IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2021-CP-00331-COA

GUSTAVO LOPEZ A/K/A GUSTAVO ADOLFO LOPEZ A/K/A GUSTAVO ADOLFO HERNANDEZ LOPEZ	**APPELLANT**

v.

STATE OF MISSISSIPPI	**APPELLEE**

DATE OF JUDGMENT:	03/08/2021
TRIAL JUDGE:	HON. CLAIBORNE McDONALD
COURT FROM WHICH APPEALED:	PEARL RIVER COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	GUSTAVO LOPEZ (PRO SE)
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: ALEXANDRA RODU ROSENBLATT
NATURE OF THE CASE:	CIVIL - POST-CONVICTION RELIEF
DISPOSITION:	AFFIRMED - 07/19/2022
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

BEFORE CARLTON, P.J., GREENLEE AND McDONALD, JJ.

GREENLEE, J., FOR THE COURT:

¶1. Gustavo Lopez appeals from the order of the Pearl River County Circuit Court denying his motion for post-conviction collateral relief (PCR). Finding no reversible error, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2. In November 2016, Lopez was driving a GMC Sierra northbound on Interstate 59 when he was pulled over by Detective Daniel Quave with the Pearl River County Sheriff's Office for following another vehicle too closely. According to Detective Quave's incident report, Lopez was identified by his Guatemalan Identification Card, and Lopez stated he was

in the United States on a visa. Detective Quave asked Lopez where he was headed, and Lopez stated that he had a small car dealership in Guatemala and that he was going to purchase at least one vehicle in Birmingham, Alabama.

¶3. For safety reasons, Detective Quave asked Lopez to exit the vehicle and sit in the passenger seat of his patrol vehicle while he completed the traffic citation. During that time, they continued their discussion. As Detective Quave asked Lopez questions, he believed that at least one of Lopez's answers was rehearsed. Detective Quave also noted that Lopez seemed "very familiar with the area," and it appeared that he had "traveled the area quite frequently."

¶4. Throughout their discussion, Detective Quave observed Lopez continuously staring at the GMC Sierra. Detective Quave asked Lopez if there was anything in the vehicle that he needed to be aware of, and Lopez responded "no" several times. When he asked Lopez if there were any illegal guns in the vehicle, Lopez responded no. Detective Quave asked if there was marijuana, cocaine, or crystal methamphetamine in the vehicle, and Lopez consistently stated no. However, when Lopez was asked specifically about heroin, "he seemed to all of the sudden be out of breath" but stated no. When Detective Quave asked about heroin again, Lopez did not say anything. According to Detective Quave, when he asked if there were any hidden compartments in the vehicle, Lopez looked directly at the bed of the GMC Sierra as he stated no. At that point, Detective Quave asked Lopez for permission to search the vehicle and explained that he could refuse the search. However,

Lopez responded, "[N]o sir go ahead, everything is open."[1]

¶5. During the search of the vehicle, Detective Quave noticed "two metal bars that appeared to be tow saddles for tractor trucks." He also noticed that there was a large amount of grease, sand, and grass covering the tow saddles, which seemed odd to him. When he tapped one of the tow saddles, the metal sounded thin and the inside sounded hollow. Detective Quave retrieved his K-9 partner from his vehicle; the dog "began to show interest in the area where the [tow] saddles were located." At that point, the vehicle was moved to the Lenoir Rowell Criminal Justice Center Complex to safely continue the search. Detective Quave ran a knife across the tow saddles where the welding should have been, but he cut into white caulk instead. According to Detective Quave, Lopez told him that he had towed several eighteen-wheelers with the tow saddles, but "it was obvious that the saddles would not be able to stand the weight . . . ." When Detective Quave further dismantled the tow saddles, he recovered twelve packages wrapped in duct tape. A field test showed a positive result for heroin, and the Mississippi Forensics Laboratory later tested two of the bundles and confirmed that they contained heroin.

¶6. The next day, Detective Quave conducted a post-*Miranda*[2] interview. During the interview, Lopez stated that he was paid $5,000 to pick up the tow saddles in Texas and drive them to Pennsylvania, which he had done several other times. Lopez stated that he knew something was not right with the tow saddles, and he "figured" that they contained drugs

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[1] According to Detective Quave, Lopez completed a consent to search form; however, the form does not appear in the record.

[2] *Miranda v. Arizona*, 384 U.S. 436 (1966).

because he was getting paid so much money.

