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# State v. McGraw Appellant's Reply Brief Dckt. 44935

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

<b>STATE OF IDAHO,</b>	)	
	)	<b>Ada Co. Case No. CR01-16-27824</b>
<b>Plaintiff-Appellant,</b>	)	<b>Supreme Court No. 44935</b>
	)	
<b>v.</b>	)	
	)	
<b>BRIAN McGRAW,</b>	)	
	)	
<b>Defendant-Respondent.</b>	)	
	)	
<hr/>		
<b>STATE OF IDAHO,</b>	)	
	)	<b>Ada Co. Case No. CR01-16-25070</b>
<b>Plaintiff-Appellant,</b>	)	<b>Supreme Court No. 44942</b>
	)	
<b>v.</b>	)	
	)	
<b>LACEY KILLEEN,</b>	)	
	)	
<b>Defendant-Respondent.</b>	)	
	)	
<hr/>		

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**REPLY BRIEF OF APPELLANT**

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**APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL  
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE  
COUNTY OF ADA**

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**HONORABLE MICHAEL J. REARDON  
District Judge**

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## ARGUMENT

### The District Court Erred By Finding An Abandonment Of The Traffic Stop

#### A. Introduction

Application of the law to the facts in these cases shows the district court erred by concluding that handing off the citation book to a second officer so he could complete the citation for failure to signal a lane change constituted an abandonment of the traffic stop. (Appellant’s brief, pp. 4-7.) Both McGraw and Killeen contend the district court did not err, because handing the citation book to a second officer for completion added time to the stop. (Killeen Response, pp. 7-8; McGraw Response, pp. 7-8.) Killeen further argues that Officer Green extended the stop by having her exit the car. (Killeen Response, pp. 8-9.) Application of the law to the facts shows neither argument to have merit. Because the officers reasonably pursued the initial purpose of the stop, the stop was not unlawfully extended.

#### B. Handing The Citation Book To A Different Officer Did Not Abandon The Traffic Stop

The Idaho Supreme Court has held that if an officer abandons the purpose of a traffic stop, reasonable suspicion no longer supports his actions. State v. Linze, 161 Idaho 605, 609, 389 P.3d 150, 154 (2016); State v. Danney, 153 Idaho 405, 409, 283 P.3d 722, 726 (2012); see also State v. Aguirre, 141 Idaho 560, 112 P.3d 848 (Ct. App. 2005). However, the “stop remains a reasonable seizure while the officer diligently pursues the purpose of the stop, to which that reasonable suspicion is related.” Linze, 161 Idaho at 609, 389 P.3d at 154.

In Linze the Court held that the officer abandoned the purpose of the traffic stop “by delaying the traffic stop for two and a half minutes while performing a back-up function for a drug dog sweep.” Linze, 161 Idaho at 609, 389 P.3d at 154. For that two and one-half minutes, the police were pursuing a different investigation and were not pursuing the purposes of the traffic stop. In contrast, here the exchange of the citation book was not a separate investigation that abandoned the purposes of the stop, but was rather an act that assured the purposes of the stop were not abandoned.

McGraw and Killeen argue that handing off the citation book constituted an abandonment because it “added time to the stop.” (Killeen Response, pp. 7-8 (actions were unconstitutional because they “added time to the stop”); McGraw Response, p. 7 (handing off citation book “delayed, *i.e.*, added time, to the stop”).) This argument fails because *everything* the officer does adds time to the stop. Walking to the stopped car adds time to the stop. Securing the driver’s license, insurance and registration adds time to the stop. Running the driver’s and passenger’s identification through dispatch adds time to the stop. Writing the ticket adds time to the stop. Double-checking to make sure the name on the citation is spelled correctly adds time to the stop. Whether an act “added time to the stop” is not by itself an abandonment inquiry. Rather, as set forth in Linze, an abandonment is a “deviation from the original purpose of the stop” that lengthens the time of the stop. Linze, 161 Idaho at \_\_\_, 389 P.3d at 153. Handing the citation book to another officer to write the citation was not a “deviation” or abandonment of the purposes of the stop, but was the opposite—an effort to complete the purposes of the stop.

