

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF **INSERT DISTRICT**

UNITED STATES OF AMERICA,) CASE NO. **INSERT CASE #**
)
Plaintiff,)
) **BRIEF IN SUPPORT OF MOTION TO**
vs.) **SUPPRESS EVIDENCE & STATEMENTS**
)
INSERT CLIENT NAME,)
)
Defendant.)

INTRODUCTION

COMES NOW the Defendant, by and through his Attorney, and submits the following Brief in Support of his Motion to Suppress Evidence and Statements. Defendant summarizes the constitutional issues with the traffic stop in this case as follows:

- The Government unlawfully seized Defendant because there was no probable cause to believe a traffic violation had occurred;
- The cruiser camera recording refutes Officer [REDACTED]'s justification for stopping Defendant's vehicle, contained in both his written report and his testimony;
- Following the unlawful stop and seizure of Defendant, Officer [REDACTED] continued to violate Defendant's constitutional rights by unlawfully detaining him after the mission of the traffic stop was complete;
- Next, Officer [REDACTED] conducted an unreliable drug dog sniff search;
- The unreliability of the drug dog sniff search is set forth in the expert testimony of Andy Falco-Jimenez; and

- Following the drug dog sniff search, Officer [REDACTED] unlawfully interrogated Defendant, while in custody, without advising him of his rights pursuant to Miranda.

BACKGROUND

On or about [REDACTED], Omaha Police Department Officer [REDACTED] conducted a traffic stop on eastbound Interstate 80, mile marker [REDACTED]. Officer [REDACTED] pulled over a silver 2017 Cadillac XTS with Oregon license plate [REDACTED]. At the time of this traffic stop, the vehicle was being operated by [REDACTED] (hereinafter "Defendant"). Upon conducting the traffic stop, Officer [REDACTED] escorted Defendant back to his police SUV for questioning. Officer [REDACTED] reiterated to Defendant that the reason he had pulled him over was for following the vehicle in front of him too closely.

After explaining his reason for the traffic stop, Officer [REDACTED] began to question Defendant about his travels. Defendant explained that he and his wife, [REDACTED] (hereinafter "co-Defendant"), had flown into Las Vegas to visit his uncle. Officer [REDACTED] proceeded to question Defendant about why he was driving back to Iowa instead of flying back. Officer [REDACTED] bombarded Defendant with unnecessary, extensive, and intrusive questions regarding his travels. Such questioning would make any reasonable person feel uncomfortable, especially given the psychology of the power dynamics inherent in an officer/civilian interaction. Defendant posits that Officer [REDACTED] created an uncomfortable environment for the purpose of building an after-the-fact basis for

the search; in that the Officer pulled over the vehicle with the premeditated intent to perform a search.

According to the video recording of the encounter, Officer ██████'s questioning went on for approximately six and half minutes. Questions included in this interrogation were not only superfluous but were also repetitive and accusatory. After this line of questioning, Officer ██████ told Defendant that he would be issuing a warning ticket for the traffic stop. At this time, the traffic stop and corresponding interactions between Officer ██████ and Defendant should have ceased; however, this was not the case. Officer ██████ instructed Defendant to remain in the police vehicle, at which time Officer ██████, without sufficient probable cause, directed his dog to execute a canine sniff test on the rented vehicle. After leaving Defendant to wait for several minutes without explanation, Officer Vaughn returned to his police SUV and proceeded to ask Defendant more invasive questions about his work history and personal life. At no time did Officer ██████ offer explanation for his questioning, acknowledge the utilization of the police canine, or read Defendant his Miranda rights.

Officer ██████ questions became increasingly intrusive and began to hone in on whether Defendant had a previous criminal history. After a lengthy round of redundant and invasive questioning, Officer ██████ reiterated to Defendant that he was issuing him a warning ticket; which would not require a fine to be paid and would not go on his record. Immediately following Defendant's signing of the warning ticket, Officer ██████ alerted Defendant that his police

canine indicated the presence of drugs in the rental vehicle. He then asked Defendant if there were any drugs in the vehicle, to which Defendant answered no, and proceeded to explain that he would be performing a search of the vehicle.

Defendant did not consent to said search and told Officer [REDACTED] that he was not allowed to search the vehicle. Officer [REDACTED] retorted that he was not asking Defendant to search the vehicle, but rather telling him that he would be conducting the search. From here, Officer [REDACTED] made his way over to the passenger side of the police SUV, opened up the passenger door and demanded that Defendant “get out” and “get down on the ground.” Defendant was compliant with the officer at all times and did not refuse his commands.