¶7. In July 2018, Lopez entered a petition to plead guilty to possession of 1,500.29 grams of heroin, a Schedule I controlled substance, with intent to traffic. The court accepted Lopez's plea, and after a pre-sentence investigation, Lopez was sentenced to serve thirty years in the custody of the Mississippi Department of Corrections with credit for time served in the county jail. The court further ordered Lopez to serve his sentence before being released on an immigration hold that was placed on him by Immigration and Customs Enforcement. The court waived all fines, fees, and court costs.[3]

¶8. In April 2020, Lopez filed a PCR motion suggesting that his plea was involuntary and expressly claiming (1) he was denied his right to a speedy trial, (2) he was denied his Fifth and Fourteenth Amendment rights against self-incrimination, (3) he was denied his Fourth Amendment right against unreasonable searches and seizures, and (4) he received ineffective assistance of counsel.[4]

¶9. Ultimately, the court denied Lopez's PCR motion. Now Lopez appeals.

STANDARD OF REVIEW

¶10. "When reviewing a circuit court's denial or dismissal of a PCR motion, we will only disturb the circuit court's decision if it is clearly erroneous; however, we review the circuit court's legal conclusions under a de novo standard of review." *Taylor v. State*, 313 So. 3d 1106, 1109 (¶5) (Miss. Ct. App. 2021) (quoting *Williams v. State*, 228 So. 3d 844, 846 (¶5)

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[3] In November 2019, Lopez filed a motion for reconsideration of his sentence.

[4] He also filed a motion for an evidentiary hearing and appointment of counsel, which was denied.

(Miss. Ct. App. 2017)). "The [circuit] court may summarily dismiss a PCR motion where it plainly appears from the face of the motion, any annexed exhibits, and the prior proceedings in the case that the movant is not entitled to any relief." *Pinkney v. State*, 192 So. 3d 337, 341 (¶11) (Miss. Ct. App. 2015). "[T]his Court will affirm the summary dismissal of a PCR motion if the movant fails to demonstrate a claim is procedurally alive substantially showing the denial of a state or federal right." *Porter v. State*, 271 So. 3d 731, 732 (¶3) (Miss. Ct. App. 2018) (quoting *Pinkney*, 192 So. 3d at 341-42 (¶13)).

DISCUSSION

¶11. We must decide whether the circuit court erred by denying Lopez's PCR motion. In his PCR motion and on appeal, Lopez claims (1) law enforcement violated his Fifth and Fourteenth Amendment right against self-incrimination, (2) the warrantless search of his vehicle and seizure of evidence were unreasonable and violated the Fourth Amendment, and (3) his counsel was ineffective for failing to file a motion to suppress and for misrepresenting the sentence he would receive if he pled guilty.[5]

I. Constitutional Rights

¶12. We will address Lopez's claims regarding the alleged violations of his constitutional rights together. Lopez claims law enforcement violated his Fifth and Fourteenth Amendment right against self-incrimination. He seemingly argues that he was not advised of his *Miranda* rights prior to being interrogated, or, if he was, he could not validly waive his rights because

[5] In his PCR motion, Lopez also argued that his right to a speedy trial had been violated, but he has abandoned and waived this issue on appeal because he did not discuss it in his brief. *Woods v. State*, 302 So. 3d 218, 220 n.4 (Miss. Ct. App. 2020); *see* M.R.A.P. 28(a)(7).

he did not speak English proficiently. He also claims that the warrantless search of his vehicle was unreasonable and in violation of the Fourth Amendment. He seemingly argues that law enforcement lacked reasonable suspicion, that he did not validly consent to the search, and that the search was unreasonably prolonged.

¶13. However, this Court has held that "a valid guilty plea operates as a waiver of all non-jurisdictional rights or defects which are incident to trial." *McDonald v. State*, 180 So. 3d 780, 786 (¶21) (Miss. Ct. App. 2015) (quoting *Logan v. State*, 771 So. 2d 970, 972 (¶6) (Miss. Ct. App. 2000)). This waiver includes Lopez's claim involving his *Miranda* rights. *Montalto v. State*, 119 So. 3d 1087, 1096 (¶20) (Miss. Ct. App. 2013). And it includes his claim involving the allegedly unreasonable search and seizure. *Buckley v. State*, 119 So. 3d 1171, 1173 (¶6) (Miss. Ct. App. 2013). Because Lopez pled guilty, he waived his claims regarding the alleged violations of his constitutional rights.

