NO._____

In the Supreme Court of the United States

ERICKSON CAMPBELL,

PETITIONER-APPELLANT,

v.

UNITED STATES OF AMERICA,

RESPONDENT-APPELLEE.

Appendix A – Eleventh Circuit's Published Opinion
***United States v. Campbell*, 912 F.3d 1340 (2019)**

[PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 16-10128

D.C. Docket No. 3:14-cr-00046-CAR-CHW-1

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ERICKSON MEKO CAMPBELL,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Georgia

(January 8, 2019)

Before TJOFLAT and MARTIN, Circuit Judges, and MURPHY,* District Judge.

TJOFLAT, Circuit Judge:

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* Honorable Stephen J. Murphy III, District Judge for the United States District Court for the Eastern District of Michigan, sitting by designation.

This appeal presents important questions about the proper confines of a traffic stop. First, whether a highway patrolman had reasonable suspicion to stop a motorist for a rapidly blinking turn signal. Second, if there was reasonable suspicion, whether the seizure became unreasonable when the patrolman prolonged the stop by questioning the motorist about matters unrelated to the stop's mission. The District Court concluded that the initial stop was valid and that the questioning about unrelated matters did not transform the stop into an unreasonable seizure. The District Court therefore denied the motorist's motion to suppress inculpatory evidence discovered during a subsequent search.

We agree that there was reasonable suspicion to stop the motorist. But we find that under the Supreme Court's recent decision in *Rodriguez v. United States*, 135 S. Ct. 1609 (2015), the patrolman did unlawfully prolong the stop. Because his actions were permitted under binding case law at the time, however, the good faith exception to the exclusionary rule applies. We thus affirm the denial of the motion to suppress.

I.

A.

At about 9:00pm on a brisk night in December 2013, Deputy Sheriff Robert McCannon was patrolling Interstate 20 in Georgia when he observed a Nissan

Maxima cross the fog line.[1] McCannon activated the camera on the dashboard of his patrol car, and after observing the Maxima cross the fog line a second time and noticing that its left turn signal blinked at an unusually rapid pace, he pulled the car over. He approached the Maxima, introduced himself to the driver, Erickson Campbell, asked him for his driver's license, and explained why he had pulled him over. After determining that the Maxima's left turn signal was malfunctioning, McCannon decided to issue Campbell a warning for failing to comply with two Georgia traffic regulations: failure to maintain signal lights in good working condition,[2] and failure to stay within the driving lane.[3] McCannon asked Campbell

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[1] The "fog line" is the line on the side of the highway that separates the highway from the shoulder, marking the end of the highway's outside lane.

[2] O.C.G.A. § 40–8–26 states, in pertinent part:

(a) Any motor vehicle may be equipped . . . with the following signal lights or devices:

. . . .

(2) A light or lights or mechanical signal device capable of clearly indicating any intention to turn either to the right or to the left and which shall be visible from both the front and the rear.

(b) Every . . . signal light or lights indicating intention to turn shall be visible and understandable during daytime and nighttime from a distance of 300 feet from both the front and the rear. . . . [S]uch light or lights shall at all times be maintained in good working condition.

[3] O.C.G.A. § 40–6–48 states, in pertinent part:

Whenever any roadway has been divided into two or more clearly marked lanes for traffic, the following rules, in addition to all others consistent with this Code section, shall apply:

(1) A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.

to step out of his car and accompany him to the patrol car while he wrote the warning ticket.

While writing the ticket, McCannon asked the dispatcher to run a check on Campbell's license and engaged Campbell in conversation. He learned that Campbell was en route to Augusta to see his family, where Campbell worked, that Campbell had been arrested sixteen years ago for a DUI, and that Campbell was not traveling with a firearm. Then he asked Campbell if he had any counterfeit CDs or DVDs, illegal alcohol, marijuana, cocaine, methamphetamine, heroin, ecstasy, or dead bodies in his car. Campbell answered that he did not. At that time, McCannon asked Campbell if he could search his car for any of those items, and Campbell consented.

While McCannon continued writing the warning ticket, Deputy Patrick Paquette, who had arrived on the scene a few minutes earlier, began searching the car. McCannon finished the warning ticket and had Campbell sign it. After giving Campbell the ticket and returning his license, McCannon joined Paquette in the search. They found a 9mm semi-automatic pistol, 9mm ammunition, a black stocking cap, and a camouflage face mask in a bag hidden under the carpet in the Maxima's trunk. Confronted, Campbell admitted that he lied about not traveling with a firearm because he was a convicted felon and had done time.

B.

Campbell was indicted for possessing a firearm as a convicted felon, in violation of 18 U.S.C. § 922(g)(1). Following his indictment, he asserted that the evidence found in the search of his car was obtained in violation of the Fourth Amendment's prohibition against unreasonable searches and seizures, and moved the District Court to suppress it.[4] He presented two arguments in support of his motion. First, the seizure was unreasonable because Deputy McCannon lacked reasonable suspicion to believe that a traffic violation had occurred. Second, even if there was reasonable suspicion, his seizure became unreasonable when McCannon prolonged the stop by asking Campbell questions unrelated to the purpose of the stop. In turn, the unreasonable seizure tainted any consent he had given the officers to search his car, requiring that the evidence uncovered during the search be suppressed. [5]

Campbell's first argument was that his rapidly blinking turn signal did not supply reasonable suspicion to make the traffic stop. All that O.C.G.A. § 40–8–26 requires is that the turn signal "indicate a driver's intention to change lanes," and the Maxima's left turn signal was able to do that. That the signal was not blinking

[4] The Fourth Amendment states, in pertinent part, that "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." The Fourth Amendment is applicable to the states through the Due Process Clause of the Fourteenth Amendment. *Mapp v. Ohio*, 367 U.S. 643, 655, 81 S. Ct. 1684, 1692 (1961).

[5] Campbell also argued that the search was tainted because it exceeded the scope of any consent he had given, but this issue is not before us on appeal.

as designed was irrelevant, Campbell said, because the statute did not require that a turn signal "(1) blink in unison with the other turn signal, (2) blink at a certain pace, or even, (3) blink as intended by the vehicle manufacturer."[6]

Campbell's second argument was that McCannon unlawfully prolonged the stop by asking questions unrelated to the purpose of the stop. Specifically, he challenged questions on the following topics:

> McCannon asked: (1) where he was going, (2) who he was going to see, (3) where he worked, (4) if he had time off work, (5) when his last traffic ticket was, (6) if he had ever been arrested, (7) how old his car was, (8) how good of a deal he got on his car, (9) whether he had any counterfeit merchandise in the car, and, (10) if he had a dead body in the car.

Relying on the Supreme Court's decision in *Rodriguez*, Campbell maintained that if McCannon prolonged the stop at all through these inquiries, the stop became unlawful.

The District Court held an evidentiary hearing on Campbell's motion to suppress. Deputy McCannon, whom the Government called to the stand at the outset of the hearing, was the sole witness. Aside from his testimony, the Court had the benefit of the video created by the dashboard camera. The video portrays what transpired between McCannon's activation of the camera and Campbell's arrest, including the questioning Campbell complains of as unrelated to the

[6] Campbell also denied that reasonable suspicion existed for allegedly crossing the fog line. The District Court did not reach this argument and neither do we.

purpose of the stop. The video's timestamps indicate precisely when this questioning took place. The following bullet points, headed by the timestamps, demonstrate this.

- **0:00:** McCannon activates the camera.
- **2:05–16:** McCannon provides the Sheriff's Office dispatcher with the car's license plate number. The dispatcher runs the number and informs him that it belongs to Erickson Campbell, an "active felon."
- **2:31:** McCannon activates his patrol car's flashing lights.
- **2:36–58:** Campbell pulls over.
- **3:25–32:** McCannon approaches the car from the passenger side and requests Campbell's driver's license.
- **3:34–4:42:** McCannon explains to Campbell that he stopped him for "weaving in his lane" and because his left turn signal was blinking rapidly. McCannon says the rapid blinking means "you've got a bulb out somewhere." He then checks the lights in the front and back of the car, none of which are out. McCannon says it must be that the turn signal is "about to go bad," but that he won't write a ticket for that—just a warning.
- **4:43–5:09:** McCannon asks Campbell where he is going. Campbell says he is traveling to Augusta, Georgia. McCannon asks why he is going there, and Campbell responds that he is going to see his family.
- **5:10–13:** McCannon asks Campbell to step out of the car and walk with him to the patrol car where he will write the warning.
- **5:48:** McCannon begins writing the warning ticket.
- **6:13–29:** McCannon asks Campbell about his family in Augusta, adding that he knows a little about Augusta. Campbell says he does not know much about Augusta; he just has family there. McCannon continues writing the ticket.
- **6:30–57:** McCannon asks Campbell what type of work he does. Campbell says that he works for American Woodlawn, building for Home Depot and Lowes.
- **7:07–27:** McCannon asks Campbell where his family lives in Augusta. Campbell responds that his family lives off of Watson Road. McCannon indicates he knows approximately where that is, and continues writing the ticket.

- **7:48–8:30:** McCannon stops writing to retrieve his jacket from the patrol car.
- **8:32–38:** McCannon asks Campbell if he is traveling with a firearm. Campbell shakes his head no.
- **9:07:** McCannon acknowledges Sergeant Paquette, who has just arrived off camera.[7]
- **9:12–18:** McCannon asks Paquette to "come here and let me ask you about this location." McCannon tells Campbell that Paquette is from Augusta.
- **9:31–39:** McCannon calls the dispatcher to run a check on Campbell's driver's license.
- **9:40–54:** McCannon asks Campbell if he had been arrested before. Campbell responds yes, about sixteen years ago, for a DUI.
- **10:00–56:** McCannon and Paquette ask Campbell about his destination and where his family lives in Augusta, while McCannon continues to intermittently write the ticket.
- **11:16–19:** McCannon: "I know I asked you if you have any firearms tonight, and you said 'no.'" Campbell nods and says "yes, sir."
- **11:20–45:** McCannon: "Any counterfeit merchandise that you're taking to your relatives in Augusta? And what I mean by that is—any purses? Shoes? Shirts? Any counterfeit or bootleg CDs or DVDs? Anything like that? Any illegal alcohol? Any marijuana? Any cocaine? Methamphetamine? Any heroin? Any ecstasy? Nothing like that? You don't have any dead bodies in your car?" Campbell shakes his head or otherwise responds in the negative to each question.
- **11:47–55:** McCannon: "I know you said you didn't have that, and I'm not accusing you of anything—can I search it? Can I search your car for any of those items I asked you about?" Campbell responds in the affirmative, nodding and gesturing toward the car.
- **12:02–13:05:** Paquette pats down Campbell after McCannon indicates that he had not yet done so. McCannon continues writing the ticket.
- **13:06:** Paquette begins searching the car.
- **13:22–44:** McCannon asks Campbell to sign the ticket. Campbell does so and returns it to McCannon.
- **14:00:** McCannon hands the ticket to Campbell.
- **16:18–19:58:** McCannon and Paquette search the car.

[7] Sergeant Paquette had observed McCannon's encounter with Campbell while patrolling the highway, and had pulled over to assist.

- **19:58–20:08:** Paquette informs McCannon that he has discovered a gun and a ski mask.
- **20:30–21:02:** The officers finish searching the car and place Campbell in handcuffs.
- **21:25–40:** McCannon informs Campbell of his *Miranda* rights.
- **24:12–48:** McCannon tells Campbell he is under arrest for felon in possession of a firearm. McCannon places Campbell in the rear of his patrol car to be taken to the Greene County jail.

From the time McCannon began writing the warning ticket to Campbell's consent to the search, a total of 6 minutes and 7 seconds elapsed. Campbell consented 8 minutes and 57 seconds after McCannon made the stop.

C.

At the conclusion of the evidentiary hearing, the District Court asked the parties for supplemental briefing to address the possible application of the *Rodriguez* decision. The District Court also requested supplemental briefing on the applicability of *Davis v. United States*, in which the Supreme Court held that the Fourth Amendment's exclusionary rule should not apply when the police act in good-faith reliance on binding judicial precedent. 564 U.S. 229, 232, 131 S. Ct. 2419, 2423–24 (2011). After briefing, the Court denied the motion to suppress.

The District Court determined that the rapidly blinking turn signal provided reasonable suspicion to stop the car. Georgia's statute requires turn signals to be in good working condition. The Court reasoned that McCannon had reasonable suspicion to believe that the rapidly blinking turn signal violated this requirement. The Court further concluded that McCannon had "reasonable suspicion to initiate

the stop to determine whether the front signal lights were functioning properly." The Court based this conclusion on McCannon's testimony that in his experience a rapidly blinking turn signal indicates either a bulb is out or is about to go out. Given this finding, there was no need to address the failure-to-maintain-lane violation.

After finding reasonable suspicion, the District Court moved to the prolongation issue. The Court found that precedent entitled McCannon to ask Campbell about his destination and the purpose of his trip; the year his car was made; the last traffic citation he received; his criminal history[8]; and whether he was traveling with a firearm. As the Court put it, "[t]hese questions either addressed the traffic violation or were related to legitimate safety concerns."

But the questions about contraband, the Court said, were not related to the purpose of the stop. These questions—about counterfeit merchandise, drugs, and dead bodies—and Campbell's negative responses, consumed all of 25 seconds. Immediately thereafter, Campbell consented to the search of his automobile.

Citing our decision in *United States v. Griffin*, 696 F.3d 1354, 1362 (11th Cir. 2012), the Court said the few seconds "McCannon took to ask a few unrelated questions 'did not transform the stop into an unconstitutionally prolonged

[8] Citing *United States v. Purcell*, 236 F.3d 1274, 1280 (11th Cir. 2001), the Court held that McCannon "lawfully asked Defendant about his criminal history while he waited on dispatch to run [Defendant's] license information."

seizure.'" The Court concluded that the overall length of the stop was reasonable and that McCannon conducted the stop expeditiously. Because the seizure was reasonable, there was no reason for the Court to decide whether the consent was tainted or the good faith exception to the exclusionary rule applied.

Following the Court's ruling, Campbell entered a conditional guilty plea, preserving the right to appeal the denial of his motion to suppress. *See* Fed. R. Crim. P. 11(a)(2). He lodged this appeal after the Court imposed a 28-month sentence.

II.

"A denial of a motion to suppress involves mixed questions of fact and law." *United States v. Spivey*, 861 F.3d 1207, 1212 (11th Cir. 2017) (quotation omitted). We review the District Court's findings of fact for clear error, considering all the evidence in the light most favorable to the prevailing party—in this case, the Government. *Id*. But we review *de novo* the District Court's application of the law to those facts. *United States v. Luna-Encinas*, 603 F.3d 876, 880 (11th Cir. 2010). Our review is not moored to the evidence presented at the suppression hearing; we are free to look at the whole record. *United States v. Newsome*, 475 F.3d 1221, 1224 (11th Cir. 2007).

A.

A traffic stop is a seizure within the meaning of the Fourth Amendment. *Whren v. United States*, 517 U.S. 806, 809–10, 116 S. Ct. 1769, 1772 (1996). To comply with the Fourth Amendment, the officer must have reasonable suspicion. *Heien v. North Carolina*, 135 S. Ct. 530, 536 (2014) ("All parties agree that to justify [a traffic stop], officers need only reasonable suspicion[.]" (quotation omitted)).[9] That is, the officer must have "a particularized and objective basis for suspecting the person stopped of criminal activity." *Navarette v. California*, 572 U.S. 393, 396, 134 S. Ct. 1683, 1687 (2014). Criminal activity includes even minor traffic violations. *See United States v. Chanthasouxat*, 342 F.3d 1271, 1277 (11th Cir. 2003). The question here is whether a rapidly blinking turn signal creates reasonable suspicion that a traffic violation has occurred.

