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

<b>STATE OF IDAHO,</b>	)	
	)	<b>NO. 46680-2019</b>
<b>Plaintiff-Respondent,</b>	)	
	)	<b>KOOTENAI COUNTY NO.</b>
<b>v.</b>	)	<b>CR-2017-22041</b>
	)	
<b>DESIREE ELAINE KARST,</b>	)	<b>APPELLANT'S BRIEF</b>
	)	
<b>Defendant-Appellant.</b>	)	
_____	)	

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**BRIEF OF APPELLANT**

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**APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL  
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE  
COUNTY OF KOOTENAI**

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**HONORABLE LANSING L. HAYNES**  
**District Judge**

---

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## STATEMENT OF THE CASE

### Nature of the Case

Desiree E. Karst appeals from the district court's order denying in part and granting in part her motion to suppress evidence obtained from a traffic stop. During this traffic stop, the police officer temporarily abandoned the stop's purpose to request a drug dog and wait for dispatch to relay that request. This deviation prolonged the stop, and it was not supported by reasonable suspicion of a drug offense to justify this added time. Therefore, Ms. Karst argues the district court should have granted her motion to suppress on this basis as a violation of the Fourth Amendment. She respectfully requests this Court reverse or vacate the district court's order denying her motion to suppress in part and remand for further proceedings.

### Statement of Facts and Course of Proceedings

The State charged Ms. Karst with possession of methamphetamine, introduction of contraband into jail, possession of marijuana, and possession of a pipe. (R., pp.51–52.) These charges arose from a traffic stop. (*See* R., pp.145–47.) Ms. Karst was a passenger in a truck stopped by Sergeant Hyle for improperly backing up into traffic, crossing the yellow line, and driving with condensation on the front windshield. (R., pp.145–46.) During the traffic stop, Sergeant Hyle requested a drug dog. (R., p.146.) Sergeant Hyle also observed Ms. Karst was not wearing a seatbelt. (R., p.146.) After writing out citations for the driver for a suspended license and no insurance, Sergeant Hyle filled out a no-seatbelt citation for Ms. Karst. (R., p.146.) The dog alerted during Sergeant Hyle's citation preparation, police searched the truck, and they found contraband inside and on Ms. Karst. (R., pp.146–47.) Among other items, a metal tin on

Ms. Karst’s lap contained methamphetamine, and a plastic baggie in her pocket contained a marijuana pipe. (R., p.147; Tr. Vol. III,<sup>1</sup> p.57, L.24–p.58, L.1.)

Ms. Karst moved to suppress the evidence obtained from the stop. (R., pp.59–72.) In support of her motion, she made three arguments: (1) Sergeant Hyle did not have reasonable suspicion for the traffic stop; (2) Sergeant Hyle unlawfully extended the traffic stop for a drug investigation without reasonable suspicion; and (3) Sergeant Hyle unlawfully searched her when he ordered her to give him the baggie in her pocket. (R., pp.64–72.) The State responded in opposition. (R., pp.77–103.) Ms. Karst replied. (R., pp.108–12.) In advance of the hearing, the district court admitted Sergeant Hyle’s dash cam and body cam videos of the traffic stop. (R., p.74; *see* State’s Exs. 1, 2.)

At the hearing, Sergeant Hyle and Deputy Lyons, a canine handler, testified. (*See* Tr. Vol. III, p.9, L.2–p.103, L.20, p.106, L.12–p.145, L.16.) The district court also admitted a supplemental police report. (Tr. Vol. III, p.141, L.21–p.142, L.2; *see* Def.’s Ex. A.)

Relevant here, Sergeant Hyle discussed “the very first thing” he did right after his initial contact with the driver and Ms. Karst. (Tr. Vol. III, p.67, Ls.2–4.) He testified, upon walking back to his patrol car after his initial contact, he stopped and radioed dispatch. (Tr. Vol. III, p.67, Ls.5–6, p.68, Ls.7–9.) He requested Deputy Lyons to come to his location with his drug dog. (Tr. Vol. III, p.67, Ls.5–6.) This occurred at 18:22:31 on Sergeant Hyle’s body cam video. (Tr. Vol. III, p.67, Ls.8–13; State’s Ex. 2, 18:22:31–18:22:50.) Sergeant Hyle then had to wait. (Tr. Vol. III, p.68, Ls.10–14.) He could not talk to dispatch while dispatch was on the radio,