This unwarranted and pre-meditated search resulted in Defendant making a statement during a custodial interrogation when Officer [REDACTED] asked him, “where did you get the drugs” to which Defendant responded while seated in the back of Officer [REDACTED]’s police cruiser. Officer [REDACTED] did not advise Defendant of his *Miranda* Rights. Subsequently, this unwarranted and pre-meditated search resulted in the Defendant’s arrest and the charges he is currently facing.

The Government charged Defendant in an Indictment with violations of Title 21 U.S.C. § 846 for Conspiracy to Distribute Marijuana. Officer [REDACTED]’s actions violated Defendant’s Fourth, Fifth and Fourteenth Amendment Rights of the United States Constitution, and therefore any and all evidence obtained as a result of the unlawful stop, detention, search and custodial interrogation of Defendant’s vehicle and person must be suppressed.

ARGUMENT

I.

THE OFFICER WAS UNJUSTIFIED IN SEIZING THE DEFENDANT BECAUSE DEFENDANT COMMITTED NO VIOLATION TO JUSTIFY A TRAFFIC STOP

Reasonable Expectation of Privacy

The Fourth Amendment of the United States Constitution protects all citizens from unreasonable and unnecessary search and seizure. U.S. Const. Amend. IV. One must have a legitimate expectation of privacy in the place or thing searched or seized in order to assert the protection. Katz v. United States, 389 U.S. 347, 351-53 (1967). A legitimate expectation of privacy is one that ‘society is prepared to recognize as reasonable.’ Rakas v. Illinois, 439 U.S. 128, 151 (1978) (quoting Katz, 389 U.S. at 516). A defendant who has a property or possessory interest in the place searched or the items seized has a legitimate expectation of privacy sufficient to invoke the Fourth Amendment’s protections to be free from unreasonable searches and seizures. Rakas, 439 U.S. at 148. A defendant can demonstrate his or her own legitimate expectation of privacy has been infringed by showing he or she owns or lawfully possesses the property subjected to search. United States v. Pierson, 219 F.3d 803, 806 (8th Cir. 2003) (quoting United States v. Gomez, 16 F.3d 254, 256 (8th Cir. 1994)).

A Traffic Stop is a Seizure

The Supreme Court has established that a traffic stop constitutes a seizure protected by this amendment. Delaware v. Prouse, 440 U.S. 648, 653, 99 S. Ct.

1391, 59 L.Ed.2d 660 (1979). It has been held that a traffic stop is lawful so long as an objectively reasonable foundation is present for the stop. Whren v. United States, 517 U.S. 806 (1996). Put differently, the validity of a stop depends on whether the officer's actions were objectively reasonable in the circumstances. United States v. Smart, 393 F.3d 767, 770 (8th Cir. 2005).

Traffic Stop Requires Probable Cause of a Traffic Violation or Reasonable Suspicion that Criminal Activity is Afoot

The Government has the burden to prove a traffic stop is justified at its inception. See, United States v. Sharpe, 470 U.S. 675, 682 (1985) (citing Terry v. Ohio, 392 U.S. 1, 20 (1968)). Absent an articulable, individualized, and reasonable suspicion of specific criminal activity, or probable cause of a traffic violation, a stop violates the Constitution when based merely on a pretextual nature, such as a hunch or profile. City of Indianapolis v. Edmond, 531 U.S. 32, 37 (2000) (citing Chandler v. Miller, 520 U.S. 305, 308 (1997)).

Officer [REDACTED] states that he pulled Defendant over for following the vehicle in front of him too closely. Nebraska law requires that a "vehicle shall not follow another vehicle more closely than is *reasonably prudent*." Neb. Rev. Stat § 60-6,140 (emphasis added). An examination of Nebraska case law similarly construes the statute as vague and provides no clear rule one way or another. See, e.g., State v. Waltz, 2012 WL 4897097 (half a second behind another vehicle deemed following too close); State v. Draganescu, 276 Neb. 448, 755 N.W. 2d 57 (2008) (less than one car lengths in the rain at 70 mph deemed following too close); State v. Truesdale, 2008 WL 582530 (same); and

State v. Dupre, 2006 WL 2987000 (less than one second behind semi-trailer at 55 mph in construction zone deemed following too close when supported by video evidence). Perhaps the best standard of reasonable and prudent distance can be derived from the other provisions of the statute itself. Indeed, section 60-6, 140(2), (3), (4), and (5) provide guidance in this regard. For instance, subsection (2) provides that the safe following distance for a vehicle towing a trailer, semi-trailer, or another vehicle is someplace between one car length or 100 feet if following another towing vehicle. However, the standard continues to be vague.