Georgia law requires that a vehicle be equipped with right and left turn signal lights. O.C.G.A. § 40–8–26(a)(2). Such lights must clearly indicate an intention to turn right or left and be visible from the front and rear from a distance of 300 feet. In addition, such lights "shall at all times be maintained in good

[9] The parties and the District Court mention needing reasonable suspicion or probable cause. This framing is understandable given the Supreme Court's declaration in *Whren* that "the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred." *Whren*, 517 U.S. at 810, 116 S. Ct. at 1772. We have also echoed that standard. *See United States v. Pierre*, 825 F.3d 1183, 1192 (11th Cir. 2016) ("Pursuant to the Fourth Amendment, police may stop a vehicle if they have probable cause to believe that a traffic violation has occurred."). But the Supreme Court has since made it plain that reasonable suspicion is all that is required. *See Heien*, 135 S. Ct. at 536. While probable cause is sufficient, only reasonable suspicion is necessary.

working condition." *Id.* §§ 40–8–26(a)(2), (b). As the District Court noted, the good working condition requirement is separate. If all the statute demanded is that the turn signal be visible from 300 feet and clearly indicate an intention to change lanes, the good working condition language would be superfluous. It must mean more.

Typically, when a turn signal blinks rapidly, it does so to notify the driver that a bulb is out or is about to go out. It can also mean that there is a problem with the wiring. Campbell maintains that a rapidly blinking turn signal works as intended—to notify the driver of a potential problem—and equipment that works according to design must be in good working condition. But the rapid blinking is an alert that something, be it an expired bulb or faulty wiring, might not be in good working condition. Thus, the rapidly blinking turn signal provided McCannon with reasonable suspicion to believe that Campbell's car was in violation of the traffic code. On that basis,[10] we affirm the District Court's holding that McCannon's initiation of the stop was lawful and proceed to the issue of whether his unrelated inquiries turned Campbell's seizure into a Fourth Amendment violation.

[10] The District Court also noted that even if McCannon was mistaken that the rapidly blinking turn signal violated the "good working condition" requirement of O.C.G.A. § 40–8–26, his mistake would be a reasonable mistake of law and thus "give rise to the reasonable suspicion necessary" to validate the stop and uphold the seizure. *See Heien*, 135 S. Ct. at 536.

B.

Even if the police have reasonable suspicion to make a traffic stop, they do not have unfettered authority to detain a person indefinitely. The detention is "limited in scope and duration." *Florida v. Royer*, 460 U.S. 491, 500, 103 S. Ct. 1319, 1326 (1983) (plurality opinion). Officers must conduct their investigation diligently. *See Rodriguez*, 135 S. Ct. at 1616 ("[T]he Government acknowledges that an officer always has to be reasonably diligent." (quotation omitted)); *see also United States v. Place*, 462 U.S. 696, 709, 103 S. Ct. 2637, 2645 (1983) ("[I]n assessing the effect of the length of the detention, we take into account whether the police diligently pursue their investigation."). And officers cannot unlawfully prolong a stop. *See Rodriguez*, 135 S. Ct. at 1614–16.

The Supreme Court expanded on unlawfully prolonged traffic stops in *Rodriguez*. In that case, police pulled over a vehicle for swerving onto the shoulder. *Id.* at 1612. After writing a warning ticket and returning the license, registration, and proof of insurance to the driver, the officer made the driver and passenger wait for seven or eight minutes while he conducted a dog sniff. *Id.* at 1613. The dog discovered contraband, and the driver sought to suppress the evidence. *Id.* On appeal, the Eighth Circuit determined that a seven or eight minute delay is a permissible *de minimis* intrusion. *Id.* at 1614. But the Supreme Court rejected the *de minimis* standard. *Id.* at 1615–16.

The Supreme Court explained that a traffic stop is analogous to a *Terry* stop. *Id.* at 1614. As such, the scope of the stop "must be carefully tailored to its underlying justification." *Id.* (quoting *Royer*, 460 U.S. at 500). Thus, in the context of a traffic stop, "the tolerable duration of police inquiries . . . is determined by the seizure's mission[.]" *Rodriguez*, 135 S. Ct. at 1614 (quotation omitted). The mission of a traffic stop is "to address the traffic violation that warranted the stop . . . and attend to related safety concerns[.]" *Id.* The stop may "last no longer than is necessary" to complete its mission. *Id.* (quoting *Royer*, 460 U.S. at 500). In other words, "[a]uthority for the seizure . . . ends when tasks tied to the traffic infraction are—or reasonably should have been—completed." *Id.*

The question becomes, which tasks are related to the stop's purpose? The Court identified a number of tasks it says are "ordinary inquiries incident to [the traffic] stop." *Id.* at 1615 (alteration in original). These inquiries include "checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance." *Id.* Inquiries such as these ensure "that vehicles on the road are operated safely and responsibly." *Id.*

The Court has also identified tasks that are not related to a stop's purpose. In *Arizona v. Johnson*, for example, the Court said asking about a passenger's gang affiliation is not related. *See* 555 U.S. 323, 332, 129 S. Ct. 781, 787 (2009).

Similarly, using a dog to search for contraband is not related. *Rodriguez*, 135 S. Ct. at 1615. A dog sniff lacks "the same close connection to roadway safety as the ordinary inquiries," and cannot be "fairly characterized as part of the officer's traffic mission." *Id.* Instead, a dog sniff is "aimed at detect[ing] evidence of ordinary criminal wrongdoing." *Id.* (alteration in original) (citation omitted).

In short, related tasks are the "ordinary inquiries incident to a traffic stop"; unrelated tasks are "other measures aimed at detecting criminal activity more generally." *See United States v. Green*, 897 F.3d 173, 179 (3d Cir. 2018) (interpreting *Rodriguez*).

That said, unrelated inquiries are permitted so long as they do not add time to the stop. *Rodriguez*, 135 S. Ct. at 1615 ("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 . . . reasonable suspicion."). This seems counterintuitive: how could an officer conduct unrelated inquiries without adding at least some time to the stop? Precedent provides the answer.

In *Illinois v. Caballes*, an officer making a stop radioed dispatch to report it. 543 U.S. 405, 406, 125 S. Ct. 834, 836 (2005). A second officer "overheard the transmission and immediately headed for the scene with his narcotics-detection dog." *Id.* The second officer conducted the dog sniff while the first officer "was in the process of writing a warning ticket[.]" *Id.* Thus, because there were

multiple officers, one of them was able to conduct an unrelated inquiry without adding time to the stop.

Similarly, in *Johnson*, three officers pulled over a car with three passengers. 555 U.S. at 327, 129 S. Ct. at 784. While one officer made the ordinary inquiries into the driver's license and registration, another officer questioned the passenger, Johnson. *Id.* at 327–28. This officer made unrelated inquiries into whether Johnson was affiliated with a gang, *id.* at 328, but because the first officer simultaneously followed up on the purpose of the stop, it did not add any time.

In this way, the *Rodriguez* Court suggested that its decision—commanding that a stop "may last no longer than is necessary" to complete its purpose—was a simple application of its precedents. 135 S. Ct. at 1614 ("Our decisions in *Caballes* and *Johnson* heed these constraints. In both cases, we concluded that the Fourth Amendment tolerated certain unrelated investigations *that did not lengthen the roadside detention*." (emphasis added)). But this Court, in conjunction with a number of our sister circuits,[11] had interpreted the precedent cases to establish a different standard.

[11] Almost all of the circuits developed a rule looking to whether the length of the stop as a whole was reasonable and finding that brief extensions did not transform the stop into an unreasonable seizure. *See United States v. McBride*, 635 F.3d 879, 883 (7th Cir. 2011); *United States v. Everett*, 601 F.3d 484, 492 (6th Cir. 2010); *United States v. Harrison*, 606 F.3d 42, 45 (2d Cir. 2010) *abrogated by United States v. Gomez*, 877 F.3d 76, 89–90 (2d Cir. 2017); *United States v. Chaney*, 584 F.3d 20, 26 (1st Cir. 2009); *United States v. Farrior*, 535 F.3d 210, 220 (4th Cir. 2008) *abrogation recognized by United States v. Williams*, 808 F.3d 238, 246–47 (4th Cir. 2015); *United States v. Turvin*, 517 F.3d 1097, 1101 (9th Cir. 2008); *United States v.*

In *United States v. Griffin*, 696 F.3d 1354 (11th Cir. 2012), we considered the appropriate standard to decide prolongation cases. As part of that consideration, we looked to the Supreme Court's ruling in *Johnson*,[12] where the Court condoned unrelated inquiries "so long as those inquiries do not measurably extend the duration of the stop." *Griffin*, 696 F.3d at 1361 (quoting *Johnson*, 555 U.S. at 333, 129 S. Ct. at 788).[13] Based on the language from *Johnson*, we determined that the issue of whether unrelated questions "measurably extended or prolonged the duration of the stop so as to make it unreasonable under the Fourth Amendment" should be decided by an overall reasonableness standard. *Id.* at 1362 ("To address this issue, we do not simply look at the interval of prolongation in isolation, but rather assess the length of the stop as a whole, including any extension of the encounter, by undertaking a fact-bound, context-dependent

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Olivera-Mendez, 484 F.3d 505, 510–11 (8th Cir. 2007); *United States v. Stewart*, 473 F.3d 1265, 1269 (10th Cir. 2007).

[12] We also looked to the Supreme Court's decision in *Muehler v. Mena*, 544 U.S. 93, 125 S. Ct. 1465 (2005). *See Griffin*, 696 F.3d at 1360–61. In *Mena*, an officer questioned "a person about her immigration status while she was detained during the execution of a search warrant—by other law enforcement officers—for deadly weapons and evidence of gang membership." *Id.* (citing *Mena*, 544 U.S. at 95–6, 125 S. Ct. at 1468). Because the questioning did not prolong the detention, the Court held that the officers did not need independent reasonable suspicion to ask about her immigration status. *Mena*, 544 U.S. at 101, 125 S. Ct. at 1471. Thus, *Mena* is fully consistent with the idea that unrelated inquiries are permitted only if they do not add time to the stop. The unrelated questions did not prolong the stop because other officers executed the search warrant.

[13] The standard from *Johnson* resembled the one from *Caballes*, where the Court said a traffic stop "can become unlawful if it is prolonged beyond the time reasonably required to complete that mission." *Caballes*, 543 U.S. at 407, 125 S. Ct. at 837.

analysis of all of the circumstances concerning the stop and the unrelated questions." (quotation omitted)).

But the Supreme Court rejected the overall reasonableness standard in *Rodriguez*. In that case, the Government argued that it is acceptable to "incremental[ly] prolong a stop" for unrelated inquiries so long as the officer is diligent "*and the overall duration of the stop remains reasonable*[.]" *Rodriguez*, 135 S. Ct. at 1616 (alteration in original) (emphasis added) (quotation omitted). The Court disagreed, noting that the Government's position would effectively grant officers "bonus time to pursue an unrelated criminal investigation" if they complete the "traffic-related tasks expeditiously[.]" *Id.* That cannot be right. Instead, courts must look at what an officer actually does: if he "can complete traffic-based inquiries expeditiously, then that is the amount of 'time reasonably required to complete [the stop's] mission.'" *Id.* (alteration in original) (quoting *Caballes*, 543 U.S. at 407, 125 S. Ct. at 837). And "a traffic stop prolonged beyond that point is unlawful." *Id.* (quotation omitted). Put differently, a stop can be unlawfully prolonged even if done expeditiously.

The Supreme Court also rejected the reasoning from *Griffin*. In *Griffin*, an officer stopped and frisked a person suspected of theft. *Griffin*, 696 F.3d at 1357. During the frisk, the officer asked the suspect: "Hey, what's in your pocket? Why do you have batteries?" *Id.* These questions were "unrelated to the attempted theft

or the frisk for weapons," *id.* at 1358, and prolonged the stop by about 30 seconds, *id.* at 1362. We offered two reasons for finding that the stop was not unlawfully prolonged. *Id.* First, the officer "acted diligently." *Id.* But as explained above, diligence does not provide an officer with cover to slip in a few unrelated questions. Second, the officer "had not yet completed his investigation." *Id.* The *Rodriguez* Court rebuffed this argument as well: the "critical question . . . is not whether the [unrelated inquiry] occurs before or after the officer issues the ticket . . . but whether conducting the [unrelated inquiry] 'prolongs'—*i.e.*, adds time to—'the stop.'" *Rodriguez*, 135 S. Ct. at 1616. In other words, an officer can prolong a stop before or after completing the investigation.

Neither can *Griffin* be distinguished because of the time difference. Although the unrelated questions in *Griffin* prolonged the stop by about 30 seconds, *Griffin*, 696 F.3d at 1362, and the dog sniff in *Rodriguez* prolonged the stop by seven to eight minutes, *Rodriguez*, 135 S. Ct. at 1613, the Supreme Court was clear that the length of time is immaterial. The Court rejected the Eighth Circuit's *de minimis* rule, under which minor extensions of seizures were tolerated. *See id.* at 1615–16. To differentiate *Griffin* on the grounds that a 30 second delay is less serious than a seven minute delay would revive a standard—be it characterized as a *de minimis* rule or as overall reasonableness—that the Supreme Court specifically rejected.

Bottom line: *Griffin* cannot be squared with *Rodriguez*. Accordingly, we find that *Rodriguez* abrogates *Griffin*.

Still, Campbell's interpretation of *Rodriguez* goes too far. He suggests, for example, that the officer unlawfully prolonged the stop by taking a few seconds to retrieve his coat or by looking Campbell in the eye while they conversed rather than exclusively focusing on writing the ticket. But *Rodriguez* does not prohibit all conduct that in any way slows the officer from completing the stop as fast as humanly possible.[14] It prohibits prolonging a stop *to investigate other crimes*. *Id.* at 1616 ("On-scene investigation into other crimes . . . detours from that mission."). The problem with the dog sniff was that it was "a measure aimed at detecting evidence of ordinary criminal wrongdoing." *Id.* at 1615 (quotation omitted). And efforts to "detect crime in general or drug trafficking in particular" are "different in kind" from interests in highway and officer safety. *Id.* at 1616.

We think the proper standard emanating from *Rodriguez* is this: a stop is unlawfully prolonged when an officer, without reasonable suspicion, diverts from

[14] Of course, the officer could be so slow as to warrant a claim that the officer was not diligent. As the *Rodriguez* Court noted, "an officer always has to be reasonably diligent." *Rodriguez*, 135 S. Ct. at 1616 (quotation omitted). On that question, there is still no bright-line time limit on how long a stop can last before it becomes an unreasonable seizure. *See United States v. Sharpe*, 470 U.S. 675, 685, 105 S. Ct. 1568, 1575 (1985) ("Obviously, if an investigative stop continues indefinitely, at some point it can no longer be justified as an investigative stop. But our cases impose no rigid time limitation on *Terry* stops."); *see also Place*, 462 U.S. at 709, 103 S. Ct. at 2646 ("[W]e decline to adopt any outside time limitation for a permissible *Terry* stop[.]").

the stop's purpose and adds time to the stop in order to investigate other crimes. *See id.* at 1614–16; *see also Greene*, 897 F.3d at 179. That is, to unlawfully prolong, the officer must (1) conduct an unrelated inquiry aimed at investigating other crimes (2) that adds time to the stop (3) without reasonable suspicion.

