Buren suspicious because it was a long way to drive for a weekend. Norwood was unable to locate the vehicle's registration, and after handing Van Buren his driver's license and insurance card, said the car belonged to his nephew. This too made Van Buren suspicious because the car was insured under Norwood's name, and in Van Buren's experience this is a classic tactic to distance oneself from a vehicle that has contraband. Van Buren testified that Norwood appeared more nervous than people normally do. Van Buren also stated the fast-food wrappers and lack of luggage in the car made him suspicious, and that

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Norwood made inconsistent statements about whether his luggage was in the trunk or in the passenger compartment. Van Buren decided to check the vehicle's registration and Norwood's driver's license through the El Paso Intelligence Center because he suspected drug activity and the Center provides information on border crossings. This call took three minutes.

Eventually, Van Buren returned Norwood's license, issuing a verbal warning. He then asked: "Hey, before you leave, can I ask you some additional questions?" Norwood responded: "Go ahead." Van Buren asked if everything in the car belonged to Norwood, to which he again said the car wasn't his. About then, a second officer with a drug-sniffing dog arrived. Van Buren asked Norwood for permission to search the car. Norwood declined, saying "I just want to get home." Van Buren told him, "Wait right here." About a minute and a half later, the drug-sniffing dog went around Norwood's car, and indicated the trunk. Searching there, officers found a kilogram of cocaine.

Norwood moved to suppress the cocaine...The magistrate recommended that the motion to suppress be denied.

Agreeing, the district court found that his nervousness, the fast-food wrappers, his explanation for the trip, his inconsistent statements about the luggage, and his failure to produce the vehicle's registration, taken together, constituted reasonable suspicion to continue his detention. The district court also ruled that Norwood was detained only a minute and a half from the time he refused consent to search until the drug dog deployed, and that this detention was only a de minimis Fourth Amendment intrusion.

Norwood appealed the denial of his motion to suppress to the Eighth Circuit Court of Appeals. He argued (1) that there was no reasonable suspicion to continue the traffic stop for the *canine sniff* (\*LG) after the officer issued his warning, and (2) that despite this court's previous holdings, the *Fourth Amendment* does not allow de minimis intrusions.<sup>ii</sup>

\*LG [2010 Legal Guide Reference](#)  
"Canine Sniff" - see "*U.S. v. Place*"  
p92, and "*IL v. Caballes*" p93

As to the first issue of whether there was sufficient reasonable suspicion to continue the traffic stop for the canine sniff after the issuance of the warning, the court first stated three applicable rules.

- Canine sniffs of the exterior of a vehicle are not searches for the purpose of the *Fourth Amendment*.<sup>iii</sup>
- A dog sniff may be the product of an unconstitutional seizure if the traffic stop is unreasonably prolonged before the dog is employed.<sup>iv</sup>
- Having made a valid traffic stop, the police officer may detain the offending motorist while the officer completes a number of routine but somewhat time-consuming tasks related to the traffic violation, such as computerized checks of the vehicle's registration

and the driver's license and criminal history, and the writing up of a citation or warning. During this process, the officer may ask the motorist routine questions such as his destination, the purpose of the trip, or whether the officer may search the vehicle, and he may act on whatever information is volunteered.<sup>v</sup>

In applying the facts of Norwood's case to the above rules, the court found that the officer had made a lawful traffic stop. The officer then asked questions about Norwood's travel plans, his luggage, ownership of the car, and he called the El Paso Intelligence Center regarding Norwood. The court found that the officer's actions were within the permissible scope of the traffic stop.

The next issue was regarding the officer's actions after the issuance of the warning. Particularly, after issuing Norwood a warning, the officer then asked, "Hey, before you leave, can I ask you some additional questions?"<sup>vi</sup> Norwood replied, "Go ahead."<sup>vii</sup> The court noted the following rule:

- So long as a reasonable person would feel free 'to disregard the police and go about his business,' the encounter is consensual and implicates no *Fourth Amendment* interest.<sup>viii</sup>

In applying the facts of *Norwood* to the rule above, the court found that the officer's question ("Hey, before you leave, can I ask you some additional questions?") indicated that Norwood had a choice. Therefore, the court found that, initially, this additional questioning after the issuance of the warning was consensual.

However, about one minute after this consensual encounter began, the officer asked for consent to search Norwood's car. Norwood answered, "I just want to get home."<sup>x</sup> The officer then told Norwood to "wait right here" while a canine conducted a one-and-a-half minute sniff of the exterior of Norwood's vehicle. The canine alerted on the trunk and cocaine was found. The court noted that once the officer told Norwood to "wait right here," a reasonable person would not feel free to leave. Thus, the issue here was whether this one-and-a-half minute detention warrants suppression of the cocaine or whether this was simply a *de minimis* delay that did not warrant suppression of the cocaine. The court noted the following rules:

- 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.<sup>x</sup>
- Under this court's (8<sup>th</sup> Circuit) precedent a *de minimis* delay does not violate the *Fourth Amendment*.<sup>xi</sup>

The court then noted that they (8<sup>th</sup> Circuit) have repeatedly upheld canine sniffs that took place "within a few minutes after the traffic stop had ended."<sup>xii</sup>

Therefore, the court held "the minute-and-a-half detention here was a *de minimis* intrusion, and did not violate Norwood's *Fourth Amendment* rights."<sup>xiii</sup>

**Note:** Court holdings can vary significantly between jurisdictions. As such, it is advisable to seek the advice of a local prosecutor or legal advisor regarding questions on specific cases. This article is not intended to constitute legal advice on a specific case.

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## **CITATIONS:**

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<sup>i</sup> No. 09-3296, 2010 U.S. App. LEXIS 10966 (8<sup>th</sup> Cir. Decided May 28, 2010 Unpub.)

<sup>ii</sup> *Id.* 2-4

<sup>iii</sup> *Id.* at 5 (*United States v. Suitt*, 569 F.3d 867, 870 (8th Cir. 2009); *United States v. Olivera-Mendez*, 484 F.3d 505, 511 (8th Cir. 2007))

<sup>iv</sup> *Id.* (citing *Illinois v. Caballes*, 543 U.S. 405, 407, 125 S. Ct. 834, 160 L. Ed. 2d 842 (2005))

<sup>v</sup> *Id.* at 5-6 (citing *United States v. \$ 404,905.00 in U.S. Currency*, 182 F.3d 643, 647 (8th Cir. 1999))

<sup>vi</sup> *Id.* at 6

<sup>vii</sup> *Id.*

<sup>viii</sup> *Id.* (citing *United States v. White*, 81 F.3d 775, 779 (8th Cir. 1996) (quoting *Florida v. Bostick*, 501 U.S. 429, 434, 111 S. Ct. 2382, 115 L. Ed. 2d 389 (1991))

<sup>ix</sup> *Id.* at 7

<sup>x</sup> *Id.* (quoting *Illinois v. Caballes*, 543 U.S. 405, 407 (2005))

<sup>xi</sup> *Id.* (See *United States v. Rivera*, 570 F.3d 1009, 1014 (8th Cir. 2009) (holding that a two-minute delay while a dog sniffs around a car is de minimis and does not violate the *Fourth Amendment*); *United States v. Martin*, 411 F.3d 998, 1002 (8th Cir. 2005))

<sup>xii</sup> *Id.* at 8 (quoting *Suitt*, 569 F.3d at 873; see also *United States v. Alexander*, 448 F.3d 1014, 1017 (8th Cir. 2006), cert. denied, 549 U.S. 1118, 127 S. Ct. 929, 166 L. Ed. 2d 715 (2007))

<sup>xiii</sup> *Id.*