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**IN THE SUPREME COURT OF THE STATE OF IDAHO**

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 46524-2018
	)	
v.	)	JEROME COUNTY NO. CR27-18-655
	)	
JOSHUA D. DEWITT,	)	REPLY BRIEF
	)	
Defendant-Appellant.	)	
<hr/>		

**REPLY BRIEF OF APPELLANT**

**APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL  
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE  
COUNTY OF JEROME**

**HONORABLE JOHN K. BUTLER**  
District Judge

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## STATEMENT OF THE CASE

### Nature of the Case

Joshua Dewitt appeals from the district court's order denying his motion to suppress drug evidence obtained after an officer prolonged a traffic stop to conduct unrelated investigations, in violation of Mr. Dewitt's Fourth Amendment rights. Mr. Dewitt argues on appeal that the officer detoured from the mission of the traffic stop, unlawfully extending his detention, by making unrelated inquiries into his travel history, then his prescription medications, and then later, by deploying a drug dog, without reasonable suspicion that Mr. Dewitt was engaged in criminal activity. Suppression of all evidence should have been granted.

This Reply Brief is necessary to respond to the State's claims regarding (1) the time added by the officer's questioning into Mr. Dewitt's travel history, and to demonstrate that the State failed to carry its burden to justify those inquiries as serving the mission of the traffic stop; (2) the time added by the officer's investigation into whether Mr. Dewitt had illegal drugs or prescription pills in his vehicle, and to demonstrate that this delay is attributable to the officer's decision to detour into such questioning, not to Mr. Dewitt's decision to respond; and (3) the application of the Fourth Amendment to an unjustified extension of a traffic stop that measures seconds as opposed to minutes, and to re-state that the controlling precedent holds that the Fourth Amendment's shield applies to all extensions, even those that may be considered *de minimis* intrusions.

ISSUE

Did the district court err when it denied Mr. Dewitt's motion to suppress?

## ARGUMENT

### The District Court Erred When It Denied Mr. Dewitt's Motion To Suppress

A. Officer Marrott Unlawfully Prolonged The Traffic Stop In Violation Of Mr. Dewitt's Fourth Amendment Rights

1. The State Has Failed To Demonstrate That Officer Marrott's Questioning Into Mr. Dewitt's Travel History, Conducted Prior To Requesting Mr. Dewitt's Driver's License And Registration, Are Tied To The Mission Of The Traffic Stop

The State does not dispute that Officer Marrott took some 45 seconds to query Mr. Dewitt about where he was coming from that day, where he was headed, where was his "home," and how long had he been "out here." (*See* Resp.Br., p.14.) Rather, the State claims that this interrogation did not unlawfully extend the stop "because questions regarding a driver's travel plans are routine inquiries permitted as part of the mission of a traffic stop." (*See* Resp.Br., p.14.) The State's arguments are unavailing.

"The burden is on the State to demonstrate that the seizure it seeks to justify was sufficiently limited both in scope, *and duration.*" *Florida v. Royer*, 460 U.S. 491, 500 (1983) (emphasis added); *accord State v. Pannell*, 127 Idaho 420, 423 (1995). With regard to the time taken to interrogate Mr. Dewitt about his travel history, the State has not met that burden.

First – and conspicuously omitted from the State's briefing – the United States Supreme Court and Idaho Supreme Court have not identified questions about travel plans as "ordinary inquiries" included within the traffic stop's mission. *See Rodriguez v United States*, 575 U.S. \_\_\_, 135 S.Ct. 1609, 1614 (2015), and *State v. Linze*, 161 Idaho 605, 607 (2016). In *Rodriguez*, the U.S. Supreme Court described permissible "ordinary inquiries" as "typically" involving "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*, 135

S.Ct. at 1614. In explaining the framework for gauging the reasonable duration of a traffic stop, the Court was careful to explain that “ordinary inquiries” are tailored to the traffic stop’s mission and “serve the same objective as enforcement of the traffic code: ensuring that vehicles on the road are operated safely and responsibly.” *Id.* at 1611. The State has not shown that questioning a driver about travel intentions or travel history serve that same mission.