Most circuits that have addressed *Rodriguez* have reached a similar conclusion. *See United States v. Stewart*, 902 F.3d 664, 674 (7th Cir. 2018) (suggesting that 75 seconds used to call for backup might unlawfully prolong the stop, but the record was inadequate to determine if the officer's purpose was for safety or a dog sniff), *reh'g en banc denied* (Oct. 26, 2018); *United States v. Clark*, 902 F.3d 404, 410–11 (3d Cir. 2018) (finding that 20 seconds of unrelated questioning prolonged the stop); *United States v. Bowman*, 884 F.3d 200, 219 (4th Cir. 2018) (finding that officer did not have consent or reasonable suspicion to question passenger after mission completed); *United States v. Gomez*, 877 F.3d 76, 88–93 (2d Cir. 2017) (concluding that it is not a reasonableness test but whether the unrelated inquiry adds time to the stop at all, and finding that asking a few questions about drugs prolonged the stop); *United States v. Gorman*, 859 F.3d 706, 715 (9th Cir. 2017) (holding that unrelated questioning prolonged the stop); *United States v. Macias*, 658 F.3d 509, 518–19 (5th Cir. 2011) (deciding that unrelated questions violated the standard which says an officer can ask such questions only if they do not extend the duration of the stop). *But see United States v. Collazo*, 818

F.3d 247, 257–58 (6th Cir. 2016) (using language suggesting an overall reasonableness standard).

With this understanding of *Rodriguez*, we address the case at hand. On appeal, Campbell points to several actions that he maintains prolonged the stop. First, he identifies the numerous questions McCannon asked about his travel plans. McCannon spent approximately two minutes asking Campbell where he was going and why. We find that these questions were related to the purpose of the stop.

Generally, questions about travel plans are ordinary inquiries incident to a traffic stop. *See United States v. Dion*, 859 F.3d 114, 125 (1st Cir. 2017) ("[O]ur case law allows an officer carrying out a routine traffic stop . . . to inquire into the driver's itinerary."), *cert. denied*, 138 S. Ct. 346 (2017); *United States v. Bowman*, 660 F.3d 338, 343 (8th Cir. 2011) (stating that tasks related to a traffic violation include "inquiring about the occupants' destination, route, and purpose"); *United States v. Brigham*, 382 F.3d 500, 508 (5th Cir. 2009) (en banc) ("An officer may also ask about the purpose and itinerary of a driver's trip during the traffic stop."); *United States v. Givan*, 320 F.3d 452, 459 (3d Cir. 2003) ("[Q]uestions relating to a driver's travel plans ordinarily fall within the scope of a traffic stop."); *United States v. Williams*, 271 F.3d 1262, 1267 (10th Cir. 2001) ("[W]e have repeatedly held (as have other circuits) that questions relating to a driver's travel plans ordinarily fall within the scope of a traffic stop.").

More specifically, in this case, Campbell's travel plans were relevant to the traffic violation—a malfunctioning turn signal. In McCannon's experience, a rapidly blinking turn signal indicates that a bulb is either out or is about to go out. Since Campbell was traveling for a long distance, the chances that his turn signal would stop working while he was driving increased accordingly. For this reason, asking about Campbell's travel plans was a related and prudent part of investigating his malfunctioning turn signal.[15]

Campbell also argues that the questions about whether he had contraband in his car unlawfully prolonged the stop. Just before asking for Campbell's consent to search the car, McCannon queried:

> "[Do you have] any counterfeit merchandise that you are taking to your relatives over there in Augusta? And what I mean by that is--any purses? Shoes? Shirts? Any counterfeit or bootleg CDs or DVDs or anything like that? Any illegal alcohol? Any marijuana? Any cocaine? Methamphetamine? Any heroin? Any ecstasy? Nothing like that? You don't have any dead bodies in your car?"

These questions were not related to a traffic stop for a malfunctioning turn signal and allegedly crossing the fog line. These questions were inquiring about "crime in general [and] drug trafficking in particular." *See Rodriguez*, 135 S. Ct. at 1616. They added 25 seconds to the stop. And the Government does not contend that

[15] Admittedly, McCannon acknowledged that the reason he took such interest in Campbell's destination was because that part of Augusta was a high crime area. But in this area of the law, we do not consider officers' subjective motivations. *See Whren*, 517 U.S. at 813, 116 S. Ct. at 1774.

McCannon had reasonable suspicion. Consequently, we find that these questions unlawfully prolonged the stop.

C.

Normally, if an officer unlawfully prolongs a stop, any evidence uncovered as a result would be suppressed. *See Davis*, 564 U.S. at 231–32, 131 S. Ct. at 2423. But the exclusionary rule is subject to exceptions. *Id.* at 236–38, 131 S. Ct. at 2426–27. [16]

Davis excepts from the exclusionary rule evidence the police obtain in searches conducted "in objectively reasonable reliance on binding appellate precedent[.]" *Id.* at 232, 131 S. Ct. at 2423–24. This is because the "sole purpose" of the exclusionary rule is to deter Fourth Amendment violations, *id.* at 236, 131 S. Ct. at 2426, and suppressing evidence obtained from a search that was lawful when conducted would "do nothing to deter" police wrongdoing while coming "at a high cost to both the truth and the public safety," *id.* at 232, 131 S. Ct. at 2423.

At the time of Campbell's arrest, *Griffin* was our last word on the issue and the closest precedent on point. *Griffin*, 696 F.3d 1354. As noted above, *Griffin* held that an officer's unrelated questioning lasting no more than 30 seconds did not

[16] As an aside, we cannot use the good faith exception to avoid deciding whether there was a constitutional violation. To do so would deny the retroactive effect of constitutional criminal procedure. *See Davis*, 564 U.S. at 243–44, 131 S. Ct. at 2430–31 ("[T]he retroactive application of a new rule of substantive Fourth Amendment law *raises* the question whether a suppression remedy applies; it does not answer that question.").

unconstitutionally prolong the stop because the officer "had not yet completed his investigation . . . and because he acted diligently[.]" *Id.* at 1362.

The facts here fit squarely within *Griffin*'s parameters. McCannon lawfully stopped Campbell to investigate a traffic violation. His unrelated questions lasted 25 seconds. He asked them before he had completed the stop by issuing the warning ticket. And the District Court found that McCannon "diligently investigated" the traffic violations and "expeditiously" completed the citations. We cannot say the District Court clearly erred in so finding. As such, *Griffin* controls, and McCannon acted in "objectively reasonable reliance on binding appellate precedent[.]" *Davis*, 564 U.S. at 232, 131 S. Ct. at 2423–24.

However, the Government did not raise the good faith exception on appeal. Typically, when an appellee waives or abandons an affirmative defense, we will not consider it. *See Hamilton v. Southland Christian Sch., Inc.*, 680 F.3d 1316, 1318–19 (11th Cir. 2012). But waiver is a prudential doctrine, not a jurisdictional limitation, and we can reach a waived issue in "exceptional circumstances" at our discretion. *See Dean Witter Reynolds, Inc. v. Fernandez*, 741 F.2d 355, 360 (11th Cir. 1984). Here, even though the Government did not present the issue on appeal, both parties submitted briefs on whether the good faith exception applied to the District Court. Furthermore, the applicability of the exception to this case is plain—*Griffin* is on all fours with this case—and ignoring it would be a

miscarriage of justice. The exclusionary rule is meant to deter unlawful conduct by the police; punishing law enforcement for following the law at the time does not do this. If we ignored the good faith exception, we would be suppressing the truth to no end other than teaching the Government's counsel a well-deserved lesson. We decline to do so.

III.

Deputy McCannon had reasonable suspicion to stop Campbell for a traffic violation. He unlawfully prolonged the stop when he asked unrelated questions without reasonable suspicion about whether Campbell was trafficking contraband. Because these questions were permitted under binding precedent at the time, however, the good faith exception applies and we decline to invoke the exclusionary rule. Thus, there is no need to consider whether Campbell's consent purged the taint from the unlawfully prolonged seizure.[17] Nor do we reach the question of whether the consent issue was waived.

AFFIRMED.

[17] When a stop is unlawfully prolonged, the seizure becomes unconstitutional, and any subsequent discovery of evidence produced by that seizure would normally be tainted. However, if the defendant consents to the search after the stop is unlawfully prolonged but before the evidence is discovered, the consent can purge the taint. *See United States v. Santa*, 236 F.3d 662, 676 (11th Cir. 2000). To do this, the government must show (1) that the consent is voluntary and (2) that the consent is not a product of the illegal seizure. *United States v. Delancy*, 502 F.3d 1297, 1308 (11th Cir. 2007). Since the evidence from McCannon's search is admissible under the good faith exception, we are spared from pursuing this analysis.

MARTIN, Circuit Judge, concurring in part and dissenting in part:

The Majority is right that, under the Supreme Court's decision in Rodriguez v. United States, 575 U.S. __, 135 S. Ct. 1609 (2015), the patrolman here unlawfully prolonged the traffic stop of Mr. Campbell. Maj. Op. at 23–25. It is also true that our Court's decision in United States v. Griffin, 696 F.3d 1354 (11th Cir. 2012), which established this court's pre-Rodriguez standard for prolongation, cannot be squared with the Supreme Court's subsequent ruling in Rodriguez. Maj. Op. at 18–21.

I write separately from the Majority, however, because in contrast to the result reached in the Majority opinion, I believe Mr. Campbell should prevail. I would not apply the exclusionary rule's good faith exception to affirm the District Court's denial of Mr. Campbell's suppression motion because the Government never made that argument on appeal. Indeed, the government did not make this argument despite having been put on notice of the issue by the District Court and having ample opportunity to raise it. Due to the government's waiver of this argument, I would suppress evidence derived from the unlawfully prolonged traffic stop of Mr. Campbell as fruit of the poisonous tree.

Under this Court's precedent, "a party seeking to raise a claim or issue on appeal must plainly and prominently so indicate. Otherwise, the issue—even if properly preserved at trial—will be considered abandoned." United States v.

Jernigan, 341 F.3d 1273, 1283 n.8 (11th Cir. 2003); see also Access Now, Inc. v. Sw. Airlines Co., 385 F.3d 1324, 1330 (11th Cir. 2004) ("[T]he law is by now well settled in this Circuit that a legal claim or argument that has not been briefed before the court is deemed abandoned and its merits will not be addressed."). Our Court regularly applies this rule to bar arguments criminal defendants and pro se plaintiffs made in the trial court but neglected to raise again on appeal. See, e.g., Hall v. Thomas, 611 F.3d 1259, 1284 n.37, 1289 n.40, 1290 n.41 (11th Cir. 2010) (holding a juvenile sentenced to life imprisonment waived certain arguments raised in his habeas petition by failing to reassert them on appeal); Timson v. Sampson, 518 F.3d 870, 874 (11th Cir. 2008) (per curiam) ("While we read briefs filed by pro se litigants liberally, issues not briefed on appeal by a pro se litigant are deemed abandoned." (citation omitted)); cf. United States v. Vanorden, 414 F.3d 1321, 1323 & n.1 (11th Cir. 2005) (per curiam) (acknowledging "neither Blakely nor Booker had been decided" at the time a criminal defendant first appealed his sentence, but nonetheless holding the defendant abandoned challenges to his sentence on "Sixth Amendment-Apprendi-Blakely-Booker grounds" by failing to raise the issue in his first appeal).

This very case gives insight into this Court's routine reliance upon waiver to winnow issues presented in the appeals we consider. Here, both the government and this panel suggested at oral argument that Mr. Campbell might have waived

his fruit-of-the-poisonous tree argument because, although plainly mentioned in his opening brief, the issue was not separately listed as a claim in Campbell's "Statement of Issues." See Oral Arg. at 11:36–11:44 ("We have a hard-and-fast rule in this Circuit. It's pretty punitive, really. That if you don't put it in the brief as an issue, we don't consider it." (comment of Judge Tjoflat)), 13:40–14:20 (government arguing the Court should deem waived issues not prominently raised in a brief, because "[w]hen we're coming before this Court it's important that we know as the responding party, as the appellee, what issues the appellant believes are germane").

Nevertheless, the Majority affirms the District Court's denial of Mr. Campbell's suppression motion on the good faith exception, an argument the government never asserted on appeal. To be clear, the government did not argue the good faith exception in its initial brief, at oral argument, or in any supplemental filing. Yet the Majority invokes the good faith exception based on briefing the parties submitted in District Court, at the explicit direction of that court.

The Majority also holds that the application of the good faith exception to this case is "plain." Maj. Op. at 27. I must say, it is not "plain" to me. The government is a sophisticated, often-appearing party before this Court. As such, the government should be left to the decisions it makes about what arguments it wants us to consider. We know the government was aware of the issue of the

"good faith exception" here, because the District Court specifically requested briefing on the subject. Under the circumstances, I would not reach out to decide Mr. Campbell's fate on a ground abandoned by the government.

Neither would I affirm on the ground Mr. Campbell consented to the unlawfully-prolonged search. The Majority did not reach this issue because it concluded the evidence was admissible under the good faith exception. Maj. Op. at 5 & nn.5, 17. However, just as the government never raised the good faith exception, it neglected to mention the possibility of Mr. Campbell's consent until this Court prompted it to do so. See Order Denying Mot. to Suppress at 14 ("The Government, however, does not argue, nor does the evidence establish, that Deputy McCannon had reasonable suspicion of criminal activity beyond the traffic violations to detain Defendant or that the encounter had become consensual before Defendant gave consent to search his vehicle.").[1] "The government bears the burden of proving both the existence of consent and that the consent was not a function of acquiescence to a claim of lawful authority but rather was given freely and voluntarily." United States v. Yeary, 740 F.3d 569, 581 (11th Cir. 2014) (quotation marks omitted). The government's failure to raise Mr. Campbell's

[1] Even though the government failed to raise consent before the District Court, the District Court nonetheless briefly addressed the issue, finding that because "Deputy McCannon retained [Mr. Campbell's] driver's license throughout the encounter, . . . therefore [Mr. Campbell] was not free to leave."

consent before the District Court and on appeal means this argument is also waived. See Jernigan, 341 F.3d at 1283 n.8.

I would not put this Court in the business of resuscitating arguments the government was made aware of, then clearly abandoned. In my experience, this Court rarely extends the same courtesy to the criminal defendants and pro se litigants who come before us. Based on the Majority's conclusion that the patrolman unlawfully prolonged the traffic stop, I would reverse the District Court's denial of Mr. Campbell's suppression motion.

I respectfully dissent from the Majority's decision not to suppress the search of Mr. Campbell's automobile.

NO._____

In the Supreme Court of the United States

ERICKSON CAMPBELL,

PETITIONER-APPELLANT,

v.

UNITED STATES OF AMERICA,

RESPONDENT-APPELLEE.

Appendix B – United States District Court, Middle District of Georgia,
Order Denying Motion to Suppress

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
ATHENS DIVISION

UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	
	:	
vs.	:	**3:14-CR-46 (CAR)**
	:	
ERICKSON MEKO CAMPBELL,	:	
	:	
Defendant.	:	

_____

ORDER DENYING MOTION TO SUPPRESS

Defendant Erickson Meko Campbell is charged with possession of a firearm by a convicted felon, in violation of 18 U.S.C. § § 922(g)(1) and 924(a)(2). The charge results from the traffic stop, search of Mr. Campbell's vehicle, and seizure of a firearm. Mr. Campbell filed a Motion seeking to suppress the evidence, arguing there was no probable cause for the traffic stop, and the officer measurably extended the traffic stop in violation of the Fourth Amendment. This Court held a hearing on the Motion and allowed the parties to file post-hearing supplemental briefs. The Court subsequently requested the parties file a second supplemental brief on the potential applicability of

Davis v. United States to this case.[1] Thereafter, Defendant filed a Motion to Strike [Doc. 40] portions of the Government's second supplemental brief as nonresponsive. Both Motions are now ripe for decision. The Court finds it unnecessary to strike any portion of the Government's supplemental brief. Additionally, the Court finds the traffic stop here was lawful, and Defendant's detention was not unconstitutionally prolonged. Thus, the search and resulting seizure of the firearm will be upheld. Defendant's Motion to Suppress [Doc. 26] and Motion to Strike [Doc. 40] are **DENIED**.

