



## SEVENTH CIRCUIT UPHOLDS DELAY IN TRAFFIC STOP WHERE OFFICER FORGOT TO REQUEST INSURANCE INFORMATION

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On June 11, 2021, the Seventh Circuit Court of Appeals decided *the United States v. Gholston*<sup>i</sup>, which serves as an excellent review of the law related to unreasonable delay by an officer during a traffic stop. The relevant facts of *Gholston*, taken directly from the case, are as follows:

Officer Cowick had long suspected that Gholston was distributing large quantities of methamphetamine from his truck. Cowick had an informant, Taylour Toolate, who occasionally provided information about criminal activity in Quincy, Illinois. On one occasion at an unspecified time, Toolate informed Cowick that she believed that Gholston was about to pick up and deliver large quantities of methamphetamine using his green pickup truck, which had a toolbox in the bed. She predicted that Gholston would store the methamphetamine in a magnetic box affixed to the bottom of the truck. Cowick also vaguely said that other people he had arrested in the past told him that Gholston sold methamphetamine from his truck. Cowick could not identify any of them by name, nor could he provide any details or documentation about those supposed encounters.

In the early morning hours of April 29, 2018, Cowick was patrolling a high crime area in Quincy. He spotted Gholston's green pickup truck with the toolbox in its bed. Evidently Cowick had kept Toolate's tip in mind for some time, as she had been incarcerated since January 10, 2018. He decided to follow Gholston to see if he could stop him for a traffic infraction.

An opportunity presented itself when, around 12:16 am, Gholston turned right from 5th Street onto Chestnut Street without using a turn signal. Cowick caught up to Gholston's truck, activating his emergency lights at 12:17 am as he made the same turn onto Chestnut Street. By the time Cowick finished turning, Gholston had already parked the truck and was walking away. This further heightened Cowick's suspicions, as he believes that "walk[ing] away from a traffic stop in this area" usually means drugs are involved. Cowick radioed to dispatch that he was preparing to make a stop. He then called out for Gholston to stop, but Gholston kept walking. This, too, disturbed Cowick, because he thought that the two had made eye contact. Cowick decided to follow Gholston on foot, calling after Gholston until he responded and returned to the car. Gholston explained that he did not hear Cowick calling him at first. He added that Cowick did not turn on his

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lights until after Gholston was already out of the car, and so he did not realize that Cowick was after him. Cowick handcuffed Gholston at 12:18 am and sat him on the curb. Around that time, Officers Hodges and Cirrincione arrived at the scene.

Cowick began the standard procedure for writing a ticket, but there were a few delays along the way. When asked for his license, Gholston explained that his ID was in his truck. Cowick, unprovoked, asked if there was a reason Gholston did not want Cowick to retrieve the ID from the vehicle, to which Gholston responded "huh." That was the most that Gholston said; he never stated in so many words that he did not want Cowick to retrieve the ID from the car. Instead, Gholston verbally conveyed his ID information to Cowick. Cowick also conducted an additional consensual search of Gholston's person; it did not turn up anything. He then returned to his squad car and radioed dispatch to confirm whether Gholston had a valid driver's license. Dispatch informed Cowick that Gholston's ID was valid but that he also had a Notice of Violation ("Notice") on file for improperly parking over a year earlier.

At that point, Cowick contacted two more officers to assist him with the stop. First, at 12:24:23 am, he looked up the location of a K9 officer, Deputy Saalborn (known as "sam12"), who was six to seven miles away from the stop. Next, he called for assistance in retrieving the Notice from the police station and delivering it to the traffic stop. Sargent Elbus radioed back that he could pick up the Notice. Cowick immediately responded at 12:26:43 am, using the car's messaging terminal, inviting Elbus to "take your time!!" because he was "trying to get sam12 here." Cowick was also communicating with Officer Cirrincione about getting Saalborn to the scene. At 12:28:03 am, Cirrincione messaged Cowick through his car terminal saying that Saalborn was on the way.

Throughout the time he was completing the ticket, Cowick continued to urge Elbus to take his time, sending him messages at 12:29:15 am and 12:29:20 am to that effect. He did the opposite with Saalborn, urging him at 12:30:31 am to "drive fast" because he could guarantee that Gholston had drugs in his car. Cowick printed Gholston's warning ticket for failing to use his turn signal at 12:32:27 am, 14 minutes after he had handcuffed Gholston.

As Cowick returned to Gholston to hand him the printed ticket, he realized that he had not yet asked Gholston for his insurance information. Gholston explained that his girlfriend had the truck insured but that he did not have proof of insurance on him. Cowick went back to his car to write a ticket for that infraction. As Cowick was finishing the second ticket, Saalborn arrived and walked the drug-sniffing dog around Gholston's truck. The dog alerted as the ticket was still printing. The officers searched the truck and discovered 9 grams of methamphetamine.<sup>ii</sup>

Subsequently, Gholston was charged with federal drug violations. He filed a motion to suppress and argued that Officer Cowick unreasonably extended the stop in violation of the Fourth Amendment. The district court denied the motion to suppress, and he appealed to the Seventh Circuit Court of Appeals.

The issue on appeal was whether Officer Cowick unreasonably extended the length of the traffic stop in order to wait on the arrival of the K9.