Killeen’s and McGraw’s argument to the contrary—that the detention was unconstitutionally delayed because the exchange of the citation book was an

abandonment of the traffic stop—is without merit. “[A]n investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop.” Florida v. Royer, 460 U.S. 491, 500 (1983). “[T]he 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, and attend to related safety concerns.” Rodriguez v. United States, \_\_\_ U.S. \_\_\_, 135 S.Ct. 1609, 1614 (2015). “Authority for the seizure thus ends when tasks tied to the traffic infraction are—or reasonably should have been—completed.” Id. “In assessing whether a detention is too long in duration to be justified as an investigative stop, we consider it appropriate to examine whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly, during which time it was necessary to detain the defendant.” United States v. Sharpe, 470 U.S. 675, 686 (1985).

Here the traffic citation was pursued diligently; that McGraw and Killeen have come up with a way the police could conceivably have been more efficient by getting things done a few seconds quicker does not show that the officers behaved unreasonably.

A court making this assessment [of “whether a detention is too long in duration to be justified”] should take care to consider whether the police are acting in a swiftly developing situation, and in such cases the court should not indulge in unrealistic second-guessing. A creative judge engaged in *post hoc* evaluation of police conduct can almost always imagine some alternative means by which the objectives of the police might have been accomplished. But the fact that the protection of the public might, in the abstract, have been accomplished by ‘less intrusive’ means does not, itself, render the search unreasonable.

Sharpe, 470 U.S. at 686–87 (internal quotations, citations and brackets omitted). Killeen’s and McGraw’s argument that the police could have been more efficient and possibly shaved seconds off the process of writing the citation by not handing off the



citation book, by not turning off the flashing lights, by taking a shorter route around the police car, and by focusing on writing the citation to the exclusion of awareness of his surroundings amounts to nothing more than an invitation to engage in unrealistic second-guessing.

The district court erred by concluding the officers abandoned the purpose of the traffic stop by handing off the citation book for completion of the citation. Such an act was within the scope of the purposes of the stop, which included writing a citation, and not a deviation from the purposes of the traffic stop. Likewise, McGraw's and Killeen's *post hoc* evaluation of the officers' efficiency in writing the citation is an improper invitation to second-guess the officer's conduct by imagined alternative means by which the officers may have pursued the investigation.

Killeen then doubles down on the second-guessing in a manner that cements the error of her, and McGraw's, argument by asserting that Officer Green "deviated from the initial purpose of the stop" by removing her and McGraw from the vehicle because this act "facilitated the dog sniff." (Killeen Response, pp. 8-9.) However, it is well established that an officer may order an occupant of a stopped vehicle to exit the car "as a matter of course." Maryland v. Wilson, 519 U.S. 408, 410 (1997) (citing Pennsylvania v. Mimms, 434 U.S. 106, 111 (1977)). That a perfectly legitimate and constitutional act in the course of a traffic stop "facilitated the dog sniff" does not make it a deviation from the purposes of the stop. Indeed, by that standard the stop itself "facilitated" the dog sniff because such a sniff could not have occurred but for the stop.

A "deviation" from the purposes of the traffic stop must necessarily be an act that the officers could not take in the course of an ordinary stop. See Linze, 161 Idaho at 608-

09, 389 P.3d at 153-54 (officer abandoned traffic stop by participating in drug dog sniff). The acts of handing the citation book to another officer so that officer could complete the ticket, turning off emergency lights, walking around a car, and being observant of surroundings while writing the citation are all acts legitimately within the scope of the traffic stop. Therefore, the officers did not deviate from or abandon the purposes of the stop and the district court erred by concluding otherwise.

### CONCLUSION

The state requests that this Court reverse the district court's order granting suppression and remand for further proceedings.

DATED this 22nd day of September, 2017.

/s/ Kenneth K. Jorgensen  
KENNETH K. JORGENSEN  
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 22nd day of September, 2017, served a true and correct copy of the foregoing REPLY BRIEF OF APPELLANT by emailing an electronic copy to:

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/s/ Kenneth K. Jorgensen  
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KKJ/dd