II. Ineffective Assistance of Counsel

¶14. Next, Lopez claims that he received ineffective assistance of counsel. Specifically, he argues that his attorney failed to file a motion to suppress and that his attorney misrepresented the sentence he would receive if he pled guilty.

¶15. "A voluntary guilty plea waives claims of ineffective assistance of counsel 'except insofar as the alleged ineffectiveness related to the voluntariness of the giving of the guilty plea.'" *Jones v. State*, 284 So. 3d 855, 859 (¶12) (Miss. Ct. App. 2019) (quoting *Rigdon v. State*, 126 So. 3d 931, 936 (¶16) (Miss. Ct. App. 2013)). Lopez does not contend in his appellate brief, and the record does not support, that he entered his guilty plea involuntarily.

Therefore, this issue was waived.

¶16. Even if Lopez had not waived his ineffective-assistance-of-counsel claim, he could not meet the two-part test for such a claim set forth in *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Under *Strickland*, a defendant must show that counsel's performance was deficient and that the deficiency was prejudicial. *Id*.

A. Motion to Suppress

¶17. First, Lopez argues that had his attorney investigated the case, he would have filed a motion to suppress, and the failure to do so constituted ineffective assistance of counsel. This Court has held that "[t]he failure to file a [motion to suppress] does not constitute per se ineffective assistance of counsel." *Wilkerson v. State*, 307 So. 3d 1231, 1247 (¶41) (Miss. Ct. App. 2020) (quoting *Shinstock v. State*, 220 So. 3d 967, 971 (¶16) (Miss. 2017)). However, "counsel may be deemed ineffective where counsel fails to move to suppress evidence obtained in violation of the accused's constitutional rights if the petitioner shows that the motion would have been meritorious and that prejudice resulted from the evidence's admission." *Id*. (quoting *Crawford v. State*, 218 So. 3d 1142, 1161 (¶67) (Miss. 2016)). Lopez seemingly argues that his attorney should have filed a motion to suppress (1) his statement to law enforcement, and (2) any evidence of heroin.

1. Statement

¶18. It is well established that prior to a custodial interrogation, the accused must be advised of his right to remain silent and his right to counsel. *Miranda*, 384 U.S. at 444. "Once advised of his *Miranda* rights, an accused may validly waive these rights and respond

to interrogation." *Chim v. State*, 972 So. 2d 601, 603 (¶7) (Miss. 2008) (citing *North Carolina v. Butler*, 441 U.S. 369, 374-75 (1979)). "However, the waiver must be voluntary, knowing, and intelligent." *Id*. (citing *Miranda*, 384 U.S. at 444). It is unclear whether Lopez claims that he was not advised of his *Miranda* rights or that he was advised of his *Miranda* rights but could not validly waive them because he did not speak English proficiently.

¶19. According to Detective Quave's incident report, a "post-*Miranda* interview" was conducted the day after the traffic stop. During the interview, Lopez stated that he was paid $5,000 to pick up the tow saddles in Texas and drive them to Pennsylvania, which he had done several other times. Lopez stated that he knew something was not right with the tow saddles, and he stated that he figured that they contained drugs because he was getting paid so much money. The evidence in the record suggests that Lopez was advised of his *Miranda* rights prior to giving his statement to law enforcement.

¶20. Additionally, the evidence in the record suggests that Lopez could speak English proficiently. In his petition to plead guilty, Lopez swore that he could read and write English. Then, at the plea hearing, he swore that he understood English. This Court has held that "solemn declarations in open court carry a strong presumption of verity." *Townsend v. State*, 285 So. 3d 199, 202 (¶4) (Miss. Ct. App. 2019) (quoting *Mitchener v. State*, 964 So. 2d 1188, 1194 (¶15) (Miss. Ct. App. 2007)). In the order denying Lopez's PCR motion, the court found that Lopez was proficient in English and was able to easily converse at the plea hearing without an interpreter. The court noted that there was no reason to believe Lopez could not understand or speak English; and had Lopez given any indication that he did not

understand the proceedings or the consequences of entering a guilty plea, the court would have arranged for an interpreter to be present. Finally, the court noted that Lopez's attorney worked for a firm specializing in immigration law, and the court was "confident [that Lopez's attorney] would not have proceeded with his representation of [Lopez] . . . without an interpreter if one was needed."[6] For these reasons, Lopez did not show that a motion to suppress his statement on those grounds would not have failed for lack of merit.

