

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 18-2244

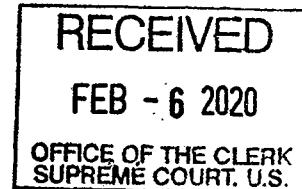
United States of America

Appellee

v.

Santiago Soto-Garcia

Appellant



Appeal from U.S. District Court for the Western District of Missouri - Joplin
(3:15-cr-05034-MDH-1)

ORDER

The District Court has granted appellant leave to proceed in forma pauperis. The motion of Mr. Adam Woody, appellant's retained attorney, for leave to withdraw is granted. On the court's own motion, Mr. John Jenab is appointed under the provisions of the Criminal Justice Act to represent appellant. Information regarding the CJA appointment and voucherizing process in eVoucher will be emailed to counsel shortly.

Appellant's opening brief is due 08/27/2018.

July 18, 2018

Order Entered under Rule 27A(a):
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
SOUTHWESTERN DIVISION

UNITED STATES OF AMERICA,)
)
)
Plaintiff,)
)
)
vs.) Case No. 15-05034-01-CR-SW-RK
)
)
SANTIAGO SOTO-GARCIA,)
)
)
Defendant.)
)

ORDER

Pending before the Court is Defendant's Motion to Suppress Evidence (Doc. 77) and a Motion to Suppress an Unlawful Stop and Seizure (doc. 78). Defendant argues in his Motion to Suppress Evidence (doc. 77) that the stop of his vehicle was unreasonably extended for a drug dog sniff. In Defendant's Motion to Suppress an Unlawful Stop and Seizure (doc. 78), Defendant contends there was no reasonable suspicion or probably cause to stop him because he did not commit a traffic violation.

On June 21, 2016, United States Magistrate Judge David P. Rush conducted an evidentiary hearing on the motions to suppress. Objections were due by September 12, 2016. No objections have been filed.

On August 24, 2016, Judge Rush issued his Report and Recommendation (doc. 109). Upon careful and independent review of the pending motions, as well as the applicable law, this Court hereby adopts and incorporates as its own Opinion and Order the Report and Recommendation of United States Magistrate Judge David P. Rush.

Accordingly, it is hereby ORDERED that Defendant's Motion to Suppress Evidence (doc. 77) and Defendant's Motion to Suppress an Unlawful Stop and Seizure (doc. 78) are OVERRULED and DENIED.

SO ORDERED.

/ Roseann A. Ketchmark

ROSEANN A. KETCHMARK, JUDGE
UNITED STATES DISTRICT COURT

DATED: September 30, 2016

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 18-2244

United States of America

Appellee

v.

Santiago Soto-Garcia

Appellant

Appeal from U.S. District Court for the Western District of Missouri - Joplin
(3:15-cr-05034-MDH-1)

ORDER

The petition for rehearing by the panel is denied.

January 07, 2020

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 18-2244

United States of America

Plaintiff - Appellee

v.

Santiago Soto-Garcia

Defendant - Appellant

Appeal from U.S. District Court for the Western District of Missouri - Joplin
(3:15-cr-05034-MDH-1)

JUDGMENT

Before LOKEN, WOLLMAN, and KELLY, Circuit Judges.

This appeal from the United States District Court was submitted on the record of the district court and briefs of the parties.

After consideration, it is hereby ordered and adjudged that the judgment of the district court in this cause is affirmed in accordance with the opinion of this Court.

November 22, 2019

Order Entered in Accordance with Opinion:
Clerk, U.S. Court of Appeals, Eighth Circuit.