MOTION TO STRIKE

Defendant seeks to strike the portions of the Government's second supplemental brief that are not responsive to the Court's request for briefing on the potential application of *Davis.* Alternatively, Defendant asks to file a brief addressing the Government's arguments. The Court, however, finds both actions unnecessary. The Government did not raise any novel issues or arguments in its brief that this Court has not considered and evaluated in ruling on the Motion to Suppress. This Court has thoughtfully and carefully determined every issue in this case after thoroughly researching, studying, and contemplating the facts with the current state of the law. The

[1] 131 S.Ct. 2419 (2011). Because the stop, search, and seizure in this case were lawful, the Court need not discuss *Davis.*

Court has evaluated all angles of this case, both argued and not argued, and finds any need to strike or allow additional briefing unnecessary. Thus, Defendant's Motion to Strike is DENIED.

MOTION TO SUPPRESS

FINDING OF FACTS

On December 12, 2013, at approximately 9:00pm, Greene County Deputy Sheriff Robert McCannon was patrolling on Interstate 20 when he observed a grey Nissan Maxima cross the fog line; thus, he initiated the video camera in his police vehicle. Deputy McCannon observed the vehicle cross the fog line a second time, and when the driver turned on his left blinker to signal a lane change, the blinker flashed at a rapid pace, suggesting a malfunction with the signal lights. McCannon ran the vehicle's tag and learned that the vehicle belonged to Defendant. McCannon initiated a traffic stop for failure to maintain lane, in violation of O.C.G.A. § 40-6-48, and failure to maintain a signal light in good working condition, in violation of O.C.G.A. § 40-8-26.

Upon initiation of the stop, Defendant immediately pulled over and came to stop. Deputy McCannon approached the vehicle from the passenger side and requested Defendant's driver's license. McCannon testified that he noticed Defendant was

breathing heavily, was nervous, and was shaking when he handed McCannon his license. McCannon explained to Defendant that he was stopped for failing to maintain his lane and for the malfunctioning signal light. McCannon had Defendant activate his left turn signal, which showed that the signal light was rapidly flashing. McCannon informed Defendant that he most likely had a bulb out, and they engaged in a short conversation about the cause of the rapidly-flashing blinker. McCannon examined the vehicle's brake lights and the front signal lights to ensure they were working properly. McCannon then told Defendant it was likely that his signal light "was going bad" and that he would not write Defendant a ticket.[2] The stop had lasted 1 minute and 55 seconds.

Deputy McCannon then asked Defendant how far he had to travel, to which Defendant replied he was going to Augusta, Georgia. McCannon asked Defendant how long he was going to be in Augusta, whether he worked there, and if he had family there. Defendant responded to each question and told McCannon he was going to see his family. Thereafter, McCannon asked Defendant to step out of the vehicle and come back to the police car, where he would write him a warning "and send him down the

[2] Exhibit G-1, Police Video, 4:41 [Doc. 37].

road."[3] McCannon and Defendant walked to the front of the police car, and McCannon retrieved the citation forms out of his vehicle. Three minutes and 17 seconds into the stop, McCannon began to complete the warning citations.[4]

While Deputy McCannon began writing the warning, he and Defendant engaged in a conversation in which McCannon asked Defendant about the weather, what kind of work Defendant does, and where his family lives in Augusta. Defendant responded to each question. Two minutes after he began writing the warning, McCannon stopped to get a jacket out of his vehicle because he was cold.[5] It took McCannon approximately 30 seconds to retrieve and put on his jacket. After putting on his jacket, McCannon continued to write the warning. McCannon informed Defendant that his driver's license would expire at the end of the month. He also asked Defendant if he was driving with a firearm, to which Defendant responded no. In continuing to complete the citation, McCannon asked Defendant the year his car was made, and they engaged in a short conversation in which Defendant told McCannon he had acquired the car from an older couple.

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[3] *Id.* at 5:12.
[4] *Id.* at 5:48.
[5] *Id.* at 7:48.

Approximately 3 minutes and 28 seconds after McCannon first began writing the citation, Sergeant Patrick Paquette arrived on the scene.[6] McCannon acknowledged Sergeant Paquette and then asked Defendant when he last received a traffic ticket, to which Defendant responded about four years ago. McCannon called dispatch to run a check on Defendant's driver's license to determine the license's validity and whether Defendant had any warrants for his arrest.[7] While waiting on dispatch to respond, he asked Defendant if he had ever been arrested to which Defendant responded he was arrested about 15 or 16 years ago for a DUI.

Thereafter, McCannon motioned toward Sergeant Paquette, an Augusta native, and told Paquette the location Defendant was travelling in Augusta. Sergeant Paquette then asked Defendant some questions about his destination. While Paquette questioned Defendant, McCannon continued to complete the warning citation. McCannon then told Defendant that he would put both of his warning citations on the same form.[8]

Before completing the citations, McCannon asked Defendant the following series of questions unrelated to the traffic stop:

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[6] *Id.* at 9:16.
[7] *Id.* at 9:33.
[8] *Id.* at 11:04.

> "[Do you have] any counterfeit merchandise that you are taking to your relatives over there in Augusta? And what I mean by that is--any purses? Shoes? Shirts? Any counterfeit or bootleg CDs or DVDs or anything like that? Any illegal alcohol? Any marijuana? Any cocaine? Methamphetamine? Any heroin? Any ecstasy? Nothing like that? You don't have any dead bodies in your car?"[9]

Defendant either shook his head or responded no to each question. McCannon had been writing the warning for 5 minutes and 22 seconds when he began asking these questions. The questioning lasted 35 seconds.

Immediately after asking those questions, McCannon asked Defendant for permission to search his vehicle, and Defendant responded yes. While Sergeant Paquette conducted a pat-down search of Defendant, McCannon continued to complete the warning citation and returned Defendant's driver's license. Sergeant Paquette began to search the vehicle while McCannon completed the warning citations and obtained Defendant's signature.

From the time McCannon began writing the warning citations until Defendant

[9] *Id.* at 11:10– 11:45.

consented to a search, a total of 6 minutes and 10 seconds elapsed.[10] In total, it took Deputy McCannon 7 minutes and 47 seconds to complete the warning citations.[11] At the time Defendant gave his consent to search, the duration of the stop was 9 minutes and 3 seconds.[12] The total duration of the stop for purposes of addressing the traffic violations was 10 minutes and 34 seconds.[13]

A search of the vehicle revealed a 9mm pistol, ammunition, a black stocking cap, and a camouflage ski mask.

ANALYSIS

Defendant contends the firearm seized in this case must be suppressed because Deputy McCannon unlawfully initiated the traffic stop without probable cause or reasonable suspicion that Defendant committed a traffic offense, and then, unconstitutionally detained him longer than necessary to effectuate the purpose of the stop.[14] As explained below, the Court finds Deputy McCannon lawfully stopped

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[10] *Id.* at 5:48 (begins writing warning); 11:58 (Defendant gives consent).
[11] *Id.* at 5:48 (begins writing warning); 13:35 (Defendant signs warning).
[12] *Id.* at 2:55 (stop begins; 11:58 (Defendant gives consent to search).
[13] *Id.* at 2:55 (stop beings); 13:34 (Defendant signs warning citation).
[14] At the end of the hearing, Defendant mentioned that the scope of the search exceeded his consent; however, Defendant made no such argument in his original brief, nor did he make this argument in his supplemental briefs; thus, it appears he has abandoned this argument. Even if he did not abandon the argument, the search here did not exceed the scope of his consent. Deputy McCannon asked Defendant

Defendant for failure to maintain his turn signal in "good working condition" under Georgia law, and McCannon did not "measurably extend the duration" of the stop by asking a few questions unrelated to the traffic violations "so as to convert the encounter into something other than a lawful seizure."[15] Thus, the search and resulting seizure of Defendant's firearm were lawful.

Probable Cause/Reasonable Suspicion to Initiate the Traffic Stop

The Fourth Amendment protects individuals from unreasonable search and seizure, and a traffic stop is a seizure within the Fourth Amendment.[16] A routine traffic stop is a relatively brief encounter and "is more analogous to a so-called '*Terry* stop' . . . than to a formal arrest."[17] Therefore, the legality of the stop is analyzed under the *Terry* standard.[18] Under *Terry v. Ohio*, police officers may stop and briefly detain an individual

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whether he was carrying any counterfeit merchandise, drugs, or firearms. A "general consent to search for specific items includes the consent to search any compartment or container that might reasonably contain those items." *United States v. Zapato*, 180 F.3d 1237, 1243 (11th Cir. 1999). Even where the officer does not disclose the purpose or object of the search to the consenting party, "a police officer can reasonably interpret that consent encompasses any reasonable action necessary to carry out a search for evidence of illegal activity." *United States v. Chappell*, Case No. 1:10-CR-531-WSD-ECS-1, 2011 WL 5352947, *5 (N.D. Ga. Nov. 4, 2011) (citations omitted).

[15] *Arizona v. Johnson*, 555 U.S. 323, 333 (2009).

[16] *See United States v. Purcell*, 236 F.3d 1274, 1277 (11th Cir. 2001) (citations omitted).

[17] *Knowles v. Iowa*, 525 U.S. 113, 117 (1998) (citation and quotation marks omitted).

[18] *See United States v. Lewis*, 674 F.3d 1298, 1312 n. 3 (11th Cir. 2012); *Purcell*, 236 F.3d at 1277.

if they reasonably suspect that criminal activity is occurring or about to occur.[19] Reasonable suspicion to initiate a traffic stop must be "particularized,"[20] meaning that "the police officer must be able to point to specific and articulable facts" justifying the stop.[21] As a general matter, the decision to stop a vehicle is reasonable where the police have probable cause to believe that a traffic violation has occurred.[22] Additionally, reasonable suspicion can rest on an officer's mistake of law or fact if such mistake is objectively reasonable.[23]

Here, Deputy McCannon testified he initiated the traffic stop due to the vehicle's rapidly-blinking turn signal and Defendant's failure to maintain lane. Defendant argues neither of these reasons justified the stop. Because the Court finds the rapidly-blinking turn signal justified the stop, it need not address Defendant's arguments regarding failure to maintain lane.

Under Georgia law, a vehicle must be equipped with "[a] light or lights or mechanical signal device capable of clearly indicating any intention to turn either to the

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[19] 392 U.S. 1 (1968).
[20] *United States v. Cortez*, 449 U.S. 411, 417-18 (1981).
[21] *Terry*, 392 U.S. at 21.
[22] *Whren v. United States*, 517 U.S. 806, 810 (1996).
[23] *Heien v. North Carolina*, ___ U.S. ___, 135 S.Ct. 530, 536 (2014) (mistake of law); *Illinois v. Rodriguez*, 497 U.S. 177, 185 (1990) (mistake of fact).

right or to the left and which shall be visible from both the front and the rear."[24] The signal lights must "be visible and understandable during daytime and nighttime from a distance of 300 feet from both the front and the rear."[25] Moreover, the statute requires that "such light or lights shall at all times be maintained in good working condition."[26]

Defendant argues a "turn signal is maintained in good condition if it works as the statute requires—clearly indicating an intention to change lanes, and visible from a distance of 300 feet from the front and back of the vehicle."[27] Thus, because Defendant's rapidly-blinking turn signal clearly indicated his intention to change lanes and was visible for a distance of 300 feet, it was maintained in good repair under Georgia law, and McCannon's belief otherwise was unreasonable.

The Court is unpersuaded by Defendant's arguments. Under Defendant's analysis, only the signal's complete failure to function is a violation of the statute. Defendant's reliance on Georgia cases finding a signal light's complete failure to function is not "in good working condition" under the statute, is not dispositive of the issue here. The holding that a signal light's complete failure to function violates the

[24] O.C.G.A. § 40-8-26(a)(2).
[25] *Id.* at 26(b).
[26] *Id*.
[27] Defendant's Supplemental Brief in Support of his Motion to Suppress, p. 2 [Doc. 35].

statute, is not a holding that any functioning light, including a rapidly-blinking turn signal, satisfies the statute's "good working condition" requirement. Indeed, such an interpretation would render the "good working condition" language of the statute superfluous. The statute requires that every signal light be visible from a distance of 300 feet in the front and the rear. In a separate sentence the statute requires that "[w]hen a vehicle is equipped with . . . signal lights, such . . . lights shall at all times be maintained in good working condition."[28] Thus, the requirement that lights be "maintained in good working condition" is separate and distinct from the requirement that lights be visible from a distance of 300 feet. It is "canonical that courts must read a statute to give effect to all provisions and avoid rendering any part 'inoperative or superfluous, void or insignificant.'"[29] Thus, Deputy McCannon had probable cause to initiate the stop for a violation of O.C.G.A. § 40-8-26 due to the rapidly-blinking turn signal.

Not only did Deputy McCannon have probable cause to stop Defendant's vehicle based on the malfunctioning signal light, he also had reasonable suspicion to initiate the stop to determine whether the front signal lights were functioning properly. At the

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[28] O.C.G.A. § 40-8-26(b).

[29] *U.S. Commodity Futures Trading Com'n v. Hunter Wise Commodities, LLC*, 749 F.3d 967 (11th Cir. 2014) (quoting *Corley v. United States*, 556 U.S. 30, 314 (2009)).

hearing, Deputy McCannon testified that he had changed "a couple hundred bulbs on [his] personal vehicles, on [his] patrol cars, [and] other people's cars," so he has "a pretty good knowledge of the bulbs when they go out."[30] Based on his experience, when a bulb is blinking very rapidly, it is not working correctly; it is indicating a problem—that either a bulb is out, or one that is about to go out.[31] Thus, he stopped Defendant because the left rapid-blinking signal light did not appear to be working correctly, and he wanted to determine if the front blinkers on the vehicle were functioning properly. Moreover, even if McCannon was mistaken that the rapidly-blinking signal light violated the "good working condition" requirement under O.C.G.A. § 40-8-26, such a mistake of law is reasonable and would "give rise to the reasonable suspicion necessary" to validate the stop and uphold the seizure.[32] Thus, McCannon lawfully initiated the traffic stop.

Lawful Detention

Defendant also contends he was unlawfully detained because Deputy McCannon "measurably extended" the duration of the stop, asking questions unrelated to the

[30] Motion to Suppress Hearing Transcript, p. 13 [Doc. 32].
[31] *Id*. at pp. 13-14.
[32] *See Heien,* 135 S.Ct. at 536.

traffic stop rather than expeditiously processing the traffic violation. The Government contends Defendant's detention was not unlawfully prolonged. It is well established that an officer may lengthen the detention beyond that related to the initial traffic stop where there is articulable suspicion of other criminal activity, or where the initial detention has become a consensual encounter.[33] The Government, however, does not argue, nor does the evidence establish, that Deputy McCannon had reasonable suspicion of criminal activity beyond the traffic violations to detain Defendant[34] or that the encounter had become consensual before Defendant gave consent to search his

[33] *See United States v. Pruitt*, 174 F.3d 1215, 1220 (11th Cir. 1999).