¶21. Furthermore, Lopez cannot show prejudice. Even if his statement had been suppressed, the evidence of heroin seized from the vehicle established his guilt. At the plea hearing, the State's proffer consisted only of the evidence of heroin. The prosecutor could not remember if Lopez had given a statement or not. Accordingly, Lopez's claim is without merit.

2. Evidence of Heroin

¶22. Lopez also claims that his attorney should have filed a motion to suppress the evidence of heroin because the search of the vehicle was unreasonable and thus in violation of the Fourth Amendment.

¶23. Lopez suggests that the traffic stop was unlawful because law enforcement lacked reasonable suspicion, and law enforcement unlawfully prolonged the stop. With respect to the alleged lack of reasonable suspicion, Lopez asserts that he was racially profiled and maintains that he could not have been following too closely because there were no vehicles

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[6] For the first time, in his reply brief, Lopez suggests that his ability to speak English may have improved from the time he gave his statement to law enforcement to the time of the hearing.

"in the near front" of him. However, Lopez does not present any evidence in support of his assertions other than his own statements. This Court has held that "in cases involving post-conviction collateral relief, where a party offers only his affidavit, then his ineffective-assistance-of-counsel claim is without merit." *Bell v. State*, 310 So. 3d 837, 840 (¶7) (Miss. Ct. App. 2021) (quoting *Thomas v. State*, 159 So. 3d 1212, 1215 (¶10) (Miss. Ct. App. 2015)).

¶24. Furthermore, Lopez's assertions contradict the evidence. In the incident report, Detective Quave stated that he conducted a traffic stop on Lopez for following too closely. Specifically, Detective Quave noted that he "observed the vehicle in question traveling northbound on Interstate 59 approximately two and a half car [lengths] behind a vehicle in the right lane near the 4 mile marker." Lopez had the opportunity to review the presentence investigation report, which appears to include Detective Quave's incident report, and Lopez did not offer any additions or corrections.[7] For these reasons, Lopez failed to show that a motion to suppress on these grounds would not have failed for lack of merit.

¶25. With respect to Lopez's claim that the traffic stop was unlawfully prolonged, it does not appear that this argument was presented to the circuit court. "It is well established that

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[7] Lopez also had an opportunity to provide his version of events. Lopez stated:

> I was driving from Houston, Texas crossing Interstate 59 and was stopped by the police for a traffic violation. The police said that I was following to[o] closely behind another vehicle. The police asked if they could search my vehicle and I told them that they could. The police officer kept me on the side of the interstate for 45 minutes and called for assistance, one to include a K9 dog who didn't find anything in my vehicle. The police officer told me I was being transported to the jail and again I was searched when I got to the jail.

this Court is not obligated to review appellate arguments which were not presented in the [circuit] court because a [circuit] judge cannot be put in error on a matter which was not presented to him for decision." *Johnson v. State*, 44 So. 3d 400, 404 (¶10) (Miss. Ct. App. 2010) (internal quotation marks omitted) (quoting *Foster v. State*, 928 So. 2d 873, 880-81 (¶17) (Miss. Ct. App. 2005)).

¶26. Lopez also argues that his consent to search was invalid for several reasons. First, he argues that his consent was invalid because he did not speak English proficiently. However, for the reasons discussed above, this argument lacks merit.

¶27. Second, he argues that he was unaware of his right to refuse. However, Lopez does not produce any evidence that he was not advised of the right to refuse. Again, "in cases involving post-conviction collateral relief, where a party offers only his affidavit, then his ineffective-assistance-of-counsel claim is without merit." *Bell*, 310 So. 3d at 840 (¶7) (quoting *Thomas*, 159 So. 3d at 1215 (¶10)). Additionally, the incident report contradicts his assertion. According to Detective Quave, he asked Lopez for permission to search the vehicle and explained that he could refuse the search. However, Lopez responded, "No sir go ahead, everything is open."

¶28. Third, Lopez seemingly argues that the search exceeded the scope of his consent because it continued after his vehicle was taken to the criminal justice center complex. However, our supreme court has held that "police officers who have legitimately stopped an automobile and who have probable cause to believe that contraband is concealed somewhere within it may conduct a warrantless search of the vehicle as thorough as a magistrate could

[authorize] by warrant." *Blissett v. State*, 754 So. 2d 1242, 1245 (¶15) (Miss. 2000) (quoting *Fleming v. State*, 502 So. 2d 327, 329 (Miss. 1987)).