Upon inspection of Officer [REDACTED]'s police cam video documenting the driving of Defendant leading up to the traffic stop, it is clear that, not only was Defendant trailing the vehicle in front of him at a reasonably prudent distance, but he was leaving an ample amount of space between him and the vehicle ahead that was both safe and lawful under the circumstances. In addition, the objectively reasonable driving standards being used by Defendant include:

- 1) He was operating at the speed limit;
- 2) Defendant's vehicle, initially in the left passing lane, signaled properly and moved to the right into the adjoining lane, as was appropriate due to the officer's vehicle approaching him. Nebraska law provides that a motorist should move from the passing lane if another motorist is in a position to pass him;

- 3) Traffic was light at the time, and Defendant would have had the opportunity to switch lanes quickly if the vehicle in front of him necessitated such a movement;
- 4) Defendant was not weaving in his lane
- 5) Defendant utilized his turn signal to change lanes.

Officer ██████'s -second rule would be impossible to maintain on a crowded rush-hour urban interstate. Therefore, according to Officer ██████'s theory, every car travelling on such a crowded interstate would be in violation of the law. As such, Defendant's driving pattern was reasonable under the circumstances. The proof in the pudding is clearly illustrated by a view of Exhibit 1, the video footage taken by Officer ██████'s in-vehicle camera.

It is evident that Officer ██████'s traffic stop was conducted with a pre-meditated motive, and although an officer's subjective motivations are not relevant under Whren, the obligation for an objective basis was not met. Therefore, Defendant unlawfully seized in violation of his rights protected by the Fourth Amendment of the United States Constitution. Further credibility issues concerning the officer's memory of the stop include his testimony as to whether the vehicle Defendant was following was white or dark-colored (Mot. Suppress Hearing Transcript at 44; 2-9). Due to lack of reasonable suspicion required by Terry v. Ohio, the entirety of the traffic stop and subsequent actions between Defendant and Officer ██████ are unconstitutional and thus require the suppression of all evidence, statements and information arising from this

encounter going forward. Terry v. Ohio, 44 Ohio Op. 2d 383 (U.S. June 10, 1968).

II.

THE OFFICER'S CONTINUED DETENTION OF DEFENDANT WAS UNJUSTIFIED BECAUSE THERE WAS NO "REASONABLE ARTICULABLE SUSPICION" TO WARRANT DETAINING DEFENDANT BEYOND THE INITIAL STOP

Following the unconstitutional seizure of Defendant, any and all interaction between the Defendant and Officer ██████████ should have ceased at the conclusion of the traffic stop. The Court has established that a law enforcement officer must have further "reasonable articulable suspicion" for detaining a motorist beyond the preliminary traffic stop. United States v. Salazar, 454 F.3d 843 (8th Cir. 2006). Such suspicion must be articulable due to specific fact and cogent conclusion that sufficiently suggests that criminal conduct has occurred, is occurring or is forthcoming. Id. Preemptive hunches and curious suspicions are inadequate in meeting this criterion. United States v. Halls, 40 F.3d 275 (8th Cir. 1994).

Based on his preliminary interactions with Defendant, Officer ██████████ did not have sufficient foundation for detaining Defendant beyond the initial traffic stop. His suspicions of Defendant were rooted in a premeditated motive and were not enhanced to an articulable and specific manner following his conversations with Defendant. The content of information resulting from the conversation between Officer ██████████ and Defendant relate solely to

Defendant's travel plans and method of transportation. However, Defendant's statements about his travels to Las Vegas were bolstered and corroborated by co-Defendant's comments, which were made individually and independently to Officer _____, outside of the presence of Defendant. Co-Defendant's admissions to Officer [REDACTED] prove consistent with Defendant's and thus should have diminished suspicion by the officer that their accounts were falsified in an attempt to disguise unlawful activity.

Officer [REDACTED] states that Defendant was being slow to answer his questions. First of all, this was Officer [REDACTED]'s first encounter with Defendant, and he has no baseline to say that Defendant was slow to answer. Defendant was wise in processing Officer [REDACTED]'s questions to order to provide accurate and truthful answers in order to avoid making false statements to an officer. On the video, Defendant appears calm, relaxed, poised, and is genuinely attempting to answer the officer's questions in a forthright manner.

In Officer [REDACTED]'s testimony regarding the co-Defendant, he states, "I asked her the reason for travel, et cetera. She told me that they had flown out to Las Vegas to watch the fights, and then they were driving back because they wanted to see the sights in Colorado." (Mot. Suppress at 30; 11-16). Officer [REDACTED]'s recollection of this exchange is of paramount importance because Officer [REDACTED] failed to acquire a working portable microphone on the workday in question, leaving his testimony as the only evidence in this particular matter. (Mot. Suppress at 38; 9-10). Recent history mandates the officer to employ current technology to support the credibility of the investigation.