[34] An officer must possess a "particularized and objective basis for suspecting legal wrongdoing" to lawfully detain someone based on reasonable suspicion of other illegal activity beyond the traffic violation. *United States v. Perkins*, 348 F.3d 965, 970 (11th Cir. 2003) (citation omitted). A mere "inchoate and unparticularized suspicion or hunch of criminal activity" does not rise to the "minimum level of objectivity required." *Id.* (internal quotation marks and citation omitted). Deputy McCannon testified that Defendant remained nervous throughout the encounter even when he knew he was receiving a warning, and he was travelling to an area in Augusta known for criminal activity. A driver's nervousness alone "cannot support a legitimate inference of further illegal activity that rises to the level of objective, reasonable suspicion required under the Fourth Amendment." *Id.* at 970-971. In addition, the video does not reflect Defendant's overt nervousness. Defendant is clearly seen and heard answering questions and engaging in conversations with both Deputy McCannon and Sergeant Paquette with no signs of nervousness. Indeed, he appears composed. Regarding a driver's destination, factors that "would likely apply to a considerable number of those traveling for perfectly legitimate purposes . . . "do[] not reasonably provide . . . suspicion of criminal activity." *United States v. Boyce*, 351 F.3d 1102, 1109 (11th Cir. 2003) (internal quotation marks and citation omitted). Moreover, simply driving "on a widely used interstate that also happens to be a known a drug corridor" does not establish reasonable suspicion. *Id.* Thus, reasonable suspicion of criminal activity other than the traffic offenses does not support Defendant's detention.

vehicle.[35] The issue here centers on whether Deputy McCannon's questions unrelated to the traffic stop "measurably extended" or prolonged the duration of the stop to make it unreasonable under the Fourth Amendment. The Court finds they did not.

During the course of a lawful stop, an officer may inquire into matters unrelated to the justification for the traffic stop "so long as those inquiries do not measurably extend the duration of the stop."[36] It is not the content of the officer's questions that converts the stop to an unconstitutional detention; it is whether the unrelated questions prolong the stop.[37] A traffic stop is "a relatively brief encounter," in which "the tolerable duration of police inquiries . . . is determined by the seizure's 'mission'—to address the traffic violation that warranted the stop and attend any related safety concerns."[38]

Typical ways officers address the mission involve "ordinary inquiries incident to the [traffic stop]," such as "checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration

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[35] Deputy McCannon retained Defendant's driver's license throughout the encounter, and therefore Defendant was not free to leave. *Compare United States v. Ramirez*, 476 F.3d 1231 (11th Cir. 2007) (traffic stop turned into consensual encounter where officer returned driver's license and registration).
[36] *Arizona v. Johnson*, 555 U.S. at 323.
[37] *See United States v. Griffin*, 696 F.3d 1354, 1362 (11th Cir. 2012).
[38] *Rodriguez v. United States*, __ U.S. __, 135 S.Ct. 1609, 1614 (2015).

and proof of insurance."[39] Addressing the traffic infraction is the purpose of the stop; thus, "it may 'last no longer than is necessary to effectuate th[at] purpose.'"[40] "Authority for the seizure [ ] ends when tasks tied to the traffic infraction are – or reasonably should have been – completed."[41]

Defendant contends the Supreme Court's recent decision in *Rodriguez v. United States*[42] requires the Court to find the stop in this case unconstitutionally prolonged. Defendant argues Deputy McCannon completed the "mission" of the traffic stop after he informed Defendant that he would not receive a ticket. At that point—1 minute and 55 seconds into the stop—Defendant contends Deputy McCannon had completed his investigation into the traffic violations: he had determined Defendant was not driving under the influence and had fully checked the vehicle for the blinker malfunction. Because McCannon had no reasonable suspicion of any other criminal activity, Defendant contends all of the subsequent inquiries, including the issuance of the warning citation itself, unconstitutionally prolonged the stop and thus poisoned his consent to search the vehicle. After thoughtful deliberation, the Court disagrees.

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[39] *Id.* at 1615 (citations omitted).
[40] *Id.* (citations omitted).
[41] *Id.*
[42] *Id.*

Although Deputy McCannon was not required to complete a warning citation, he acted fully within his discretion to do so. Certainly, completing a warning citation is a "task[ ] tied to the traffic infraction,"[43] and McCannon was authorized to detain Defendant to complete such a task. In making the valid stop, McCannon was entitled to require Defendant to exit his vehicle[44] and authorized to ask routine questions such as the destination, route, and purpose of the stop.[45] The questions to Defendant regarding whether he was travelling with firearms, the year his car was made, and when he received his last traffic citation, were authorized as questions that either addressed the traffic violation or were related to legitimate safety concerns. McCannon also lawfully asked Defendant about his criminal history while he waited on dispatch to run Defendant's license information.[46] In addition, the Court finds no constitutional problems with Sergeant Paquette's questions to Defendant about his destination, as they were clearly asked while McCannon was writing the traffic citation.

Deputy McCannon's final questions regarding whether Defendant was carrying

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[43] *Id.*

[44] *Pennsylvania v. Mims*, 434 U.S. 106, 111 (1977).

[45] *See United States v. Brigham*, 382 F.3d 500, 510 (5th Cir. 2009) (*en banc*).

[46] *See Purcell*, 236 F.3d at 1280 (finding that police may ask questions unrelated to the traffic violation while computer license check is in progress).

any counterfeit merchandise, drugs, or dead bodies are the most troubling. To determine whether the 35 seconds it took Deputy McCannon to ask these questions "measurably" extended the duration of the stop, the Court must determine whether these questions prolonged the stop "beyond the time reasonably required to complete the officer's mission."[47] To determine "the amount of 'time reasonably required to complete [the stop's] mission,'" the Court must examine whether an officer can complete the traffic-based tasks "expeditiously."[48]

The Court finds Deputy McCannon's brief questioning occurred while he "expeditiously" completed the warning citation; therefore these unrelated inquiries did not unconstitutionally prolong the stop. McCannon had only been writing the warning citations for 5 minutes and 22 seconds when he began asking these questions. McCannon used 30 seconds of that time to put on his coat. Thus, McCannon had taken only 4 minutes and 52 seconds to ask Defendant necessary questions pertaining to the traffic citations, process the answers, and transfer the answers to the citation form. McCannon lawfully called in his license and registration to dispatch. The 35 seconds McCannon took to ask a few unrelated questions "did not transform the stop into an

[47] *Rodriguez*, 135 S.Ct. at 1614.
[48] *Id.* at 1616 (quoting *Caballes*, 543 U.S. at 407).

unconstitutionally prolonged seizure."[49] Only 6 minutes and 10 seconds elapsed from the time McCannon began writing the citation until Defendant gave his consent to search his vehicle, and it took only 7 minutes and 41 seconds for McCannon to fully complete the citations.

Defendant contends the amount of time Deputy McCannon took to complete the warning citations is patently unreasonable, as he intentionally prolonged processing the citations by questioning Defendant and waiting for answers. There is no "rigid time limitation" applicable to determining whether an investigative detention is unreasonable because "[s]uch a limit would undermine the equally important need to allow authorities to graduate their responses to the demands of any situation."[50] Indeed, "[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."[51] The Eleventh Circuit has found it inappropriate "to adopt a bright-line no prolongation rule,"[52] and *Rodriguez* does not hold otherwise. Neither *Rodriguez* nor the Constitution requires officers to become automatons. "The question is not simply

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[49] *United States v. Griffin*, 696 F.3d 1354, 1362 (11th Cir. 2012) (citations omitted).
[50] *United States v. Sharpe*, 470 U.S. 675, 685 (1985).
[51] *Id.* at 686-87.
[52] *Griffin*, 696 F.3d at 1362.

whether some other alternative was available, but whether the police acted unreasonably in failing to recognize or to pursue it."[53] McCannon did not act unreasonably here.

The "touchstone of the Fourth Amendment is reasonableness,"[54] and the Constitution requires that the entire process remains reasonable.[55] The Court finds the entire process reasonable here. The traffic stop—from the time Defendant came to a stop until consent of the search—took 9 minutes and 3 seconds. During that time, Deputy McCannon diligently investigated the reasons for the stop and expeditiously processed the citations. The unrelated inquiries—lasting only 35 seconds and asked while McCannon simultaneously completed the warning citation—did not "measurably extend the duration of the stop."[56] Defendant's Motion to Suppress is DENIED.

SO ORDERED this 20th day of August, 2015.

S/ C. Ashley Royal
C. ASHLEY ROYAL
United States District Judge

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[53] *Sharpe*, 470 U.S. at 687.
[54] *Florida v. Jimeno*, 500 U.S. 248, 250 (1991).
[55] *Terry v. Ohio*, 392 U.S. 1, 19 (1968) ("The central inquiry under the Fourth Amendment . . . [is] reasonableness in all of the circumstances of the particular government invasion[.]").
[56] *Rodriguez*, 135 S.Ct. at 1615 (citing *Johnson*, 555 U.S. at 333).

NO._____

In the Supreme Court of the United States

ERICKSON CAMPBELL,

PETITIONER-APPELLANT,

v.

UNITED STATES OF AMERICA,

RESPONDENT-APPELLEE.

Appendix C -
Mr. Campbell's Supplemental Brief in Support of Motion to Suppress

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ATHENS DIVISION

UNITED STATES OF AMERICA v. ERICKSON MEKO CAMPBELL, Defendant.	Criminal: 3:14-CR-00046-CAR

ERICKSON MEKO CAMPBELL'S SUPPLEMENTAL BRIEF IN SUPPORT OF HIS "MOTION TO SUPPRESS ILLEGALLY OBTAINED EVIDENCE"

Erickson Meko Campbell ("Mr. Campbell") hereby files this supplemental brief in support of his motion to suppress illegally obtained evidence in this case.[1] The evidence in this case must be suppressed because Deputy McCannon ("McCannon") violated the Constitution when he (1) illegally stopped Mr. Campbell without probable cause or reasonable suspicion that a traffic offense had been committed, and then, (2) illegally prolonged that detention longer than necessary to effectuate the purpose of the traffic stop.[2]

I. MCCANNON ILLEGALLY STOPPED MR. CAMPBELL

The evidence and testimony at the evidentiary hearing showed that McCannon had neither probable cause nor reasonable suspicion that Mr. Campbell committed a traffic violation or was engaged in criminal activity. Specifically, McCannon was not justified in stopping Mr. Campbell for a malfunctioning turn signal in violation of Ga. Code Ann. § 40-8-26, nor failing to maintain

[1] Mr. Campbell filed the underlying "Motion to Suppress Illegally Obtained Evidence and Brief in Support Thereof" ("Motion to Suppress") on March 12, 2015. (Doc. 26). The Government did not file its Response to the Motion to Suppress until April 27, 2015. (Doc. 29). That same day, Mr. Campbell filed his Reply to the Government's Response. (Doc. 30). This Court held an evidentiary hearing on April 29, 2015. (Doc. 32. Any reference to the transcript of the evidentiary hearing will be cited as "MTS Trans. p.#).

[2] Mr. Campbell hereby adopts and incorporates by reference all factual assertions and legal arguments in the Motion to Suppress, the Reply and at the evidentiary hearing. Mr. Campbell specifically requests an additional evidentiary hearing to establish any evidence not already before the Court.

his lane in violation of Ga. Code Ann. § 40-6-48. This Court should suppress any and all evidence obtained as a result of McCannon's December 12, 2013, traffic stop.

First, Georgia law governing the functioning of turn signals is clear. A turn signal must clearly indicate a driver's intention to change lanes and be visible from both the front and rear of the vehicle for a distance of at least 300 feet. § 40-8-26(a), (b). Further, § 40-8-26(b) requires the turn signal to be "maintained in good working condition." A turn signal is maintained in good working condition if it works as the statute requires – clearly indicating an intention to change lanes, and visible from a distance of 300 feet from the front and back of the vehicle. There is no further or other requirement regarding turn signal functioning in § 40-8-26.

McCannon did not have probable cause or reasonable suspicion to believe that a violation of § 40-8-26 was occurring. He saw Mr. Campbell's turn signal blinking "at a very rapid pace." MTS Trans. p. 13. McCannon conceded that a "rapid" blinking turn signal does not necessarily mean that a turn signal is malfunctioning. Id. at 18. In fact, he testified that "at the time when you see a blinker going at a rapid pace, one of the things that it tells you is that the blinker is actually still working." Id. at 18.

And that was the case here. McCannon's testimony that "other than rapid blinking," Mr. Campbell's left turn signal appeared to be working properly amounts to a concession that the lamp "worked" as required by § 40-8-26. Id. at 15, 21. And McCannon recognized as much, telling Mr. Campbell that his turn signal was working after pulling him over. Id. at 20. By contrast, Georgia courts interpreting § 40-8-26 have found a violation of the statute only where a turn lamp has completely failed. See Vaughn v. Pleasent, 266 Ga. 862, 863, 471 S.E.2d 866, 867 (1996) (probable cause to stop for a violation 40-8-26(b) because signal lights were not functioning); State v. Cartwright, 764 S.E.2d 175, 177 (Ga. Ct. App. 2014) (light was not maintained in good working

condition because the light was not functioning); Lancaster v. State, 582 S.E.2d 513, 515 (Ga. Ct. App. 2003) (light was not maintained in good working condition because one of the brake lights was not working); Warren v. State, 561 S.E.2d 190, 194 (Ga. Ct. App. 2002) overruled on other grounds by Maddox v. State, 746 S.E.2d 280 (Ga. Ct. App. 2013) ("improperly activated backup lights would violate OCGA § 40–8–26(b)'s requirement that 'other signal lights ... shall at all times be maintained in good working condition'"); State v. Warren, 530 S.E.2d 515, 516 (Ga. Ct. App. 2000) (same); Stubbs v. State, 387 S.E.2d 619, 620 (Ga. Ct. App. 1989) (lights were not in good working condition because the lights were not operative); Hampton v. State, 652 S.E.2d 915, 916 (Ga. Ct. App. 2007) (probable cause to stop because tag light did not activate); Navicky v. State, 537 S.E.2d 740, 742 (Ga. Ct. App. 2000) (same); Chamberlain v. State, 684 S.E.2d 134, 134 (Ga. Ct. App. 2009) (same); Barnett v. State, 620 S.E.2d 663, 665 (Ga. Ct. App. 2005) (driving with a non-functioning headlight gives an officer probable cause to stop a car); Daniel v. State, 638 S.E.2d 430, 431 (Ga. Ct. App. 2006) (same); Hall v. State, 411 S.E.2d 274, 275 (Ga. Ct. App. 1991) (stop valid where officer observed vehicle operating without taillights); see also Reid v. Henry Cnty., Ga., 568 F. App'x 745, 748 (11th Cir. 2014); United States v. Briscoe, 216 F.3d 1088 (10th Cir. 2000) (break light not in good working order because it "improperly continued to illuminate when the truck was moving"); United States v. Young, 75 F. App'x 118, 120 (4th Cir. 2003) (signal lamp was not in good working order because it was not operational).

Because § 40-8-26 on its face only requires a turn signal to indicate the driver's intention to change lanes and be visible for a distance of 300 feet from the back and the front of the vehicle, any argument that McCannon's stop of Mr. Campbell for a malfunctioning turn signal was reasonable is without merit. See United States v. Alvarado-Zarza, No. 13-50745, 2015 WL 1529102, at *3 (5th Cir. Apr. 6, 2015).