¶29. As discussed, Detective Quave legitimately stopped Lopez's vehicle. Additionally, there was probable cause to believe that Lopez's vehicle contained contraband. During the initial search, to which Lopez consented, Detective Quave noticed that there was a large amount of grease, sand, and grass covering the tow saddles, which seemed odd to him. When he tapped one of the tow saddles, the metal sounded thin and hollow. Detective Quave retrieved his K-9 partner, and the dog "began to show interest in the area where the [tow] saddles were located . . . ." At that point, the vehicle was moved to the criminal justice center complex to safely continue the search. Finally, the search was no more thorough than a magistrate could authorize by warrant. "When probable cause justifies the search of a vehicle which the police have lawfully stopped, 'it justifies the search of every part of the vehicle and its contents that may conceal the object of the search.'" *Austin v. State*, 72 So. 3d 565, 569 (¶14) (Miss. Ct. App. 2011) (quoting *Roche v. State*, 913 So. 2d 306, 313 (¶22) (Miss. 2005)). Here, there was probable cause to suspect that drugs were hidden in the tow saddles. Because a motion to suppress the evidence of heroin would not have been successful on these grounds, Lopez cannot show that his counsel was ineffective for failing to file such a motion.

B. Sentence

¶30. Finally, Lopez claims that his attorney led him to believe that he would receive a ten-year sentence if he pled guilty. However, as stated, "in cases involving post-conviction

collateral relief, where a party offers only his affidavit, then his ineffective-assistance-of-counsel claim is without merit." *Bell*, 310 So. 3d at 840 (¶7) (quoting *Thomas*, 159 So. 3d at 1215 (¶10)). Since all Lopez offers is his own assertions in his PCR motion, his claim of ineffective assistance fails.

¶31. Additionally, Lopez's claim is contradicted by his plea petition and his sworn testimony at the plea hearing. In his plea petition, Lopez acknowledged that he faced a minimum sentence of twenty-five years to serve and a maximum sentence of life imprisonment. His attorney certified that he explained to Lopez the minimum and maximum penalty and that he had not promised or stated to Lopez that he would receive any particular sentence. At the plea hearing, Lopez acknowledged that his attorney fully explained the minimum and maximum penalties for his conviction. And when asked if he knew the minimum and maximum sentence, Lopez responded, "Yes, sir . . . . Twenty-five to life." Lopez also swore that his attorney had not promised a particular sentence. For these reasons, this issue is without merit.

CONCLUSION

¶32. The circuit court's decision to deny Lopez's PCR motion was not clearly erroneous. Therefore, we affirm the circuit court's order.

¶33. **AFFIRMED.**

CARLTON AND WILSON, P.JJ., LAWRENCE, McCARTY, SMITH AND EMFINGER, JJ., CONCUR. WESTBROOKS, J., CONCURS IN PART AND IN THE RESULT WITH SEPARATE WRITTEN OPINION, JOINED IN PART BY McDONALD AND McCARTY, JJ. BARNES, C.J., CONCURS IN RESULT ONLY WITHOUT SEPARATE WRITTEN OPINION. McDONALD, J., CONCURS IN RESULT ONLY WITH SEPARATE WRITTEN OPINION, JOINED BY BARNES,

C.J., AND McCARTY, J.; WESTBROOKS, J., JOINS IN PART.

WESTBROOKS, J., CONCURRING IN PART AND IN RESULT:

¶34. I agree with the majority that Lopez's PCR motion was properly denied in this instance. However, I believe clarification is warranted with regard to Lopez's claims that the traffic stop leading to his arrest was unlawful and that he subsequently received ineffective assistance of counsel.

¶35. In her separate opinion, which I join in part, Judge McDonald points out that Detective Quave did not have a legitimate reason to stop Lopez. I agree that there was likely no valid reason for Lopez to be pulled over. But in this instance, as the majority points out, Lopez provided only a self-serving statement and no evidence to support a finding of an unlawful stop. Had evidence of an unlawful stop been presented, then it could also be argued that Lopez's consent to search the vehicle was invalid, thus negating the evidence that was discovered. The Mississippi Supreme has stated "that consent is not valid if it occurs subsequent to an illegal detainment because 'the consent [is] tainted by the illegality and [is] ineffective to justify the search.'" *Johnson v. State*, 242 So. 3d 145, 157 (¶26) (Miss. 2017) (quoting *Florida v. Royer*, 460 U.S. 491, 507-08 (1983)). Based on the record before us, we cannot say the circuit court's denial of Lopez's PCR motion was clearly erroneous.