According to Officer ██████████'s recounting of co-Defendant's statements, the only evidence available, there are five important facts in co-Defendant's statement:

- 1) Co-Defendant flew.
 - a. This corroborates Defendant's account.
- 2) Co-Defendant's landed in Las Vegas.
 - a. This corroborates Defendant's account.
- 3) Co-Defendant watched the fights.
 - a. This is unknown in relation to Defendant.
- 4) Co-Defendant is driving back in order to see the sights.
 - a. This corroborates Defendant's account.
- 5) Co-Defendant is driving back through Colorado.
 - a. This corroborates Defendant account.

Officer ██████████ bases his statement that their narratives conflicted on a statement that is at least 80% consistent with Defendant's testimony. Couples travelling together may often have different motivations. Defendant wanted to visit and help take care of his uncle. Co-Defendant went along with him, and her main motivation for doing so was to see the fights. Furthermore, in later questioning, Defendant tells Officer ██████████ that he had seen the fights. (Exhibit 1). Shared life experience does not necessitate the same motivations, and a simple omission does not make an inconsistency.

The rental vehicle driven by Defendant was of particular interest to Officer ██████████. Officer ██████████ questioned the make and model, the exact

location of the business from which the vehicle was rented, the exact amount paid for the rented vehicle, and if Defendant received a discount. (Exhibit 1). Defendant answered all of these questions thoroughly, but Officer ██████████ was not satisfied with his answers. In State v. Passerini, officers testified that they were initially wary about the defendant because “he was driving a truck with Nevada license plates which appeared to be a rental due to the barcode on the rear window of the truck and the ‘cleanliness of the vehicle.’” State v. Passerini, 18 Neb. App. 552, 564 (2010). The Court held that, “The fact that Passerini was driving a rental vehicle is perfectly consistent with law-abiding activity, and furthermore, the matching names on the driver’s license and rental agreement, coupled with the consistency of Passerini’s story as to the timeframe of his trip . . . should have dispelled, rather than created, further suspicion.” Id. at 564. Driving a rental vehicle, no matter the make or model, is not reason for suspicion.

Another aspect that Officer ██████████ cited as suspicious is Defendant’s and co-Defendant’s appearance. Officer Vaughn stated that Defendant and co-Defendant had sunken-in facial features as well as pock marks on their faces. Judging people based on their appearance approaches territory dangerously close to the protections afforded by the Fourteenth Amendment. Officer ██████████ had no right to assume anything about Defendant’s medical history or substance abuse history based on his outward presentation, when other explanations are not only possible but more probable. If an officer needs to clarify someone’s medical history to validate a hunch, that hunch should not be used as a

determinant of suspicion. While some drug users may have pock-marked skin, pock-marked skin is by no means a tell-tale sign of drug use, and taken by itself, is not indicative of drug use. More importantly, Officer ██████████ did not observe the Defendant or co-Defendant to be overly tired, hyper, or nervous. Furthermore, there were no indications that Defendant or co-Defendant were high on any illegal substance. There is neither scientific nor factual support for Officer ██████████'s conclusion that because both parties, in his opinion, had pock marks on their faces, methamphetamine use necessarily follows. Pock marks could just as easily have been the result of childhood disease, such as chicken pox, medical surgeries, adolescent or adult acne, or simply being born with an adverse skin condition. The condition of Defendant's skin was not an adequate reason to detain Defendant, just as the color of people's skin is not an adequate reason to detain them.

Officer ██████████ also cites a "blanket laying in the backseat" and a "Red Bull energy drink" as reasons that added to his suspicions. According to the Nebraska Department of Revenue under Title 316, Chapter 1087.01, Red Bull is not taxed and is considered a grocery item. In State v. Russo, officers cited a "bag of apples in a box on the front seat" as a reason to suspect criminal activity. However, the court held that "[p]ossessing apples is not suspicious behavior and is consistent with innocent behavior." State v. Russo, 2006 Neb. App. LEXIS 165, 13 (2006). In the same manner, possessing any other grocery item does not constitute reason for suspicion during a traffic stop. Further, blankets can be used at any point of the day or night, asleep or awake, sitting

or lying. Officer [REDACTED] cites the blanket as indicative of hard driving where smugglers are trying to get to a location as quickly as possible and avoid detection by law enforcement. Most other people cite blankets as indicative of the desire for temperature regulation, not to mention a staple for long road trips.