In support of its argument, the State offers the same statement in a string of pre-*Rodriquez* opinions from the Idaho Court of Appeals, that, “typically, a reasonable investigation of a traffic stop may include asking for the driver’s license and registration, requesting that the driver sit in the patrol car, *and asking the driver about his destination and purpose.*” (Resp.Br., p.12 (emphasis added).) However, to the extent the Court of Appeals’ cases are in conflict with the reasoning and holdings of *Rodriquez* and *Linze*, the holdings in *Rodriquez* and *Linze* control.

The State also cites to several post-*Rodriquez* decisions from other jurisdictions (Resp. Br., p.12), but those cases are not persuasive, since those cases: (1) do not explain *how* questioning a driver about past or intended travel serves the mission of the traffic stop; or (2) deal only with questioning about travel *plans*, whereas in this case the officer was investigating Mr. Dewitt’s past travel *history*. The State has not shown that an officer’s questions regarding a driver’s travel plans or travel history serve the traffic stop’s objective of enforcing the traffic code. The State has failed in its burden to justify the officer’s inquiries as part of the mission of the traffic stop.

Questions about travel are also distinct from the “ordinary inquiries” identified in *Rodriquez* in that, unlike checks on a license, registration, insurance, and warrants, a driver’s travel intentions and history are typically comprised of the driver’s own *private* knowledge. And

unlike an officer's request for a license, registration, or insurance information (to which the officer is entitled and the driver is compelled to surrender),<sup>1</sup> an officer has no right to obtain, and a driver has no legal duty to surrender, the private travel plans and travel history of the driver. For this reason, too, the officer's questioning of the driver regarding his or her travel intentions or history does not serve the traffic stop's mission of enforcing the traffic code.

The State has failed to provide any authority or argument that shows a connection between such questioning and the stop's traffic safety mission. (*See generally* Tr.) Officer Marrott's testimony that his travel questioning was "a standard question" he asked everyone (7/16/18 Tr., p.27, Ls.16-17), shows only that it is his custom to ask travel questions; but it does not demonstrate *how* and *why* the questions serve the stop's traffic safety purpose. Because a close connection to roadway safety was not shown, the questioning about Mr. Dewitt's travel history cannot be fairly characterized as part of the officer's traffic mission.

2. Officer Marrott's Questioning About Mr. Dewitt's Possession Of Illegal And Prescription Drugs Was Unrelated To The Mission Of The Traffic Stop And Unlawfully Prolonged The Detention

Contrary to the State's argument, (Respondent's Br., p.14), the time added by Officer Marrott's investigation into whether Mr. Dewitt had illegal drugs or prescription pills in his vehicle extended the traffic stop, in violation of the Fourth Amendment. The officer chose to conduct an unrelated drug-related inquiry. From the outset of the encounter, Officer Marrott identified himself to Mr. Dewitt as a drug K-9 handler. (*See* Ex.11:32.) After the officer obtained Mr. Dewitt's license, expired registration, and insurance information, and after telling Mr. Dewitt he could continue looking for the current registration, the officer said, "Like I said, I

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<sup>1</sup> *See* I.C. § 49-316 (motorist to surrender driver's license for inspection to requesting officer); I.C. § 49-1232 (motorist to provide officer proof of insurance to requesting officer); I.C. § 49-427 (vehicle registration card subject to inspection of officer).

am a drug K-9 handler, so when I say ‘do you have anything illegal’ – let me just ask you a couple questions about that, Okay?” (Ex.11:33:30.) At that point, Mr. Dewitt stopped what he was doing to listen and respond to the officer’s questions. (See Ex.11:33:36-45.) Contrary to the State’s suggestion (Resp.Br., pp.14-15), a reasonable person in Mr. Dewitt’s circumstances would not have felt free to ignore the officer’s questioning and to instead continue rummaging through the vehicle for a missing registration document. Under these officer-created circumstances Mr. Dewitt’s response to the officer’s questioning was reasonable.