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<sup>1</sup> There are three transcripts on appeal—all contained in one .PDF document. Citations will refer to the separate pagination of each transcript. The first transcript, cited as Volume I, contains the change of plea hearing, held on September 10, 2018. The second, cited as Volume II, contains an earlier change of plea hearing, held on August 23, 2018. The third, cited as Volume III, contains the hearing on Ms. Karst’s motion to suppress, held on July 31, 2018.

presumably relaying Sergeant Hyle's request to Deputy Lyons. (Tr. Vol. III, p.67, L.20–p.68, L.20.) Then, at 18:22:50, the radio channel was open again, and Sergeant Hyle asked dispatch to run the driver's and Ms. Karst's information. (Tr. Vol. III, p.67, Ls.15–17, p.68, L.25–p.69, L.3; State's Ex. 2, 18:22:50–18:23:42.) Sergeant Hyle agreed his drug dog request was not “specifically” a part of his investigation for the driver's citation for a suspended license. (Tr. Vol. III, p.68, Ls.21–24.) Following the drug dog request, Sergeant Hyle spent over twenty minutes investigating the driver's license and insurance status and issuing citations to the driver and Ms. Karst. (R., p.146.)

After the officers' testimony, the parties provided additional argument. Ms. Karst conceded Sergeant Hyle had reasonable suspicion of driving violations to initiate the traffic stop. (Tr. Vol. III, p.146, Ls.20–23.) Ms. Karst then argued Sergeant Hyle unlawfully prolonged the traffic stop in two ways: first by contacting dispatch with a drug dog request and waiting for that request to go through before continuing with the traffic stop investigation (nineteen seconds) and second by generally stalling throughout his investigation until the dog arrived. (Tr. Vol. III, p.146, L.24–p.150, L.17.) Ms. Karst also argued, after the positive alert by the dog, Sergeant Hyle's taking of the tin on her lap and the baggie in her pocket were unlawful seizures of items on her person. (Tr. Vol. III, p.151, L.18–p.155, L.25.) In response to Ms. Karst's unlawfully prolonged stop argument, the State asserted Sergeant Hyle “actively” pursued the driving violation purposes of the stop. (Tr. Vol. III, p.158, L.20–p.159, L.20, p.164, L.18–p.167, L.5.) Even if Sergeant Hyle was “dragging his feet,” the State argued, his delay was reasonable relative to the overall time for the traffic stop. (Tr. Vol. III, p.159, L.21–p.162, L.7.) The district court took the matter under advisement. (Tr. Vol. III, p.177, Ls.18–21.)

The district court issued a memorandum decision and order granting in part and denying in part Ms. Karst's motion. (R., pp.145–52.) On the unlawfully prolonged stop issue, the district court ruled:

This Court finds that Hyle did not “drag his feet,” as Defendant argued, to gain time for the dog to arrive. The investigation of the traffic violations was somewhat complicated given the unusual circumstance of [the driver] having a suspended Idaho license along with a valid Florida license, and the fact that [the driver] gave some conflicting and confusing answers to some of Hyle's questions. Hyle diligently and thoroughly investigated these violations and meticulously prepared citations for them, all of which took a considerable amount of time. He did not prolong the stop to effectuate the dog sniff. Rather, he continued working on the investigation/citations both before and after the dog arrived. He did not appear to be wasting time and walked quickly between his patrol car and the truck on the few occasions he did so.

(R., p.149.) On the unlawful seizure issue, the district court held Sergeant Hyle properly seized the tin as a container in the truck after the positive drug dog alert, but improperly seized the baggie in Ms. Karst's pocket. (R., pp.150–51.)

Pursuant to a plea agreement with the State, Ms. Karst pled guilty to possession of methamphetamine, possession of marijuana, and possession of a pipe. (R., pp.153–54, 156, 161–62.) The State agreed to dismiss the remaining charge. (R., pp.156, 167, 174.) Ms. Karst reserved her right to appeal the district court's partial denial of her suppression motion. (R., p.156; Tr. Vol. I, p.11, L.24–p.12, L.11; Tr. Vol. II, p.2, Ls.20–25.) The district court sentenced her to two years of supervised probation, with an underlying sentence of four years, with two years fixed, for possession of methamphetamine and time served for the other offenses. (R., pp.169–72, 176, 177, 178–81.) Ms. Karst timely appealed. (R., pp.185–87.)

ISSUE

Did the district court err by denying Ms. Karst's motion to suppress evidence obtained from an unlawfully prolonged traffic stop?