Additionally, Officer Vaughn found suspicion in Defendant's unconventional travel arrangements, having flown into Las Vegas and chosen to drive back to Iowa. Yet, the Courts have held that unusual transportation methods do not warrant detention outright. United States v. Beck, 140 F.3d 1129 (8th Cir. 1998); United States v. Kirkpatrick, 5 F. Supp. 2d 1045 (D. Neb. 1998). Further, Defendant explained that the reason for driving back to Iowa was so that he and co-Defendant could visit the Colorado mountains and Lake Mead. Lake Mead is located directly east of Las Vegas, just off of Interstate 15. Interstate 15 runs through the southern corner of Nevada, up through Utah, where it branches off into Interstate 70, leading into Colorado. This path of travel is perfectly reasonable and consistent with one who is traveling from Nevada, through Colorado. This route is directly on the way to Iowa as well, since Interstate 70 becomes Interstate 76, which then turns into Interstate 80, where Defendant was ultimately stopped.

Not only did Officer [REDACTED] use Defendant's supposed lack of geographical knowledge as a reason for suspicion, but he also used Defendant's mispronunciation of a lake's name as a basis for suspicion. In State v. Russo, the court held that Russo's inability to answer questions about the name of someone

to whom he had sold land or the town in which he had stayed last night were not “particularly probative of criminal activity.” Id. at 16. By this standard, the misremembering of the exact location of a landmark and the subsequent mispronunciation of an aforementioned landmark has no bearing on the level of suspicion afforded to a civilian during a traffic stop. Additionally, a brochure from Lake Mead was found in Defendant’s car during the search (Mot. Suppress Exhibit 6). Ironically, Officer ██████████ was hoisted on his own petard when answering questions on the witness stand. Officer ██████████ mistakenly testified that Lake Mead was not east of Vegas. (Mot. Suppress at 48; 7-10). Instead of labelling him perjurious, Defendant will chalk that up to nerves, a simple mistake.

Defendant believes that the State will rely on the totality of factors and circumstances test in Illinois v. Wardlow to defang Defendant’s arguments concerning each factor. Illinois v. Wardlow, 528 U.S. 119 (2000). All of these factors, in totality, are also consistent with innocent activity, and as such, the officer’s interpretation goes no further than an inarticulate collective. The following chart shows activities that are consistent with innocent behavior and reasons that Officer ██████████ cited as suspicious.

Innocent Behavior	Officer Vaughn’s Reasons for Suspicion
<ul style="list-style-type: none"> Defendant was driving a rental vehicle. 	<ul style="list-style-type: none"> Defendant was driving a rental vehicle.

<ul style="list-style-type: none">• Defendant was driving a premium rental vehicle.• Defendant flew to Las Vegas.• Defendant had a can of Red Bull in the vehicle.• Defendant had a blanket in the vehicle.• Defendant and co-Defendant had matching versions of events barring co-Defendant not mentioning a funeral, a personal matter which she was under no obligation to share.• Defendant was travelling through Colorado to see the sites.• Defendant mispronounced the name of an attraction that he visited.• Defendant has pock-marked skin.• Defendant speaks slowly.	<ul style="list-style-type: none">• Defendant was driving a premium rental vehicle.• Defendant flew to Las Vegas.• Defendant had a can of Red Bull in the vehicle.• Defendant had a blanket in the vehicle.• Defendant and co-Defendant had matching versions of events barring co-Defendant not mentioning a funeral, a personal matter which she was under no obligation to share.• Defendant was travelling through Colorado to see the sites.• Defendant mispronounced the name of an attraction that he visited.• Defendant has pock-marked skin.• Defendant speaks slowly.
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Obviously, the officer's pre-conceived suspicion of Defendant is the major determining factor, seemingly the only determining factor, that Officer ██████ used to justify his search, and a hunch is simply not enough. Lack of articulable and reasonable suspicion provide that Officer ██████'s prolonged detention of Defendant was unlawful and without merit, thus violating Defendant's constitutional rights awarded to him by the Fourth Amendment.

III.

DEFENDANT WAS UNLAWFULLY DETAINED FOLLOWING THE EXECUTION AND DELIVERY OF HIS WARNING TICKET

"[A] person has been 'seized' within the meaning of the Fourth Amendment only if, in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." United States v. Mendenhall, 446 U.S. 544, 545 (1980). The Court must apply an objective test when determining whether an unlawful seizure has occurred implicating the Fourth Amendment. Florida v. Royer, 460 U.S. 491, 497 (1983); Mendenhall, 446 U.S. at 555-56. An officer can ask additional questions, but unless the answers provided to the officer give rise to probable cause to arrest, the individual must be released. Berkemer v. McCarty, 468 U.S. 420, 439 (1984).