¶36. With regard to Lopez's claim of ineffective assistance of counsel, the majority reaches the right result but fails to complete its analysis of the issue. A simple guilty plea does not waive a claim for ineffective assistance of counsel. There must be questioning by the court to ensure that the defendant understands the ramifications of the guilty plea, and the

defendant must assure the court that he is satisfied with his counsel's representation. The case relied on by the majority, *Jones v. State*, 284 So. 3d 855 (Miss. Ct. App. 2019), discusses at length that the record of Jones' guilty plea did not support her claim for ineffective assistance of counsel because she raised no "issue with her counsel's representation . . . when entering her guilty pleas." *Id.* at 859-60 (¶¶12-13); *see also King v. State*, 239 So. 3d 508, 512 (¶16) (Miss. Ct. App. 2017) (holding there was no ineffective assistance of counsel when "during his plea colloquy, King acknowledged that he was guilty, that he decided to plead guilty without the influence of another person, and that he was satisfied with his counsel's performance").

¶37. In his plea petition, Lopez stated, "I believe that my attorney has done all that anyone could do to counsel, advise, and assist me on this charge. I am satisfied with the advice and help he/she has given me." At the plea hearing, the court asked many questions about whether Lopez understood the proceedings and whether he thought his attorney had fully explained all his options. Lopez again told the court that he was satisfied with his attorney. The court specifically asked him:

> Now, do you feel like your attorney spent enough time going over all the facts of your case and the elements of the crime that you're charged with and any of the lesser-included offenses of your charge, any defenses to the charge, the law, and the other matters concerning your case in sufficient detail that you were able to understand and comprehend everything about all of the matters fully?

Lopez responded affirmatively. When asked if he had confidence in his attorney to do a good job and if he was satisfied with his attorney, Lopez again responded affirmatively in open court. It is only because of the thorough questioning by the court at the plea hearing

that Lopez waived his right to make a claim for ineffective assistance of counsel. *See Nichols v. State*, 994 So. 2d 236, 238 (¶7) (Miss. Ct. App. 2008) (finding that the defendant's claim of ineffective assistance of counsel was without merit where the plea colloquy contradicted the defendant's allegations).

¶38. For the forgoing reasons I respectfully concur in part and in the result.

McDONALD AND McCARTY, JJ., JOIN THIS OPINION IN PART.

McDONALD, J., CONCURRING IN RESULT ONLY:

¶39. I agree with the ultimate holding of the majority regarding Lopez's request for post conviction relief. But I am troubled by the warrantless search undertaken by the law enforcement officer after his traffic stop of Lopez. In my opinion, the search was illegal, but because Lopez pled guilty, he waived his objection to the warrantless search.

¶40. Traffic stops and searches pursuant to them have constitutional limits. In *Rodriguez v. United States*, 575 U.S. 348 (2015), Justice Ginsburg addressed a case similar to Lopez's. The issue there was "whether the Fourth Amendment [(the prohibition of unreasonable searches and seizures)] tolerated a dog sniff conducted after completion of a traffic stop." *Id*. at 350. Writing for the majority, Justice Ginsburg wrote, "We hold that a police stop exceeding the time needed to handle the matter for which the stop was made violates the Constitution's shield against unreasonable seizures." *Id*. In that case, a police officer named Struble stopped the defendant Rodriguez at 12:06 p.m. because he had observed Rodriguez drive onto the shoulder. *Id*. at 351. Rodriguez said he had swerved to avoid a pothole. *Id*. After gathering information, such as Rodriguez's license, registration, and proof of

insurance, Struble asked Rodriguez to accompany him to the patrol car. *Id*. Rodriguez asked if it was mandatory, and when Struble said it was not, Rodriguez elected to stay in his own vehicle. *Id.* Struble gathered information from the passenger as well and started questioning him and Rodriguez about their destination. *Id*. Struble returned to his patrol car and completed writing a warning ticket. *Id*. at 351-52. At 12:27 p.m., Struble returned to Rodriguez's vehicle and gave them back their documents as well as a warning. *Id*. at 352. But he then asked for permission to have his dog sniff the vehicle. *Id*. Rodriguez refused, and Struble had him exit the vehicle and wait for a second officer to arrive at 12:33. *Id*. Seven or eight minutes later, the dog alerted them to the presence of drugs, and a subsequent search of the vehicle revealed a large bag of methamphetamine. *Id.* After being charged in federal court with possession with intent to distribute narcotics, Rodriguez filed a motion to suppress the drug evidence, which was denied. *Id*. at 352-53. Rodriguez entered a conditional plea of guilty and appealed the denial of his motion to suppress. *Id*. at 353. The Eighth Circuit Court of Appeals affirmed, and the Supreme Court granted certiorari. *Id*.