## ARGUMENT

### The District Court Erred By Denying Ms. Karst's Motion To Suppress Evidence Obtained From An Unlawfully Prolonged Traffic Stop

#### A. Introduction

Ms. Karst asserts the district court erred by denying her motion to suppress because Sergeant Hyle impermissibly extended the traffic stop by about nineteen seconds to request a drug dog. Sergeant Hyle did not have reasonable suspicion of any drug-related offense to justify the nineteen-second delay. Therefore, Sergeant Hyle's extension of the traffic stop violated Ms. Karst's Fourth Amendment right to be free from unreasonable seizures, and the district court erred by denying her motion to suppress.

#### B. Standard Of Review

The Court uses a bifurcated standard to review a district court's order on a motion to suppress. *State v. Danney*, 153 Idaho 405, 408 (2012); *see also State v. Hunter*, 156 Idaho 568, 571 (Ct. App. 2014) (same). "The Court accepts the trial court's findings of fact if supported by substantial evidence." *State v. Watts*, 142 Idaho 230, 234 (2005). "At a suppression hearing, the power to assess the credibility of witnesses, resolve factual conflicts, weigh evidence and draw factual inferences is vested in the trial court." *Hunter*, 156 Idaho at 570. The Court exercises free review of "the trial court's application of constitutional principles to the facts found." *Danney*, 153 Idaho at 408.

#### C. The District Court Should Have Granted Ms. Karst's Motion To Suppress Because The Police Officer Impermissibly Prolonged The Traffic Stop To Request A Drug Dog

"The Fourth Amendment of the United States Constitution protects citizens from unreasonable search and seizure." *State v. Hansen*, 138 Idaho 791, 796 (2003). "Article I,

Section 17 of the Idaho Constitution nearly identically guarantees that “[t]he right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated.” *State v. Green*, 158 Idaho 884, 886 (2015) (alteration in original). “Traffic stops constitute seizures under the Fourth Amendment.” *State v. Morgan*, 154 Idaho 109, 112 (2012) (quoting *State v. Henage*, 143 Idaho 655, 658 (2007)). “Limited investigatory detentions are permissible when justified by an officer’s reasonable articulable suspicion that a person has committed, or is about to commit, a crime.” *Id.*

Here, as in the district court, Ms. Karst does not challenge Sergeant Hyle’s reasons for initiating traffic stop. (*See* Tr. Vol. III, p.146, Ls.20–23.) She argues, however, that Sergeant Hyle impermissibly prolonged the traffic stop to request a drug dog and, subsequently, to wait for dispatch to relay that request before continuing his traffic stop investigation. Sergeant Hyle’s actions “added time” to the stop without reasonable suspicion for the separate seizure. This was a Fourth Amendment violation.

“A seizure for a traffic violation justifies a police investigation of that violation.” *Rodriguez v. United States*, 135 S. Ct. 1609, 1614 (2015). The “tolerable duration” of the investigation during a traffic stop “is determined by the seizure’s ‘mission’—to address the traffic violation that warranted the stop . . . and attend to related safety concerns . . . .” *Id.* (citations omitted). The traffic stop may last no longer than necessary to effectuate that purpose. *Id.* “Authority for the seizure thus ends when tasks tied to the traffic infraction are—or reasonably should have been—completed.” *Id.*

“An officer . . . may conduct certain unrelated checks during an otherwise lawful traffic stop. But . . . he may not do so in a way that prolongs the stop, absent the reasonable suspicion ordinarily demanded to justify detaining an individual.” *Id.* at 1615. A dog sniff “is not an

ordinary incident of a traffic stop,” and therefore the officer must have reasonable suspicion to justify an additional seizure for the sniff. *Id.* The officer may, however, conduct a dog sniff during an otherwise lawful traffic stop, if it does not add time or extend the stop. *Id.* at 1616. If the sniff prolongs the stop, even by a minimal or trivial amount of time, the seizure is unlawful. *Id.* “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 . . . .” *Id.* (quotation marks and citations omitted).

This Court recently adopted and applied these constitutional limitations to a traffic stop in *State v. Linze*, 161 Idaho 605 (2016). The *Linze* Court recognized the U.S. Supreme Court’s sweeping holding:

[T]he United States Supreme Court did not restrict its analysis to cases in which the underlying purpose of the traffic stop was completed prior to a drug dog sweep. *Rodriguez*, 135 S. Ct. at 1614. Instead, the United States Supreme Court reached a much broader holding: “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.* This rule is both broad and inflexible. It applies to all extensions of traffic stops including those that could reasonably be considered *de minimis*. *Id.* at 1615–16 (rejecting the application of a *de minimis* exception previously adopted by the Eighth Circuit).