The court of appeals first discussed the legal principles relevant to this issue. The court stated

**Whether a lawful stop extends so long that it raises constitutional concerns turns on reasonableness. As relevant for our purposes, a seizure made in order to issue a warning ticket to a driver "can become unlawful if it is prolonged beyond the time reasonably required to complete that mission."** [\*Illinois v. Caballes\*, 543 U.S. 405, 407, 125 S. Ct. 834, 160 L. Ed. 2d 842 \(2005\)](#); [\*Rodriguez v. United States\*, 575 U.S. 348, 357, 135 S. Ct. 1609, 191 L. Ed. 2d 492 \(2015\)](#). The goal is to complete such a stop in a reasonable time. Side-inquiries into other potential crimes such as drug-related activity represent a "detour[]" from [the original] mission." [\*Rodriguez\*, 575 U.S. at 356](#).

**While officers must act diligently, we repeatedly have declined to adopt even a rule of thumb that relies on the number of minutes any given stop lasts. We explained recently in [\*United States v. Lopez\*, 907 F.3d 472 \(7th Cir. 2018\)](#), that we ask whether the defendant was detained longer than necessary for the underlying investigation, not "exactly how many minutes the stop lasts." [\*Id.\* at 486](#). A stop may call for a variety of measures beyond printing the ticket, including "checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance." [\*Rodriguez\*, 575 U.S. at 355](#).<sup>iii</sup>**

The court of appeals then addressed each of Gholston's arguments related to why he contended the stop was unreasonably prolonged. It is important to note that much of the decision of the court of appeals is influenced by the factual determinations made by the district court during the motion to suppress. The court of appeals can only overrule the factual determinations of the district court if they are "clearly erroneous." This means there must be clear evidence that shows that the district court made an incorrect factual determination.

The first argument made by Gholston was that Officer Cowick unreasonably prolonged the stop because he had the information to begin his citation at 12:22 a.m. but did not start writing the citation until 12:24 a.m. This was because he conducted a consent search of Gholston's person and requested consent to search his vehicle. The court of appeals noted that the officer had not requested K9 at this time so it was irrelevant to the issue of whether the officer unreasonably extended the stop to allow the K9 to arrive before the completion of the stop.

The second argument was that Officer Cowick unreasonably extended the stop by sending several messages to the K9 officer and to the officer who was retrieving the Notice of Violation for the previous improper parking allegation. Officer Cowick also telephoned the officer retrieving the Notice. Gholston argued that since the officer needed the same keyboard to issue the citation as he did to send the messages, he was not diligently pursuing the purpose of the stop at those times. The court of appeals observed that the district court concluded that Officer Cowick did not unreasonably delay the stop when he communicated with the other officers about matters unrelated to reason for the stop. The court of appeals stated that

Even if Cowick had to use the same keyboard, there are many reasons why he might have been able to communicate with his fellow officers without slowing down the ticket process, including his need to wait for dispatch to verify that Gholston's ID was valid.<sup>iv</sup>

As such, the court of appeals could not say that the factual determination of the district court was clearly erroneous, so this argument failed.

Gholston's third argument was that Officer Cowick unreasonably delayed the stop when he failed to ask him for proof of insurance at the beginning of the stop, when he asked for his driver's license. The district court held that the officer made an innocent mistake when he forgot to ask about the proof of insurance, rather than ruse to prolong the stop for the K9 sniff. The court of appeals noted that when Cowick initiated the traffic stop, Gholston exited his truck and began walking away. Officer Cowick had to exit his vehicle and catch up to Gholston to get him to stop walking away. The court of appeals noted that the decision to credit the officer's testimony that it was an innocent mistake is credibility issue for the district court to decide. They noted that there is no evidence to indicate that decision was clearly erroneous. In fact, in support of officer's explanation, was corroborating evidence that Officer Cowick complained to his fellow officers that he was frustrated that he had to re-enter Gholston's ID information a second time to issue the second ticket. Furthermore, the court stated that it did not matter whether or not Gholston refused to allow the officer to enter his truck to retrieve his ID because Gholston began communicating his ID information verbally to the officer.

As such, Gholston's argument failed, as the decision of the district court was not clearly erroneous.

Lastly, Gholston argued that the district court's decision was contrary to the Supreme Court's holding in *Rodriguez v. United States*.<sup>v</sup> In *Rodriguez*, an officer completed a traffic stop, returned Rodriguez's license and documents, and continued to detain him for a K9 sniff. The court held it was unreasonable to continue to detain Rodriguez after the completion of the stop without reasonable suspicion to support the continued detention. In Gholston's case, the court of appeals noted that Gholston's stop had not finished at the time the K9 alerted on his vehicle; rather, the officer was printing the second citation at the time the K9 alerted. Thus, this case is distinguishable from *Rodriguez*.

The court of appeals then affirmed the decision of the district court denying the motion to suppress.

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<sup>i</sup> No. 20-2168 (7<sup>th</sup> Cir. Decided June 14, 2021)

<sup>ii</sup> Id. at 2-6

<sup>iii</sup> Id. at 7-8 (emphasis added)

<sup>iv</sup> Id. at 11

<sup>v</sup> 575 U.S. 348 (2015)