It has been established that upon issuance of a warning ticket following a traffic stop, seizure under the guidelines of the 4th Amendment is nullified. United States v. Santos-Garcia, 313 F.3d 1073, 1078 (8th Cir. 2002), United States v. White, 81 F.3d 775, 778 (8th Cir. 1996) cert. denied, 519 U.S. 1011 (1996).

Santos-Garcia held that certain characteristics of an encounter, like the presence of multiple officers, an officer displaying their weapon or the physical touching of the person of interest, would render the encounter as a seizure under the Fourth Amendment.

Following the issuance of a warning ticket to Defendant, Officer ██████ brashly asked Defendant if there were drugs located in his vehicle. Defendant denied such allegations, to which Officer Vaughn responded that his drug dog indicated the presence of narcotics and he would subsequently be searching Defendant's vehicle. Defendant told Officer ██████ that he did not have permission to search the vehicle and the Officer retorted that he was "telling" him he would be performing the search, "not asking him." The entirety of this conversation was had while Defendant was detained inside of the police SUV and at no time was the Defendant instructed that he was free to leave.

Consequently, Officer ██████ exited the police SUV and made his way over to the passenger side of the vehicle where Defendant was located. He demanded that Defendant get out of the car and get down on the ground. At this time, another officer was present on the scene. These circumstances clearly depict an atmosphere of detention and thus constitute an act of seizure. Therefore, Defendant was held unlawfully following his receipt of the warning ticket and any information and evidence obtained from this point forward was done so illicitly and is considered inadmissible.

IV.

**OFFICER [REDACTED] UNDULY PROLONGED THE DETENTION OF
DEFENDANT**

Assuming arguendo, the traffic stop had been justified at its inception, a seizure justified solely for the purpose of issuing a warning ticket can become unlawful if prolonged beyond the time required to complete that mission. Illinois v. Caballes, 543 U.S. 405, 407 (2005). While an officer may detain a motorist while the officer completes routine tasks related to the traffic violation, such as computerized checks of the vehicle’s registration, running the driver’s license and criminal history, and the writing up of a citation or warning, a traffic stop becomes unreasonable where it is “prolonged beyond the time reasonably required” to complete its mission.Id.

“[O]nce the officer decides to let a routine traffic offender depart with...a warning, or an all clear—a point in time determined, like other Fourth Amendment inquiries, by objective indica of the officer’s intent—then the Fourth Amendment applies to limit any subsequent detention or search.” Fuse, 391 F.2d at 927 (quoting United States v. \$404, 905.00 in U.S. Currency, 182 F.3d 643, 648 (1999), abrogated on other grounds). An officer should not be allowed to expand the scope of a traffic stop by delaying action on the violation in order to seek evidence of criminal activity. See, Rodriguez v. United States, 135 S. Ct. 1609, 1621 (2015) (holding that a traffic stop prolonged beyond the time necessary to pursue the traffic-related purpose of a stop is unlawful whether the delay is before or after the officer issues a ticket).

Officer [REDACTED] unduly prolonged the traffic stop by asking Defendant multiple questions unrelated to the stop itself. Approximately 13 minutes and 36 seconds in to the traffic stop, Defendant inquired about the record search and Officer [REDACTED] indicated it “looks pretty good,” but delayed issuing the warning, and instead continued to ask questions. Once Officer [REDACTED] received the information he needed and determined Defendant had no warrants, the warning should have been issued and the encounter ended.

However, the detention continued. Officer [REDACTED] later stated he had filled out the warning ticket, but further prolonged the encounter when he then proceeded to get out of the cruiser to further inquire about the rental vehicle and continued to ask Defendant and co-Defendant questions about the location and purpose of their travel. Through the questioning of Defendant and co-Defendant, Officer [REDACTED] unduly prolonged the traffic stop and extended it beyond the scope of its original mission of issuing a warning. At some point during this prolonged stop, Deputy Henkel arrived behind Deputy Mayo’s cruiser with a canine.

V.

THE SEARCH OF DEFENDANT’S VEHICLE AND EVIDENCE OBTAINED AS A RESULT MUST BE SUPPRESSED FOLLOWING AN UNRELIABLE DOG SNIFF TEST AND AN UNCONSTITUTIONAL PROLONGED DETENTION

By extending the length of the detention to allow time for a dog sniff, without additional facts supporting a reasonable suspicion of criminal activity during the initial detention, Officer [REDACTED] violated Defendant’s Fourth

Amendment rights. See, Rodriguez, 135 S.Ct. 1609; Royer, 460 U.S. at 500 (the detention must “last no longer than is necessary to effectuate the purpose of the stop”). The United States Supreme Court has made it clear that extending what may be a lawful detention in order to deploy a canine transforms the detention into one which requires justification beyond a routine traffic violation.