¶41. The Supreme Court reversed and pointed out that the relatively brief encounter for a traffic stop is more analogous to a *Terry* stop than to a formal arrest. *Id*. at 354. The Court explained:

> Like a *Terry* stop, the tolerable duration of police inquiries in the traffic-stop context is determined by the seizure's "mission"—to address the traffic violation that warranted the stop, [*Illinois v.*] *Caballes*, 543 U.S. 405, [407] . . . [(2005),] and attend to related safety concerns. *See also United States v. Sharpe*, 470 U.S. 675, 685 . . . (1985); *Florida v. Royer*, 460 U.S. 491, 500 . . . (1983) (plurality opinion) ("The scope of the detention must be carefully tailored to its underlying justification."). Because addressing the infraction is the purpose of the stop, it may "last no longer than is necessary to effectuate

> th[at] purpose." *Ibid. See also Caballes,* 543 U.S. at 407. . . . Authority for the seizure thus ends when tasks tied to the traffic infraction are—or reasonably should have been—completed. *See Sharpe*, 470 U.S. at 686 (in determining the reasonable duration of a stop, "it [is] appropriate to examine whether the police diligently pursued [the] investigation").

Id. The relevant inquiries to satisfy an officer's mission in a traffic stop include checking the driver's license, registration, and insurance, and determining whether there are any outstanding warrants against the driver. *Id*. at 355. A dog sniff is not a routine measure for a traffic stop. *Id.* The Supreme Court rejected the government's argument that an officer may prolong a stop to conduct a dog sniff as long as the officer is reasonably diligent in pursuing the purpose of the stop and that the overall duration of the stop was reasonable. *Id.* at 357. The Court pointed out that "the reasonableness of seizure, however, depends on what the police in fact do." *Id.*

> If an officer can complete traffic-based inquiries expeditiously, then that is the amount of "time reasonably required to complete [the stop's] mission." *Caballes*, 543 U.S. at 407. As we said in *Caballes* and reiterate today, a traffic stop "prolonged beyond" that point is "unlawful."

Id. The Supreme Court noted that even the magistrate judge found that the detention for the dog sniff was not independently supported by individualized suspicion beyond the traffic stop, and the Supreme Court remanded the case for the Eighth Circuit Court of Appeals to rule on that issue. *Id.*

¶42. A federal court in Idaho applied *Rodriguez* in *United States v. Wrobel*, 295 F. Supp. 3d 1127, 1133 (D. Idaho 2018). In that case, an officer named Peeples stopped the defendant Wrobel for changing lanes without signaling. *Id*. at 1131. The officer noticed Wrobel roll down both front windows, which Wrobel did not roll up at Peeples' suggestion. *Id*. Peeples

also smelled a strong odor of air freshener. *Id*. Peeples asked Wrobel where he was going and how long he would stay there. *Id*. Peeples also noticed Mormon religious music playing on the radio. *Id.* From these facts, he developed a suspicion that Wrobel was engaged in criminal activity. *Id*. Peeples checked for outstanding warrants and returned to Wrobel's vehicle. *Id*. at 1132. He asked if there was anything illegal inside, to which Wrobel responded "no, no, no." *Id.* Peeples then asked if his dog could sniff the car, and "Wrobel shook his head." *Id*. Peeples proceeded to have Wrobel exit the vehicle and performed a pat-down search. *Id*. When Peoples had the dog sniff the vehicle, the dog responded consistent with its training, and a subsequent search revealed methamphetamine. *Id*. Examining these facts, the Idaho district court suppressed the evidence against Wrobel, finding that Peeples lacked reasonable articulable suspicion to expand or prolong the stop and that it necessarily followed that Peoples lacked probable cause to search the vehicle. *Id*. at 1140. The court held that "a police officer unlawfully expands the scope of a traffic stop when he compels a person to exit their vehicle for investigative purposes unrelated to the mission of a lawful traffic-stop, absent a reasonable articulable suspicion the person is engaged in criminal activity." *Id*. at 1133. "Ordering a person to exit their vehicle for purposes unrelated to the traffic similarly expands the scope of a seizure. Because the additional intrusion is motivated merely by the government's general interest in criminal enforcement, it cannot be justified as part of the mission of the stop." *Id*. at 1134.