Second, merely touching the fog line, or momentarily drifting over the fog line, does not, by itself, justify a traffic stop – even if it happens more than once. United States v. Hernandez, 17 F.Supp.3d 1255, 1258 (N.D. Ga. 2014) ("[T]ouching the line 'is a factor that may, in combination with other conduct, give rise to probable cause justifying a traffic stop' but that 'in the absence of such additional conduct, the mere touching of the white dashed line between two or more clearly marked lanes is insufficient' by itself to provide a basis for law enforcement to stop the vehicle.") (citing United States v. Bryson, No. 1:13-CR-09-ODE-GGB, 2013 WL 5739055, at *4 (N.D. Ga. Oct. 21, 2013)) (emphasis in original); United States v. Latimore, No. 1:13-CR-287-TCB, 2014 WL 3109183, at *16 (N.D. Ga. July 7, 2014); see also § 40–6–48(1); Acree v. State, 737 S.E.2d 103, 105 (Ga. Ct. App. 2013); Calcaterra v. State, 743 S.E.2d 534, 537 (Ga. Ct. App. 2013); Polk v. State, 700 S.E.2d 839, 841 (Ga. Ct. App. 2010); Semich v. State, 506 S.E.2d 216, 218–19 (Ga. Ct. App. 1998); Allenbrand v. State, 458 S.E.2d 382, 383 (Ga. Ct. App. 1995). Rather, there must be testimony or evidence of additional conduct, that in combination with crossing the fog line, indicates the person's "driving was in reality suspicious, risky, or suggestive of intoxication or an actual lack of control of the car." Hernandez, 17 F.Supp.3d at 1257; Bryson, No. 1:13-CR-09-ODE-GGB, 2013 WL 5739055, at *4; Latimore, No. 1:13-CR-287-TCB, 2014 WL 3109183, at *16; see United States v. Baugh, 71 F. Supp. 2d 1375, 1376 (M.D. Ga. 1999).

Thus, McCannon was not justified in stopping Mr. Campbell for crossing the fog line. He testified that Mr. Campbell crossed the fog line twice; once before McCannon turned on the video camera in his cruiser, and once after. MTS Trans. p. 14, 23, 25. He did not observe, and the cruiser's video camera did not record, any other conduct or driving that objectively gave rise to a reasonable suspicion that Mr. Campbell was driving under the influence or otherwise lacked control of his car. But absent such additional evidence that Mr. Campbell's "driving was in reality

suspicious, risky, or suggestive of intoxication or an actual lack of control of the car," McCannon was not, as a matter of law, justified in stopping Mr. Campbell for failing to maintain his lane. Therefore, any and all evidence obtained via the stop should be suppressed.

II. MCCANNON DETAINED MR. CAMPBELL LONGER THAN NECESSARY TO EFFECTUATE THE PURPOSE OF THE TRAFFIC STOP

Assuming, arguendo, that McCannon justifiably stopped Mr. Campbell, the evidentiary hearing showed that McCannon "exceeded the time needed to handle the matter for which [he] stop[ped]" him, "violat[ing] the Constitution's shield against unreasonable seizures." Rodriguez v. United States, 575 U.S. ___, ___ (2015); United States v. Hardy, 855 F.2d 753, 759 (11th Cir. 1988) (police must "pursue a method of investigation that [is] likely to confirm or dispel [that] suspicion[] quickly, and with a minimum of interference."); see also United States v. Acosta, 363 F.3d 1141, 1146 (11th Cir. 2004).

A traffic stop must be justified by either reasonable suspicion that criminal activity is afoot under Terry v. Ohio, 392 U.S. 1, 21 (1968) or probable cause to believe a traffic violation has occurred under Whren v. United States, 517 U.S. 806, 809–10 (1996). E.g. United States v. Chanthasouxat, 342 F.3d 1271, 1276 (11th Cir. 2003). Further, the scope of a detention for a traffic offense is limited. United States v. Boyce, 351 F.3d 1102, 1106 (11th Cir. 2003); United States v. Perkins, 348 F.3d 965, 970 (11th Cir. 2003) (citing United States v. Purcell, 236 F.3d 1274, 1277 (11th Cir. 2001)); United States v. Pruitt, 174 F.3d 1215, 1221 (11th Cir. 1999); United States v. Tapia, 912 F.2d 1367, 1370 (11th Cir. 1990). The Supreme Court recently discussed the permissible scope of a traffic stop:

> A seizure for a traffic violation justifies a police investigation of that violation. A relatively brief encounter, a routine traffic stop is more analogous to a so-called Terry stop … than to a formal arrest. Like a Terry stop, the 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. Because addressing the

> infraction is the purpose of the stop, [the traffic stop] may last no longer than is necessary to effectuate that purpose. Authority for the seizure thus ends when tasks tied to the traffic infraction are – or reasonably should have been – completed.

Rodriguez, 575 U.S. at __ (slip op., at 5) (citation and punctuation omitted).

And:

> Beyond determining whether to issue a traffic ticket, an officer's mission includes "ordinary inquires incident to [the traffic] stop." Typically such inquires involve checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance.

Id. at __ (slip op., at 6) (citation and punctuation omitted); see also Boyce, 351 F.3d at 1106. The "mission" of the traffic stop also includes minor unrelated inquires that ensure the officer's safety and the safe and responsible operation of vehicles so long as those "unrelated inquiries do not measurably extend the duration of the stop." Rodriguez, 575 U.S. at __ (slip op., at 5-6). Accordingly,

> An officer, in other words, 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 __ (slip op., at 6).

By contrast, investigative measures, including asking questions, aimed at "detecting evidence of ordinary criminal wrongdoing" are outside the mission of the traffic stop and prohibited if they add any time to the traffic stop. Id. at __ (slip op., 6-7) (citing Indianapolis v. Edmond, 531 U.S. 32, 40 – 41 (2000); Florida v. Jardines, 569 U.S. 1, __ - __ (2013) (slip op., at 7-8)) (punctuation omitted). Unlike inquires related to the traffic stop, inquiries into "ordinary criminal wrong doing"

> Lack[] the same close connection to roadway safety as the ordinary inquires, [and are] not fairly characterized as part of the officer's traffic mission.

Rodriguez, 575 U.S. at __ (slip op., at 7). "[O]n-scene investigation[s] into other crimes," that add any time to the traffic stop must be supported by reasonable suspicion of criminal activity separate and distinct from the basis for the traffic stop. Id. at __ (slip op., at 8). Otherwise, they "detour from the[e] mission" of the traffic stop and are prohibited by the Constitution. Id. Similarly, an officer may not take any "safety precaution" or perform any task associated with the mission of the traffic stop if the action's purpose or direct effect of that action adds any time to the stop for reasons unrelated to the traffic stop. Id. at __ (slip op., at 6). Further, law enforcement cannot take any action, even those related to the traffic stop, in an unreasonably dilatory fashion. Id.

> The critical question, then, is not whether [the investigative measure] occurs before or after the officer issues a ticket, [] but whether [the investigative measure] "prolongs" – i.e., adds time to – "the stop."

Id. at __ (slip op., at 8). Absent reasonable suspicion of criminal activity separate and distinct from the traffic violation, investigations unrelated to the mission of the traffic stop violate the Fourth Amendment if they prolong the detention, and any evidence seized as a result of an elongated traffic stop must be suppressed. Id.; Wong Sun v. United States, 371 U.S. 471, 484–85 (1963).

McCannon "exceeded the time needed to handle the matter for which [he] stop[ped]" Mr. Campbell in three ways.

First, assuming McCannon had reasonable suspicion to stop Mr. Campbell for a malfunctioning turn signal and/or failing to maintain his lane, he failed to immediately terminate the traffic stop after determining that Mr. Campbell's front left turn signal was working as required and that Mr. Campbell was not driving under the influence. MTS Trans. p. 15, 18, 21; Motion To Suppress, p. 2. McCannon had no reason to issue Mr. Campbell warning tickets for those alleged offenses, prolonging his detention, because McCannon had already determined there were no traffic violations.

Second, assuming, arguendo, that McCannon had reason to issue Mr. Campbell warning citations for a malfunctioning turn signal and/or failing to maintain his lane, he illegally prolonged the traffic stop by disengaging from writing the warnings and embarking on a fishing expedition aimed at "detecting evidence of ordinary criminal wrongdoing." MTS Trans. p. 44 – 46.[3] This unrelated criminal investigation involved:

(1) Asking Mr. Campbell where he was going. Id. at 35.

(2) Asking Mr. Campbell what area he was going to in Augusta. Id.

(3) Telling Mr. Campbell that he did not know much about Augusta. Id. at 39.

(4) Asking Mr. Campbell if he had the day off from work. Id.

(5) Asking Mr. Campbell if he had the weekend off from work. Id.

(6) Asking Mr. Campbell if he had any firearms. Id. at 40.

(7) Asking Mr. Campbell the last time he received a traffic citation. Id.

(8) Asking Mr. Campbell if he had ever been arrested, when that was, and what the arrest was for.

(9) Having Mr. Campbell explain to Deputy Paquette where he was going in Augusta. Id. at 42.

(10) Having Mr. Campbell explain to Deputy Paquette who he was going to visit in Augusta. Id.

(11) Explaining to Mr. Campbell that he was going to issue him one ticket with two warnings on it. Id. at 43

[3] McCannon testified that he engaged in this unrelated general criminal investigation because Mr. Campbell appeared nervous and was heading to Augusta. MTS Trans. p. 44. Nervousness during a traffic stop coupled with a supposedly suspicious destination is not sufficient to generate reasonable articulable suspicion of criminal activity. Perkins, 348 F.3d at 970; Tapia, 912 F.2d at 1371; Miller, 821 F.2d at 550; Boyce, 351 F.3d at 1109. Further, the video of the stop belies any contention that Mr. Campbell was visibly nervous.

(12) Asking Mr. Campbell if he had any counterfeit merchandise in the car. Id.

(13) Asking Mr. Campbell if he had any counterfeit shoes in the car. Id.

(14) Asking Mr. Campbell if he had any counterfeit CDs in the car. Id. at 44.

(15) Asking Mr. Campbell if he had any pirated DVDs in the car. Id.

(16) Asking Mr. Campbell if he had any counterfeit clothing in the car. Id.

(17) Asking Mr. Campbell if he had any illegal alcohol in the car. Id.

(18) Asking Mr. Campbell if he had any drugs in the car. Id.

(19) Asking Mr. Campbell if he had a dead body in the trunk of his car. Id.

(20) Asking Mr. Campbell for consent to search his car. Id.

McCannon testified that each of these questions were unrelated to the mission of the traffic stop and, importantly, admitted that each time he asked one of them he stopped writing the warnings to evaluate Mr. Campbell's answer. Id. at 35, 39, 40, 41 42, 44, 46. But the Supreme Court made clear, while McCannon was permitted to ask unrelated questions while writing the warning tickets, he could not do so in a way that measurably extended the stop. Rodriguez, 575 U.S. at __ (slip op., at 5 – 6, 8) ("The seizure remains lawful only so long as unrelated inquires do not measurably extend the duration of the stop.") (citation and punctuation omitted).

Third, McCannon did not have reasonable suspicion of separate criminal activity to detain Mr. Campbell after he determined that Mr. Campbell did not have a malfunctioning turn signal and was not driving while impaired. McCannon cited two factors that made him suspicious of Mr. Campbell: (1) that Mr. Campbell appeared nervous, and (2) that Mr. Campbell's destination was Augusta, Georgia. MTS Trans. p. 44. McCannon's description of his suspicion of Mr. Campbell was the same throughout the stop. McCannon testified that he was suspicious of Mr. Campbell because Mr. Campbell was nervous. Id. McCannon's description of Mr. Campbell's nervousness

was not only exceptionally general, vague and nondescript; it was contradicted by the video captured by his dashcam, in which Mr. Campbell may be seen calmly answering each of McCannon's questions. More importantly, even if Mr. Campbell's demeanor betrayed nervousness, the Eleventh Circuit has held that nervousness "cannot support a legitimate inference of further illegal activity that rises to the level of objective, reasonable suspicion required under the Fourth Amendment." Perkins, 348 F.3d at 970; Tapia, 912 F.2d at 1371 ("being visibly nervous or shaken during a confrontation with a state trooper . . . do[es] not provide a minimal, particularized basis for a conclusion of reasonable suspicion); United States v. Miller, 821 F.2d 546, 550 (11th Cir. 1987) (The Supreme Court "has noted that a traffic stop is an 'unsettling show of authority' that may 'create substantial anxiety.'") (citation omitted).

Likewise, Mr. Campbell's Augusta destination was not sufficient to create reasonable suspicion of criminal activity. E.g. Boyce, 351 F.3d at 1109. Driving east on I-20 to Augusta "would likely apply to a considerable number of those traveling for perfectly legitimate purposes" and simply "do[es] not reasonably provide suspicion of criminal activity," even in tandem with Mr. Campbell's hypothesized nervousness. Id. (citation and punctuation omitted).

McCannon engaged in a general criminal investigation in the absence of any reasonable suspicion of criminal activity by asking Mr. Campbell (at least) twenty questions unrelated to the mission of the traffic stop and stopped writing the warnings to evaluate Mr. Campbell's responses when he did so. He "exceeded the time needed to handle the matter for which [he] stop[ped]" Mr. Campbell, "violat[ing] the Constitution's shield against unreasonable seizures." Therefore, any and all evidence obtained from Mr. Campbell's seizure should be suppressed.

Respectfully submitted, this 13th day of May, 2015.

S/ *Christina L. Hunt*
CHRISTINA L. HUNT
Ga. Bar No.: 378501

s/ *Jared Scott Westbroek*
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CERTIFICATE OF SERVICE

I, Christina L. Hunt, hereby certify that on April 27, 2015, I electronically filed "***ERICKSON MEKO CAMPBELL'S SUPPLEMENTAL BRIEF IN SUPPORT OF HIS 'MOTION TO SUPPRESS ILLEGALLY OBTAINED EVIDENCE'***" with the clerk of Court using the CM/ECF system which will send notification of such to all counsel of record.

Respectfully submitted, this 13th day of May, 2015.

S/ *Christina L. Hunt*
CHRISTINA L. HUNT
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NO._____

In the Supreme Court of the United States

ERICKSON CAMPBELL,

PETITIONER-APPELLANT,

v.

UNITED STATES OF AMERICA,

RESPONDENT-APPELLEE.

Appendix D -
United States of America's Supplemental Brief in Opposition to Defendant's Motion to Suppress

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
ATHENS DIVISION

UNITED STATES OF AMERICA	:	
	:	**CRIM. NO. 3:14-CR-00046-CAR-CHW-1**
vs.	:	
	:	
ERICKSON MEKO CAMPBELL	:	
	:	
Defendant	:	
	:	

UNITED STATES OF AMERICA'S SUPPLEMENTAL BRIEF IN OPPOSITION TO DEFENDANT'S MOTION TO SUPPRESS

COMES NOW the United States of America, by and through its attorney, the United States Attorney for the Middle District of Georgia, and pursuant to the Court's Order files this supplemental brief in opposition to the Defendant's Motion to Suppress, Defendant's Reply to the Government's Response, and Defendant's Supplemental Brief. Doc. 26; Doc. 30; Doc. 35.

I. Procedural History

Erickson Meko Campbell was indicted on August 13, 2014, for possession of a firearm by a convicted felon, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). Indict., Doc. 1. Campbell filed a Motion to Suppress on March 12, 2015. Doc. 26. The United States filed its response in opposition to Campbell's motion on April 27, 2015. Resp. to Def.'s Mot., Doc. 29. That same day, Campbell filed a reply to the United States' response. Doc. 30. On April 29, 2015, the Court held a hearing regarding the motion to suppress and gave the parties the option of filing a brief by May 13, 2015. Suppress. Hr'g, Doc. 32. Campbell filed a supplemental brief on May 13, 2015. Def.'s Supp. Br., Doc. 35.