In Rodriguez, the Supreme Court acknowledged unrelated investigations that do not lengthen the roadside detention may be permissible under the Fourth Amendment, the Supreme Court held even a *de minimis* detention is impermissible where the unrelated investigation has the purpose of ferreting out crime, rather than similar *de minimis* detentions that are effectuated for officer safety or ensuring that vehicles on the road are operated safely. Rodriguez, 135 S. Ct. at 1613. This case makes clear that any detention prolonged for the purpose of a canine sniff must be premised upon reasonable suspicion in order to satisfy the Constitution. The Rodriguez Court stated:

A traffic stop prolonged beyond [the amount of time it takes to pursue the traffic-related purpose of the stop] is unlawful...The critical question, then, is not whether the dog sniff occurs before or after the officer issues a ticket...but whether conducting the sniff prolongs—i.e., adds time to—the stop.

Similar to Rodriguez, in this case there existed no independent cause to prolong the detention of Defendant for a dog sniff. Officer [REDACTED]'s decision to search Defendant's vehicle was spurred by the result of a dog sniff test performed at the scene. In the preliminary stage of Defendant's detention, prior to the issuing of his warning ticket for his alleged traffic offense, Officer [REDACTED] performed a dog sniff test on Defendant's vehicle. This test was

executed without warning or explanation from Officer [REDACTED] and lacked any foundation of probable cause warranting such a test. The basis of Officer [REDACTED]'s further investigation of Defendant's vehicle relies solely on the minute encounter the officer's canine had with the vehicle. In fact, the totality of the dog sniff test lasted no more than a few seconds. As soon as Officer [REDACTED] thought the canine had potentially indicated the presence of narcotics, he ceased the test and returned the animal to the police SUV.

However, the length of the dog sniff was only the introductory mistake in the totality of the interaction. As drug dog detection expert Andy Falco-Jimenez testified, the entirety of Officer [REDACTED]'s dog sniff was plagued with error. According to Falco-Jimenez, it is unlikely that [REDACTED], Officer [REDACTED]'s detection dog, would have been able to accurately identify the scent of narcotics given the side of the vehicle he was sniffing. [REDACTED] only examined the rear driver's side of Defendant's vehicle. Based on the location of the vehicle in regard to the interstate, the area sniffed by [REDACTED], according to Falco-Jimenez, would be the least likely place for a drug dog to detect narcotic odor. This is due to the driver's side of the vehicle being in closest proximity to the busy interstate. As cars speed by, wind would be pushed towards the vehicle and thus would push any odors in that same direction, i.e. away from the driver's side exterior. In other words, it would be far more probable that any odor detected would be identified on the passenger side of the vehicle instead of the driver's side. As testified to by Falco-Jimenez, for [REDACTED] to detect a narcotic odor on the

driver's side, said odor would have to defy the rules of physics and go against the direction of the airflow coming off of the interstate.

Not only is the location of the dog sniff problematic due to the air current, however, Falco-Jimenez also pointed out that the spot on the vehicle where [REDACTED] was sniffing lacked any sort of seam where odor would escape. Drug detection dogs are trained to sniff seams of vehicles where air molecules are small enough to escape from. The area examined by Nacho was a solid panel of the vehicle which covers the thick metal walls of the trunk of the car. Without an open seam for these molecules to escape from, it is improbable that a drug dog would be able to detect these odor molecules.

The dog sniff of Defendant's vehicle was also plagued by the dynamic between Officer [REDACTED] and [REDACTED]. As seen in the video of the traffic stop, Officer [REDACTED] came to a complete stop in front of [REDACTED] as soon as he began to sniff the vehicle. Falco-Jimenez testified that stopping in front of a dog and raising a hand during a sniff test indicates to the animal that something is about to happen or has happened, thus influencing and biasing the dog. Officer [REDACTED]'s deliberate stop in front of [REDACTED] encourages the dog to alert the officer to the presence of drugs because the dog believes this is what the officer desires.

Further, Falco-Jimenez stated that it is proper procedure for an officer to walk a detection dog around the entirety of a vehicle once a dog has indicated the presence of an odor. This action tests whether or not a dog will return to the original indication spot, reinforcing the probability that a true narcotic odor was

detected there. Not only did Officer ██████ not take ██████ around the entire vehicle to begin with, he did not lead Nacho around the vehicle once the animal had signaled that an odor was supposedly identified. Officer ██████ simply accepted ██████'s initial reaction as valid without any supportive measures to bolster the reliability of ██████'s indication.