161 Idaho at 608. In light of this holding, the *Linze* Court explained, a traffic stop “remains a reasonable seizure while the officer diligently pursues the purpose of the stop, to which that reasonable suspicion is related.” *Id.* at 609. But, “should the officer abandon the purpose of the stop, the officer no longer has that original reasonable suspicion supporting his actions.” *Id.* Once the officer abandons the original purpose, “the officer has for all intents and purposes initiated a new seizure with a new purpose; one which requires its own reasonableness under the Fourth Amendment. This new seizure cannot piggy-back on the reasonableness of the original seizure.” *Id.* The new seizure without reasonable suspicion is a Fourth Amendment violation. *Id.*

Applying these principles, the *Linze* Court held an officer's two and one-half minute delay of a traffic stop to assist a second officer with a dog sniff was a Fourth Amendment violation. *Id.* There, the first officer made initial contact with the driver and passenger, started warrant checks, and then called for a second officer with a drug dog. *Id.* at 606. The first officer continued to work on the citations and run the warrant checks until the second officer's arrival. *Id.* Upon the second officer's arrival, the first officer "stopped writing the citation and running the warrant checks" to provide backup to the second officer during the dog sniff. *Id.* at 607. This took two and one-half minutes, and the State conceded the first officer "had stopped pursuing the original purpose of the stop" during this time. *Id.* The Court held this brief delay, while likely de minimis, was a deviation from the stop's original purpose. *Id.* at 609 & n.2. The Court explained, "The rule isn't concerned with *when* the officer deviates from the original purpose of the traffic stop, it is concerned with the fact that the officer deviates from the original purpose of the stop *at all.*" *Id.* at 609 (emphasis added). As such, an officer's deviation for a dog sniff during a traffic stop is viewed the same as a deviation at the end of the stop—both constitute a new seizure requiring a separate justification under the Fourth Amendment. *Id.*

Like the officer in *Linze*, Sergeant Hyle deviated from the traffic stop's original purpose when he requested the drug dog. After his initial contact with the driver and Ms. Karst, Sergeant Hyle radioed dispatch to request Deputy Lyons and his drug dog. (Tr. Vol. III, p.67, Ls.2–6, p.68, Ls.7–9.) He stood outside his patrol car and waited for the request to go through. (*See* State's Ex. 2, 18:22:31–18:22:50.) He did not request the dog while, for example, waiting for other information from dispatch, pulling up information on his patrol car computer, or some other multitasking during the stop. Before doing anything else, Sergeant Hyle abandoned the stop's original purpose and requested a drug dog. Sergeant Hyle admitted he was not

“specifically” pursuing the traffic stop mission during this nineteen second deviation. (Tr. Vol. III, p.68, Ls.21–24.) This nineteen-second delay prolonged—*i.e.*, added time to—the stop. *Rodriguez*, 135 S. Ct. at 1616. “While such a brief period of time could reasonably be considered *de minimis*, the United States Supreme Court was clear in *Rodriguez* that *de minimis* exceptions are no longer available.” *Linze*, 161 Idaho at 609. Even if *de minimis*, Sergeant Hyle had to possess reasonable suspicion for this separate seizure. *Rodriguez*, 135 S. Ct at 1615; *Linze*, 161 Idaho at 609. He did not. There was no evidence before or immediately after the initial encounter with the driver and Ms. Karst to establish reasonable suspicion for a drug investigation. (*See R.*, pp.145–46.) In fact, Sergeant Hyle testified he did not believe there were drugs in the truck. (Tr. Vol. III, p.66, L.22–p.67, L.1.) Lacking reasonable suspicion, Sergeant Hyle initiated a “new seizure with a new purpose” without “its own reasonableness under the Fourth Amendment.” *Linze*, 161 Idaho at 609. This nineteen-second extension of the traffic stop from the stop’s original purpose violated Ms. Karst’s Fourth Amendment right to be free from unreasonable seizures. Therefore, the district court should have granted this part of Ms. Karst’s motion to suppress.

#### CONCLUSION

Ms. Karst respectfully requests this Court reverse or vacate the district court’s order denying her motion to suppress in part, vacate her judgment of conviction, and remand this case for further proceedings.

DATED this 14<sup>th</sup> day of June, 2019.

/s/ Jenny C. Swinford  
JENNY C. SWINFORD  
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14<sup>th</sup> day of June, 2019, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF, to be served as follows:

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/s/ Evan A. Smith  
\_\_\_\_\_  
EVAN A. SMITH  
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JCS/eas