The Court directed, on June 12, 2015, that counsel file a supplemental brief within ten days discussing whether *Davis v. United States,* 131 S. Ct. 2419 (2011), applies to the facts of this case. Three days later, the Court extended the deadline to July 10, 2015.

Pursuant to the Court's direction, the United States files this supplemental brief. In Part II of the brief, the United States puts forth the pertinent facts. Next, in Part III, the United States

gives a detailed response to the Court's inquiry concerning *Davis*. Lastly, in Part IV, the United States addresses Campbell's other challenges.

II. Statement of the Facts

On December 12, 2013, at approximately 8:54 PM, Deputy Sheriff Robert McCannon (hereinafter "Deputy McCannon") of the Greene County Sheriff's Department observed a grey Nissan Maxima traveling on I-20 veer outside its lane of travel, by crossing the fog line near mile marker 133. Suppress. Hr'g., Doc. 32 at 14-15, 23; Warning Ticket, Ex. D-1. Deputy McCannon activated his video camera (hereinafter "dash cam") to attempt to capture any further traffic violations the Nissan made. Doc. 32 at 23; Dash Cam, Ex. G-1. The driver again crossed the fog line at mile marker 135. Doc. 32 at 25; Ex. D-1. The driver's left blinker then began flashing brightly at a rapid pace, suggesting a malfunction. Doc. 32 at 13-14, 26; Ex. G-1 at 1:03.[1] Shortly after, the driver veered towards the fog line at mile marker 136. Ex. D-1. Deputy McCannon ran the Nissan's tag and learned that the vehicle belonged to Erickson Meko Campbell (hereinafter "Campbell") of McDonough, Georgia. Ex. G-1, at 2:04-17. Dispatch also informed Deputy McCannon that Campbell was an "active felon." Ex. G-1, at 2:12-17. Deputy McCannon initiated a traffic stop based on Campbell's violations of O.C.G.A. § 40-6-48, failure to maintain lane, and O.C.G.A. § 40-8-26, failure to maintain signal light in good working condition. Doc. 32 at 12; Ex. D-1.

Deputy McCannon approached the Nissan from the passenger side and requested Campbell's driver's license. Doc. 32 at 27; Ex. G-1, at 3:30. Deputy McCannon observed that Campbell was breathing heavily. Doc. 32 at 44-45. Campbell's hands noticeably shook as he handed the deputy his license. *Id.*

Deputy McCannon explained that he stopped Campbell for failing to maintain his lane multiple times and for the malfunctioning signal light. *Id.* at 14-15, 19-20. He then asked

[1] The clock on the dash cam began to run once Deputy McCannon activated it. The time shown on the video refers to the actual duration the camera was running, rather than the time of day. Doc. 32 at 27-28.

Campbell to activate his left turn signal, which showed that the green arrow on the Nissan's dashboard was flashing rapidly. Doc. 32 at 15, 21; Ex. G-1 at 3:49. Campbell confirmed that he saw his blinker flashing in a rapid manner. Ex. G-1 at 3:49. Deputy McCannon informed him that generally when a bulb flashes in a bright, rapid manner, it means that there is a bulb out somewhere on the vehicle, or that particular bulb is about to expire. Doc. 32 at 13-14, 18; Ex. G-1 at 3:49. Deputy McCannon asked Campbell to turn on the passenger side turn signal, which blinked at a markedly slower speed. Doc. 32 at 21. He asked if Campbell saw the difference, and Campbell replied that he did. *Id.*

Believing the turn signal's bulb was likely to burn out, Deputy McCannon asked Campbell where he was headed. Doc. 32 at 55; Ex. G-1 at 4:44. Campbell informed Deputy McCannon he was headed to Augusta, Georgia, to visit his family for the weekend. Doc. 32 at 35; Ex. G-1 at 4:44, 6:15, 7:01. Deputy McCannon requested that Campbell exit his vehicle to come to the front of the patrol car so that he could issue warning tickets. Doc. 32 at 57; Ex. G-1 at 5:27. Because it was cold outside, he asked if Campbell needed to grab his jacket from his back seat. Doc. 32 at 45-46; Ex. G-1 at 5:30. Campbell declined. *Id.* Deputy McCannon told Campbell about how his fellow officers liked to make fun of him for wearing a short-sleeved uniform during the wintertime. Ex. G-1 at 5:34.

Immediately after Campbell exited the vehicle, Deputy McCannon began to write the warning tickets. Doc. 32 at 27, 47, 54; Ex. G-1 at 5:53. While Deputy McCannon was writing the warnings, they engaged in small talk about the weather and Campbell's travel plans. Doc. 32 at 35, 47-48. Campbell asked, "Has there been a lot of rain down your way?" Ex. G-1 at 6:03. Deputy McCannon affirmatively replied as he continued to input information on the citation. *Id.* Campbell also informed the deputy that his family lived near the Krispy Kreme in Augusta. Ex. G-1 at 7:01. The deputy was familiar with the general area that Campbell was headed because it is known for drug trafficking and high crime rates. Doc. 32 at 35, 44-45, 55-56.

Deputy McCannon paused to retrieve his jacket from his patrol car because it was a lot colder than he initially thought. Doc. 32 at 36; Ex. G-1 at 7:50. Noticing that Campbell's driver's

license was going to expire at the end of the month, Deputy McCannon made sure that Campbell was aware of the expiration date. Ex. G-1 at 8:14. After putting on his jacket, Deputy McCannon continued to write the warning and asked Campbell if he was traveling with a firearm. Doc. 32 at 40. Campbell replied that he was not traveling with a firearm. *Id.*

Approximately nine minutes into the stop, Sergeant Patrick Paquette (hereinafter "Sgt. Paquette") arrived on the scene. Ex. G-1 at 9:16. Deputy McCannon asked Campbell when he last received a traffic ticket. Ex. G-1 at 9:22. Campbell stated he received a traffic ticket about four years ago. Doc. 32 at 40; Ex. G-1 at 9:22. Deputy McCannon then ran a check on Campbell's driver's license to see if the license was valid or if Campbell had any warrants out for his arrest. Doc. 32 at 29-30; Ex. G-1 at 9:30. While simultaneously waiting on dispatch to respond to his request, and continuing to write the warning tickets, Deputy McCannon asked whether Campbell had been arrested. Doc. 32 at 29-30; Ex. G-1 at 9:44. Campbell stated that he was arrested about fourteen or fifteen years ago for a DUI. Ex. G-1 at 9:44-55. Campbell attempted to tell Sgt. Paquette, an Augusta, Georgia, native, where he was traveling and the name of the apartment complex where his family lived. Doc. 32 at 30; Ex. G-1 at 10:33-55. Campbell could not remember the exit number he usually takes, nor could he recall the full name of the apartment complex where his family lived. Ex. G-1 at 10:33-55. Sgt. Paquette suggested the actual name of the apartment complex, and Campbell confirmed that name was correct. Ex. G-1 at 10:33-55. Sgt. Paquette knew that the apartment was located in a high crime area. Doc. 32 at 46. While observing Campbell's conduct, Deputy McCannon noticed that Campbell was nervous to the point that he was afraid to look the deputy in the eyes. Doc. 32 at 44-46, 48, 55. He additionally noted that Campbell repeatedly looked towards the rear of his vehicle. *Id.* at 46.

After observing Campbell's nervousness and lapse in memory, and recognizing the high criminal activity in the Augusta area where Campbell was headed, Deputy McCannon asked a series of questions regarding counterfeit merchandise, marijuana, cocaine, methamphetamine, ecstasy, and heroin. Doc. 32 at 43-47; Ex. G-1 at 11:20-45. Campbell denied that he was traveling with any of the aforementioned items. Ex. G-1 at 11:20-45. After Campbell's negative

responses, Deputy McCannon requested consent to search Campbell's vehicle. Doc. 32 at 30-31; Ex. G-1 at 11:50. Campbell nodded his head and affirmatively responded, "Yeah." Doc. 32 at 31, 32, 47, 50, 54; Ex. G-1 at 11:58. Approximately eight minutes elapsed from the time McCannon first approached Campbell's car until the time that Campbell consented to the search. Ex. G-1 at 3:30 to 11:58. Approximately six minutes elapsed between the time Campbell exited his vehicle and consented to the search. Doc. 32 at 57; Ex. G-1 at 5:27 to 11:58.

At the time of Campbell's consent, Deputy McCannon was still writing the warning tickets. Doc. 32 at 31; Ex. G-1 at 11:58. For his safety, Sgt. Paquette executed a pat-down and found that Campbell had a large booklet of lottery tickets, similar to those found behind the counter at gas stations. Doc. 32 at 32, Ex. G-1 at 12:05. One minute and eight seconds after Campbell gave consent, Sgt. Paquette began to search his vehicle so Deputy McCannon could finish issuing the warning tickets. Doc. 32 at 31-34; Ex. G-1 at 13:10. While Sgt. Paquette searched Campbell's vehicle, Deputy McCannon assured Campbell that there would be no fine for the warning, and he returned Campbell's license and lottery tickets. Ex. G-1 at 13:10-30. Deputy McCannon then requested Campbell sign the warnings, and Campbell complied. *Id.* at 13:30-47. After getting Campbell's signature, the deputy handed him a copy of the written warnings. Doc. 32 at 32, 33, 49, 50; Ex. G-1 at 14:00.

From the stop to Campbell's consent, eight minutes and twenty-eight seconds passed. Doc. 32 at 57; Ex. G-1 at 3:30 (McCannon approaches vehicle) to Ex. G-1 at 11:58 (Campbell gives consent). The total duration of the stop for purposes of addressing Campbell's traffic violations was ten minutes and eleven seconds. Ex. G-1, 3:30 (McCannon approaches vehicle) to Ex. G-1 at 13:41 (Campbell signs warning ticket).

After handing over the written warnings, Deputy McCannon proceeded to assist Sgt. Paquette with the search of the vehicle. Doc. 32 at 34. As Deputy McCannon released the lever to push the vehicle's back seats down, an area of the trunk was exposed. *Id.* He noticed a bulge in the carpet. *Id.* at 34-35. After lifting the carpet, he found a Michael Jordan bag. *Id*. Within the bag, Deputy McCannon found a 9mm pistol, ammunition, a black stocking cap, and a

camouflage ski mask. Doc. 32 at 33, 35; Ex. G-1 at 19:56. Believing that the booklet of lottery tickets, and the vehicle's contents were consistent with a possible armed robber, Deputy McCannon handcuffed Campbell, had dispatch run his criminal history, and read him his *Miranda* rights. Ex. G-1 at 19:56 to 21:26. Campbell nodded affirmatively that he understood his rights. *Id.* at 21:26. Deputy McCannon asked Campbell why he lied about the firearm. *Id.* at 22:00. Campbell stated that he was previously convicted of armed robbery and served fourteen years in prison. *Id.* at 22:15. Deputy McCannon placed Campbell in the rear of his patrol car. *Id.* at 24:30.

III. United States' Response to Court's *Davis* Inquiry

The United States will show that the good-faith exception is not implicated because the stop did not violate Campbell's Fourth Amendment rights. If this Court should find a Fourth Amendment violation, however, the Court should apply the good-faith exception.

A. The Court need not inquire whether *Davis* applies because there was no violation of Campbell's Fourth Amendment rights.

This Court need not consider whether to apply the good-faith exception because the traffic stop was lawfully conducted. The Supreme Court's decision in *Rodriguez v. United States*, 135 S. Ct. 1609 (2015), did not alter controlling Supreme Court or Eleventh Circuit authority as to the right of an officer to ask questions during the course of a lawful stop. As a result, Deputy McCannon's questioning of Campbell did not unreasonably intrude on Campbell's Fourth Amendment rights because the stop was not measurably extended by the questions.

In April 2015, the Supreme Court held that absent reasonable suspicion, police officers may not extend an otherwise completed traffic stop in order to conduct a dog sniff. *Rodriguez*, 135 S. Ct. at 1614-17. The Supreme Court vacated and remanded the Eighth Circuit's decision, which held that the seven or eight-minute delay between the time the officer issued the written traffic warning and the time he employed his drug dog was a permissible *de minimus* extension of the traffic stop. *United States v. Rodriguez,* 741 F.3d 905 (8th Cir. 2014), *cert. granted,* 135 S.

Ct. 43 (2014). In reversing the Eighth Circuit, the Supreme Court reaffirmed that a seizure, such as a traffic stop, justified only by a police-observed traffic violation, becomes unlawful when it exceeds the time reasonably required to handle the matter for which the stop was made. *Rodriguez*, 135 S. Ct. at 1612.

Relying on *Rodriguez*, Campbell contends that any questions unrelated to the stop unreasonably extend the duration of the stop. Doc. 30 at 6-8; Doc. 32 at 5. Campbell's argument presents an unreasonable extension of the holding in *Rodriguez*, however. The decision in *Rodriguez* does not overrule the Supreme Court's past landmark decisions, which hold that it is constitutional to conduct unrelated investigations during a traffic stop, such as by questioning the suspect or performing a dog sniff, so long as they do not unreasonably lengthen the roadside detention. *See e.g. Arizona v. Johnson*, 555 U.S. 323, 333-34 (2009) (unrelated questions); *Illinois v. Caballes,* 543 U.S. 405, 409 (2005) (dog sniff).

In *Johnson,* the Supreme Court found that "[a]n officer's inquiries into matters unrelated to the justification for the traffic stop . . . do not convert the encounter into something other than a lawful seizure, so long as those inquiries do not *measurably* extend the duration of the stop." *Johnson*, 555 U.S. at 33 (emphasis added). Applying *Johnson*, the Eleventh Circuit reached a similar conclusion in *United States v. Griffin*, 696 F.3d 1354, 1361 (11th Cir. 2012). In *Caballes*, the Supreme Court held that a traffic stop "justified solely by the interest in issuing a warning ticket to a driver can become unlawful if it is prolonged beyond the time reasonably required to complete that mission." *Caballes,* 543 U.S. at 407. The Court found in *Caballes*, however, that the use of a drug dog during a legitimate traffic stop was proper where the use of the drug dog did not improperly extend the duration of the stop. *Id.* at 407-09. *See also United States v. Holt,* 777 F.3d 1234, 1256-57 (11th Cir. 2015) (holding that during the course of a lawful traffic stop, an officer does not need any level of suspicion of criminal activity to conduct a canine sniff while officers are performing routine record checks and preparing the traffic citations), *petition for cert. filed*, (U.S. June 29, 2015) (No. 14-10103).

Furthermore, *Rodriguez* did not overrule Supreme Court precedent that permits police officers to ask questions unrelated to the initial purpose of the stop, so long as they do not prolong the time reasonably required to complete the initial mission. *Muehler v. Mena,* 544 U.S. 93, 101 (2005) (internal quotations and citations omitted). *See also Florida v. Bostick,* 501 U.S. 429, 434 (1991) (mere questioning is neither a search nor a seizure); *United States v. Hernandez,* 418 F.3d 1206, 1209 n.3 (11th Cir. 2005) (explaining that "[w]hen an officer is, for instance, looking at a driver's license or waiting for a computer check of registration, he can lawfully at about the same time also ask questions—even questions not strictly related to the traffic stop" as long as such questioning does not unreasonably extend the duration of the stop); *United States v. Purcell,* 236 F.3d 1274, 1279 (11th Cir. 2001) (holding that a request for criminal histories does not constitute a Fourth Amendment violation, so long as they do not prolong the traffic stop beyond a reasonable amount of time under the circumstances of the stop). Recent unpublished decisions of this Court also apply these principles. *See e.g., United States v. Moore,* 570 F. App'x. 848, 850 (11th Cir. 2014); *United States v. Burrows,* 564 F. App'x. 486, 490 (11th Cir. 2014); *United States v. Peguero,* 518 F. App'x. 792, 795 (11th. Cir. 2013); *United States v. Chatman*, 342 F. App'x 555, 557-58 (11th Cir. 2009).