Given the totality of the circumstances surrounding this limited and unreliable dog sniff test, Officer ██████ proceeded forward with the unlawful detention of Defendant and presumptuous search of his vehicle. A positively indicative dog sniff test gives an officer probable cause to search a vehicle. See, United States v. Sundby, 186 F.3d 873, 875-76 (8th Cir. 1999). However, such a test must result from a reliable canine actor and a thorough investigation by said canine. The Court must consider evidence which may detract from the reliability of a narcotic canine's performance which then properly undermines the credibility of the canine in the probable cause analysis. Florida v. Harris, 133 S.Ct. 1050, 1057 (2013). The canine sniff utilized in this matter is unreliable and the duration and location of the sniff test, as well as the interactions between ██████ and Officer ██████, demonstrate that it lacked thorough investigation and resulted in an insufficient assessment.

VI.

**ALL EVIDENCE AS A RESULT OF THE AFOREMENTIONED STOP,
SEIZURE, PROLONGED DETENTION AND SNIFF DOG SEARCH IS FRUIT
OF THE POISONOUS TREE AND MUST BE SUPPRESSED.**

The Exclusionary Rule forbids the use of evidence derived as a direct product of an unlawful search and seizure. *Silverthorne Lumber Co. v. United States*, 251 U.S. 385, 392 (1920). All evidence seized as an indirect result of the unlawful detention must also be suppressed under the doctrine of “the fruit of the poisonous tree.” *Wong Sun v. United States*, 371 U.S. 471, 491 (1963).

The Government has failed to meet its burden justifying the stop, detention, search and seizure in Defendant’s case. It follows that any and all evidence derived from Officer [REDACTED]’s encounter with Defendant on or about [REDACTED] must be suppressed.

VII.

OFFICER [REDACTED] FAILED TO MIRANDIZE DEFENDANT DESPITE HIS CUSTODIAL PLACEMENT DURING THE TRAFFIC STOP

The landmark case Miranda v. Arizona, 384 U.S. 436 (1966) has established the requirement of Miranda warnings given to persons in custody prior to questioning by law enforcement. Miranda v. Arizona defines such custodial interrogation as “questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.” It is without doubt that the interactions between Officer Vaughn and Defendant would meet the requirements of a custodial interrogation under Miranda.

At no time during the traffic stop did Officer [REDACTED] advise Defendant of his Miranda rights. Following his initial detention, Defendant was peppered with questions from Officer [REDACTED] regarding information that was entirely

unrelated to his alleged traffic violation. Officer ██████████ interrogated Defendant about his travel plans, his method of transportation, his past criminal history and his personal life, including his marital status and his form of employment. Officer ██████████ placing Defendant in the police SUV is an uncontested form of police custody, as no reasonable person would feel free to leave such an environment, especially while being questioned by an officer. At no time did Officer ██████████ explain to Defendant that his presence following the traffic stop was voluntary and thus Defendant's freedom was significantly deprived during this detention. Due to Officer ██████████'s clear violation of Defendant's rights governed by Miranda, all statements made by Defendant during his detention in the police SUV must be ruled inadmissible.

The intensity and invasiveness of the questions asked by Officer ██████████ expanded the scope of the original *stated* reason of the stop. In United States v. Ramos, the Court held that the officer unreasonably seized the suspects when he questioned them about subjects that exceeded the scope of the original justification for the stop. United States v. Ramos, 42 F.3d 1160, 1164 (8th Cir. 1994). The Eighth Circuit Court of Appeals did not believe that the officer had an objective basis to expand the questioning, holding, "If, however, no answers are inconsistent and no objective circumstances supply the trooper with additional suspicion, the trooper should not expand the scope of the stop." *Id.* at 1163-64. As shown in the chart above, no objective reason existed for detaining Defendant.

CONCLUSION

For all reasons mentioned herein, the Defendant asks that this court grant the Motion to Suppress Evidence and Statements resulting from the unlawful traffic stop and subsequent detention of Defendant and exclude from use these items in the matter before this court. The Defendant further requests that this court enter any additional remedy or relief that the court sees fit.

DATED: **INSERT DATE**.

CLIENT NAME, Defendant,

By: s/**Attorney Name**
ATTORNEY NAME& INFO

CERTIFICATE OF SERVICE

I hereby certify that on the day of , 20, I electronically filed the foregoing with the Clerk of the Court using CM/ECF system which sent notification to the United States Attorney.

/s/**ATTY ELECTRONIC SIGNATURE**
ATTY NAME, ATTY BAR #