¶43. The facts of the case at hand clearly show an unlawful prolonging of Lopez's traffic stop and an unconstitutionally expanded search. In this case, Detective Quave stopped Lopez

on Interstate 59 in Pearl River County, Mississippi, for following too closely[8] on November 6, 2016, at 12:13 p.m. He told Lopez the reason for the stop, to which Lopez replied that he had been told to leave three car-lengths between vehicles and that another vehicle had just pulled in front of him from the right lane. Quave told Lopez that in Mississippi, the law was one car length for every ten miles of speed. Quave took Lopez's identification and noted that the truck was very clean and that Lopez had a safety jacket that was clean, appeared never worn, and was "perfectly folded around the seat." Quave then requested that Lopez exit his pickup truck so that he could be issued a ticket. Quave began what in effect amounted to a lengthy interrogation, asking Lopez about his destination, to which Lopez replied that he was going to Birmingham to buy some cars. Thereafter Quave instructed Lopez to get into the patrol car, ostensibly for safety purposes, but clearly to interrogate him further. The incident report shows that he questioned Lopez extensively about Lopez's visa status, his ownership of a small dealership in Guatemala, how he finds vehicles on the internet, whether Lopez was going to an auction, and how he would get the vehicles back to Guatemala. Quave asked what vehicles Lopez was looking for, and Lopez responded with the make and models he was interested. Quave said he felt the description was rehearsed.

¶44. At this point, Lopez was inside the patrol car and obviously not free to leave. There was no further information Quave needed to complete the traffic stop and issue the ticket. Being able to describe the vehicle he was planning to purchase, driving a clean pickup truck,

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[8] The statute creating this traffic violation provided that "[t]he driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway." Miss. Code Ann. § 63-3-619(1) (Rev. 2013).

and merely being a foreigner traveling the highways of Mississippi does not constitute a reasonable suspicion of criminal activity for Quave to have detained Lopez any longer.

¶45. Instead, Quave further interrogated Lopez, asking if he had any guns in the vehicle or narcotics, to which Lopez replied he did not. Quave then asked for permission and Lopez consented to a search of the vehicle. However, Quave's search, even through suitcases in the vehicle, resulted in nothing illegal being found.[9] Quave searched the truck bed but found nothing illegal. Without asking Lopez's consent for a dog sniff, Quave had his dog sniff the truck. When Quave determined the dog acted interested in the saddles of the truck bed, Quave ordered Lopez to drive to the county sheriff's headquarters, where after two hours of dismantling the truck, the heroin was found. According to the police's incident report, Lopez was "cleared" (assumingly arrested) at 19:31 (7:31 p.m.), approximately seven and a half hours after the initial traffic stop.

¶46. If an approximately thirty-minute stop in *Rodriguez* was unreasonably prolonged, the hours-long stop in this case is grossly unreasonable. Even if the tailgating statute is not unconstitutionally vague,[10] and if Lopez was in fact tailgating, this minor traffic stop morphed into an unreasonably long detention resulting in a warrantless search and Lopez's eventual arrest. There was no reason for Quave to order Lopez out of his vehicle for such a minor infraction, and by ordering him to do so, Quave unlawfully expanded the scope of the traffic stop. Ordering Lopez into the patrol car was also unnecessary and actually

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[9] According to the incident report, the suitcases contained "new Christmas lights" and "new clothing items. . . still in bags."

[10] *Nolan v. State*, 182 So. 3d 484, 494 (¶37) (Miss. Ct. App. 2016).

detained Lopez without cause. Simply put, this traffic stop was unreasonably and unlawfully prolonged, and Quave had no probable cause to search the vehicle. Even after Quave completed his initial search, nothing was found to give rise to suspicious criminal activity that would warrant an unconsented-to dog sniff.

¶47. In my opinion, the evidence against Lopez was the result of an unconstitutional search, and had he not knowingly and voluntarily pled guilty, I would not join in the result.

BARNES, C.J., AND McCARTY, J., JOIN THIS OPINION. WESTBROOKS, J., JOINS THIS OPINION IN PART.