Here, the Court need not consider the good-faith exception under *Davis* because *Rodriguez* did not change the law and Deputy McCannon's handling of the stop was consistent with Supreme Court and Eleventh Circuit Fourth Amendment principles. Deputy McCannon's questions to Campbell did not measurably extend the stop. The total duration of the stop for purposes of addressing Campbell's traffic violations was ten minutes and eleven seconds. Ex. G-1, 3:30 (McCannon approaches vehicle) to Ex. G-1 at 13:41 (Campbell signs warning ticket). Approximately eight minutes passed from the start of the stop to when Campbell waived his Fourth Amendment rights by consenting to the search. Doc. 32 at 57; Ex. G-1 at 3:30 (McCannon approaches vehicle) to Ex. G-1 at 11:58 (Campbell gives consent). During that eight-minute period, Deputy McCannon and Campbell engaged in conversation concerning

topics related and unrelated to the traffic stop while McCannon prepared the warning tickets. Doc. 32 at 48; Ex. G-1 at 3:30 to 11:58.

For example, Deputy McCannon explained that he stopped Campbell for failing to maintain his lane multiple times and for the malfunctioning signal light. *Id.* at 14-15, 19-20. Believing the turn signal's bulb was likely to burn out, Deputy McCannon asked Campbell where he was headed. Doc. 32 at 55; Ex. G-1 at 4:44. Campbell informed Deputy McCannon he was headed to Augusta, Georgia, to visit his family for the weekend. Doc. 32 at 35; Ex. G-1 at 4:44, 6:15, 7:01.

After approximately two minutes, Deputy McCannon requested that Campbell exit his vehicle to come to the front of the patrol car. Doc. 32 at 57; Ex. G-1 at 5:27. Immediately after Campbell exited the vehicle, Deputy McCannon began to write the warning tickets. Doc. 32 at 27, 47, 54; Ex. G-1 at 5:53. Deputy McCannon paused to retrieve his jacket from his patrol car because it was a lot colder than he initially thought. Doc. 32 at 36; Ex. G-1 at 7:50. Noticing that Campbell's driver's license was going to expire at the end of the month, Deputy McCannon made sure that Campbell was aware of the expiration date. Ex. G-1 at 8:14. After putting on his jacket, Deputy McCannon continued to write the warning and asked Campbell if he was traveling with a firearm. Doc. 32 at 40. Campbell replied that he was not traveling with a firearm. *Id.*

Deputy McCannon called in Campbell's driver's license to check if the license was valid or if Campbell had any warrants out for his arrest. Doc. 32 at 29-30; Ex. G-1 at 9:30. While simultaneously waiting on dispatch to respond to his request, and continuing to write the warning tickets, Deputy McCannon asked a series of questions regarding counterfeit merchandise, marijuana, cocaine, methamphetamine, ecstasy, and heroin. Doc. 32 at 43-47; Ex. G-1 at 11:20-45. After receiving negative responses from Campbell, Deputy McCannon requested consent to search Campbell's vehicle. Doc. 32 at 30-31; Ex. G-1 at 11:50. Campbell nodded his head and affirmatively responded, "Yeah." Doc. 32 at 31, 32, 47, 50, 54; Ex. G-1 at 11:58.

Although the deputy asked Campbell questions during the stop, the entire eight-minute period was necessary for Deputy McCannon to address the initial purposes of the stop and, therefore, the stop was not measurably extended, and no Fourth Amendment violation occurred.

B. Alternatively, Davis' good faith exception to the exclusionary rule is triggered if the Court adopts Campbell's narrow reading of *Rodriguez*.

The United States maintains that no Fourth Amendment violation occurred. If the Court finds a Fourth Amendment violation, however, this Court should decline to employ the exclusionary rule, consistent with the decision of the Supreme Court in *Davis v. United States*, 131 S. Ct. 2419 (2011). Here, as in *Davis*, Deputy McCannon acted with an objectively reasonable, good faith belief that his questioning of Campbell was lawful.

Campbell argues that any questions asked by Deputy McCannon that were unrelated to the stop, unreasonably extended the duration of the stop. Doc. 30 at 6-8; Doc. 32 at 5. If the Court adopts Campbell's expansive reading of *Rodriguez*, that standard would be in conflict with Supreme Court and Eleventh precedent. As discussed previously, there is binding appellate precedent which holds that it is permissible for an officer to ask unrelated questions while effectuating the stop, so long as the stop is not measurably or unreasonably prolonged by such inquiries. *See e.g., Johnson,* 555 U.S. at 333 ("An officer's inquiries into matters unrelated to the justification for the traffic stop . . . do not convert the encounter into something other than a lawful seizure, so long as those inquiries do not *measurably* extend the duration of the stop"); *Muehler,* 544 U.S. at 101 (reaffirming that police can ask questions unrelated to the stop so long as the questions do not prolong the time reasonably required to complete the mission); *Bostick,* 501 U.S. at 434 (mere questioning is neither a search nor a seizure); *United States v. Hernandez,* 418 F.3d 1206, 1209 n.3 (11th Cir. 2005) (explaining that "[w]hen an officer is, for instance, looking at a driver's license or waiting for a computer check of registration, he can lawfully at about the same time also ask questions—even questions not strictly related to the traffic stop" as long as such questioning does not unreasonably extend the duration of the stop); *United States v. Purcell,* 236 F.3d 1274, 1279 (11th Cir. 2001) (holding that a request for criminal histories does

not constitute a Fourth Amendment violation, so long as they do not prolong the traffic stop beyond a reasonable amount of time under the circumstances of the stop).

Despite clear precedent to the contrary, Campbell contends that after *Rodriguez*, an officer cannot ask unrelated questions during an otherwise lawful traffic stop in any manner that adds time to the stop, absent reasonable suspicion of other criminal activity. *See* Doc. 30 at 7. Should the Court adopt Campbell's interpretation, and find that the duration of Campbell's traffic stop was unconstitutionally prolonged, exclusion of the evidence does not necessarily follow as a remedy. *Davis,* 131 S. Ct. at 2431. Suppression of the evidence is not warranted where the requirements of the good-faith exception to the exclusionary rule are met.

In *Davis*, the Court declined to apply the exclusionary rule where the police conducted a search in objectively reasonably reliance on binding judicial precedent. *Davis*, 131 S. Ct. at 2429. Similarly, in this case, binding appellate precedent specifically authorized the kinds of questions that Deputy McCannon asked during the course of the traffic stop, and he acted as a reasonable officer would act under the circumstances. Consistent with the decision in *Davis*, therefore, this Court should refuse to apply the "harsh sanction of exclusion" to the evidence obtained during the search of Campbell's car. *Davis,* 131 S. Ct. at 2429.

When police act with an objectively reasonable good faith belief that their conduct is lawful, the deterrence value of the exclusionary rule is weak. *Davis*, 131 S. Ct. at 2427. Deputy McCannon did not exhibit a deliberate, reckless, or grossly negligent disregard for Campbell's Fourth Amendment rights, *Davis,* 131 S. Ct. at 2427, thus application of the exclusionary rule would not deter police misconduct—a function of the exclusionary rule. *Davis,* 131 S. Ct. at 2432 (reaffirming that the "sole purpose of the exclusionary rule is to deter misconduct by law enforcement"). Other decisions of the Supreme Court and the Eleventh Circuit support a limited application of the exclusionary rule. *See, e.g.*, *Herring v. United States,* 555 U.S. 135, 136 (2009) ("To trigger the exclusionary rule, police conduct must be sufficiently deliberate that exclusion can meaningfully deter it, and sufficiently culpable that such deterrence is worth the price paid by the justice system."); *Holt,* 777 F.3d 1234 (holding that even if new appellate

precedent deemed the warrantless search unreasonable, the good-faith exception to the exclusionary rule applied because the search was lawful at the time it was executed); *United States v. Ransfer,* 749 F.3d 914 (11th Cir. 2014) (finding that good faith reliance on then-binding Supreme Court precedent warranted the application of the good-faith exception).

Here, suppressing the evidence Deputy McCannon obtained during the traffic stop will not deter future police misconduct, seeing as his conduct was lawful at the time. Evidence Deputy McCannon discovered at the traffic stop included a 9mm pistol, ammunition, a black stocking cap, a camouflage ski mask, and a booklet of lottery tickets. Doc. 32 at 33, 35; Ex. G-1 at 19:56. Campbell is a convicted felon with a history of convictions involving the use or possession of firearms, including armed robbery. The substantial costs of ignoring the trustworthy evidence—that the defendant illegally possessed a firearm and other materials consistent with the behavior of a person who could have committed or may commit an armed robbery—undoubtedly outweigh the severe sanction of exclusion. Accordingly, this Court should find that suppression is not warranted pursuant to the good-faith exception to the exclusionary rule.

IV. United States' Response to Other Issues Raised by Campbell

Deputy Sheriff McCannon legally stopped Campbell because he had probable cause to believe a traffic violation occurred. A traffic stop is reasonable when the officer conducting the stop has probable cause to believe that the defendant has violated a traffic law. *United States v. Harris,* 526 F.3d 1334, 1337 (11th Cir. 2008). Under Georgia law, it is a traffic violation to operate a vehicle when its signal lights fail to be maintained in a good working condition or when such lights project a glaring or dazzling light. O.C.G.A. §40-8-26 (2013). Additionally, failing to drive a vehicle, as nearly as practicable, entirely within a single lane is a traffic violation. O.C.G.A. §40-6-48 (2013).

A. Campbell's malfunctioning turn signal provided a proper basis for the traffic stop.

O.C.G.A. § 40-8-26 states, "When a vehicle is equipped with a brake light or other signal lights such light or lights shall at all times be maintained in good working condition." O.C.G.A. § 40-8-26(b). Campbell contends that Deputy McCannon did not have cause to stop his vehicle because the turn signal was in good working condition. Doc. 26 at 5. He argues that it was in good working condition because it was "visible from both the front and rear of his car for a distance of at least 300 feet." *Id.*

Campbell's interpretation is erroneous, however, because it renders the remaining statutory language in O.C.G.A. § 40-8-26(b) utterly superfluous. *See* O.C.G.A. § 40-8-26(b).[2] *See also Dole Food Co. v. Patrickson,* 538 U.S. 468, 476-77 (2003) ("Absent a statutory text or structure that requires us to depart from normal rules of construction, we should not construe the statute in a manner that is strained and, at the same time, would render a statutory term superfluous."). Here, the defendant's contention that "good working condition" means that the light is working in some way or manner, renders the term "good" superfluous. Using the ordinary tools of statutory construction, the plain meaning of the term "good working condition" is that the signal not only works, the turn signal must work properly. *See Merriam-Webster,* Encyclopedia Britannica Company (2015), http://www.merriam-webster.com/dictionary/good (defining "good" as being "of high quality" and being "correct or proper").

Here, Deputy McCannon observed that Campbell's left blinker malfunctioned by brightly flashing at a rapid pace. Following plain language and common sense notions, a turn signal is in good working condition when it operates as it was designed, blinking in a steady manner. Deputy

[2] O.C.G.A. §40-8-26(b) states that:

> Every brake light shall be plainly visible and understandable from a distance of 300 feet to the rear both during normal sunlight and at nighttime, and every signal light or lights indicating intention to turn shall be visible and understandable during daytime and nighttime from a distance of 300 feet from both the front and the rear. *When a vehicle is equipped with a brake light or other signal lights, such light or lights shall at all times be maintained in good working condition. No brake light or signal light shall project a glaring or dazzling light.*

Id. (emphasis added).

McCannon's observation of the rapidly blinking light amounted to probable cause because it was reasonable for Deputy McCannon to believe that the signal was not maintained in good working condition.

B. Campbell's failure to maintain lane justified the traffic stop.

Deputy McCannon also had probable cause to believe that the defendant violated O.C.G.A. § 40-6-48(1). Georgia courts have consistently held that a traffic stop is justified when the driver weaves without reason into nearby lanes because it is a violation of O.C.G.A § 40-6-48(1). *Barlow v. State*, 327 Ga. App. 719, 723 n.2 (Ga. Ct. App. 2014). *See also Steinberg v. State*, 286 Ga. App. 417, 419 (Ga. Ct. App. 2007); *Rayo-Leon v. State*, 281 Ga. App. 74, 75 (Ga. Ct. App. 2006); *Worsham v. State,* 251 Ga. App. 774, 775-76 (Ga. Ct. App. 2001) (officer authorized to initiate traffic stop after observing driver fail to maintain lane); *Davis v. State*, 236 Ga. App. 32, 33 (Ga. Ct. App. 1999) (behavior giving rise to reasonable suspicion need not be a violation of law; police can stop drivers driving in an erratic manner – even if simply weaving within a lane); *Semich v. Stat*e, 234 Ga. App. 89, 91-92 (Ga. Ct. App. 1998).

Campbell relies on a line of Georgia cases holding that touching the fog line requires some additional conduct to equate to probable cause. These cases are inapplicable here because an officer need not observe additional conduct when the driver actually weaves outside of the lane of travel. *See Rayo-Leon,* 281 Ga. App. at 75 (holding that "weaving without reason into nearby lanes violates O.C.G.A. § 40-6-48 (1) and justifies a stop"); *United States v. Hernandez,* 17 F. Supp. 3d 1255, 1258 (N.D. Ga. 2014) (discussing touching the line, not when a vehicle actually crosses the line). *See also, Barlow*, 327 Ga. App. at 723 n.2; *Steinberg,* 286 Ga. App. at 419; *Worsham,* 251 Ga. App. 775-76; *Davis,* 236 Ga. App. at 33.

Furthermore, Campbell's contention that the video does not show his vehicle failed to maintain its lane is without merit. In *Steinberg,* the defendant claimed that the officer's dash cam did not show that his vehicle crossed or touched the line and, therefore, the officer did not witness a traffic violation. 286 Ga. App. at 419. There, as here, the deputy sheriff's testimony at

the motion to suppress hearing supported the finding that the defendant twice veered outside of his lane, and the defendant's argument was rejected. *Id.*

Deputy McCannon provided credible testimony to support a finding that Campbell's car traveled outside of its lane of travel at mile markers 133 and 135. Doc. 32 at 14-15, 23, 25. After he witnessed Campbell's car veer outside of the lane at mile marker 133, Deputy McCannon turned on his dash cam. Doc. 32 at 23. In addition to his sworn testimony, Deputy McCannon's dashboard camera further corroborates that Campbell operated his car in a distracted fashion, weaving over, away from and towards the fog line. Ex. G-1 at 0:01- 2:04. These facts alone are enough to establish that probable cause existed to justify the traffic stop. *See Steinberg* 286 Ga. App. at 419. As a result, this Court should reject Campbell's argument that Deputy McCannon lacked probable cause to justify the stop of his vehicle.

CONCLUSION

For the above and foregoing reasons, the defendant's motion to suppress should be denied.

Respectfully submitted, this 10th day of July, 2015

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CERTIFICATE OF SERVICE

I, GRAHAM THORPE, Assistant United States Attorney, hereby certify that on the 10th day of July, 2015, I filed the within and foregoing ***Supplemental Brief in Response to Defendant's Motion to Suppress*** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all parties of record.

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