Officer Marrott then questioned Mr. Dewitt about whether he had illegal drugs in the car, and whether he had “prescription pills, anything like that?” (Ex.11:33:45.) When Mr. Dewitt answered the later question in the affirmative, Officer Marrott asked “are they prescribed to you?” (Ex.A, 11:33:45-11:34:05.) Mr. Dewitt responded appropriately by handing over the prescription medications to the officer for inspection. The State’s argument is nothing more than an attempt to blame Mr. Dewitt for Officer Marrott’s decision to conduct an interrogation about the presence of drugs instead of pursuing the mission of the traffic stop. The relevant question is whether the *officer’s* unrelated task – conducting drug-related inquiries – added time to the stop, not how much time. The State’s argument should be rejected.

3. The Fourth Amendment Shield Applies To All Unjustified Extensions Of A Traffic Stop, Even Those That May Be Considered To Be *De Minimis* Intrusions

Finally, in answer to the State’s argument that a delay measured in seconds does not violate the Fourth Amendment (Resp.Br., pp.12-13), Mr. Dewitt simply restates that, under the controlling precedent, the Fourth Amendment’s shield against unjustified extensions of a traffic stop is “both broad and inflexible. It applies to *all* extensions of traffic stops including those that could reasonably be considered *de minimis*.” *Linze*, 161 Idaho at 608 (citing *Rodriguez*, 135 S.Ct. at 1615-16 (emphasis added)).

The State is mistaken in its purported concern that counting seconds-long pauses “puts courts in the difficult or impossible position of judging, for any stop, whether it *could* have been expedited.” (Respondent’s Brief, p.18.) However, as made clear by the Supreme Court, whether a stop is prolonged is gaged by “what the officer actually did and how he did it,” not by what the officer *could* have done. *Linze*, 136 S.Ct. at 1616. The controlling precedent states that an officer may engage in *unrelated* questioning and *unrelated* tasks *only if* the officer does so in a way that does not prolong – *i.e.*, add time to – the stop, regardless of whether the added time might be considered *de minimis*. *Rodriguez*, 135 S.Ct. at 1615-16; *Linze*, 161 Idaho at 608. Additionally, the Idaho Supreme Court in *Linze* agrees that *any* deviation from the original purpose of the traffic stop “will *inevitably* lengthen” the detention. 161 Idaho at 608. Consequently, whenever an officer decides to exploit the occasion of a traffic stop to engage in *unrelated* questioning or to conduct other *unrelated* tasks, the officer runs the risk of violating the detainees’ Fourth Amendment rights. Contrary to the State’s suggestion, the “line drawn” by *Rodriguez* and recognized in *Linze*, if applied correctly, is made no more or less difficult when an officer deviates from the mission of the stop for ten seconds as opposed to ten minutes. Again, the test is same: the Fourth Amendment is violated where (1) the officer engages in an unrelated inquiry or unrelated task that (2) “adds time to”<sup>2</sup> the stop, and (3) the added time is not justified by its own reasonable suspicion. *Rodriguez*, 135 S.Ct. at 1615-16; *Linze*, 161 Idaho at 608.

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<sup>2</sup> The Idaho Supreme Court in *Linze* explained that *any* deviation from the original purpose of the traffic stop “will *inevitably* lengthen” the detention. 161 Idaho at 608.

CONCLUSION

For the reasons above and those in the Appellant’s Brief, Mr. Dewitt respectfully asks that this Court reverse the district court’s order denying suppression, vacate his judgment of conviction, and remand his case to the district court for further proceedings and to allow Mr. Dewitt to withdraw his guilty plea.

DATED this 25<sup>th</sup> day of October, 2019.

/s/ Kimberly A. Coster  
KIMBERLY A. COSTER  
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25<sup>th</sup> day of October, 2019, I caused a true and correct copy of the foregoing APPELLANT’S REPLY BRIEF, to be served as follows:

KENNETH K. JORGENSEN  
DEPUTY ATTORNEY GENERAL  
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/s/ Evan A. Smith  
\_\_\_\_\_  
EVAN A. SMITH  
Administrative Assistant

KAC/eas