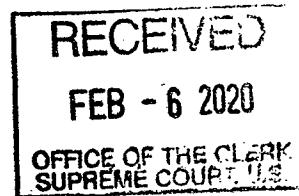
/s/ Michael E. Gans

Orders on Motions

3:15-cr-05034-MDH USA v. Soto-Garcia et al **CASE CLOSED on**
05/23/2018

APPEAL,CLOSED

U.S. District Court



Western District of Missouri

Notice of Electronic Filing

The following transaction was entered on 7/16/2018 at 4:10 PM CDT and filed on 7/16/2018

Case Name: USA v. Soto-Garcia et al

Case Number: 3:15-cr-05034-MDH

Filer:

Document Number: 252 (No document attached)

Docket Text:

ORDER granting [249] motion for leave to appeal in forma pauperis as to Santiago Soto-Garcia. Copy of Order mailed to Defendant. This is a TEXT ONLY ENTRY. No document is attached.(Roubal, Kristen)

3:15-cr-05034-MDH-1 Notice has been electronically mailed to:

Randall D. Eggert randy.eggert@usdoj.gov, CaseView.FCF@usdoj.gov,
Shawnette.Cameron@usdoj.gov

Donald R. Cooley dcooleylaw@sbcglobal.net

Brian David Risley bdrizlee@yahoo.com

Adam D. Woody adam@adamwoody.com, kelsey@adamwoody.com

Josephine L. Stockard josephine.larison@usdoj.gov, CaseView.ECF@usdoj.gov,
Scarlet.Ofarrell@usdoj.gov

3:15-cr-05034-MDH-1 It is the filer's responsibility for noticing the following parties by other means:

United States Court of Appeals
For the Eighth Circuit

No. 18-2244

United States of America

Plaintiff - Appellee

v.

Santiago Soto-Garcia

Defendant - Appellant

Appeal from United States District Court
for the Western District of Missouri - Joplin

Submitted: November 7, 2019

Filed: November 22, 2019

[Unpublished]

Before LOKEN, WOLLMAN, and KELLY, Circuit Judges.

PER CURIAM.

Santiago Soto-Garcia appeals after a jury found him guilty of drug and firearm offenses, and the district court¹ imposed a below-Guidelines sentence. His counsel

¹The Honorable M. Douglas Harpool, United States District Judge for the Western District of Missouri.

has moved for leave to withdraw, and has filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967), suggesting that the district court erred in denying Soto-Garcia's motions to suppress evidence, and that his prison term is substantively unreasonable. In a pro se brief, Soto-Garcia echos counsel's arguments, and asserts that inconsistent testimony by government witnesses violated his due process rights.

As to the issues raised by counsel, we first conclude that the denial of Soto-Garcia's motions to suppress was not erroneous. See United States v. Brewer, 624 F.3d 900, 905-06 (8th Cir. 2010) (this court examines factual findings underlying district court's denial of motion to suppress for clear error and reviews de novo whether Fourth Amendment was violated; this court must examine entire record, not merely evidence adduced at suppression hearing). Specifically, we conclude that the officer was justified in stopping Soto-Garica's car, because he was directed to do so by a detective [who had witnessed Soto-Garcia distribute methamphetamine from the car earlier that day]. See United States v. Hensley, 469 U.S. 221, 229 (1985) (if police have reasonable suspicion, grounded in specific and articulable facts, that person was involved in completed felony, they may initiate stop pursuant to Terry v. Ohio, 392 U.S. 1 (1968) to investigate); United States v. Jacobsen, 391 F.3d 904, 906-07 (8th Cir. 2004) (patrol officer was justified in stopping suspect because narcotics detective who ordered him to do so had reasonable suspicion that criminal activity was afoot); see also United States v. Robinson, 664 F.3d 701, 703 (8th Cir. 2011) (probable cause may be based on officers' collective knowledge and need not be based solely on information within arresting officer's knowledge, so long as there is some degree of communication between officers). We further conclude that the drug-dog sniff of Soto-Garcia's car was justified based on the officer's belief that the car contained evidence of criminal activity [as the officer had seen guns in the car and a large bulge of suspected contraband in a passenger's pants, and the detective had witnessed Soto-Garcia distribute meth from the car earlier that day]. See United States v. Davis, 569 F.3d 813, 817 (8th Cir. 2009) (officers may search vehicle without warrant if they have probable cause to believe it contains evidence of criminal activity). We also

conclude that Soto-Garcia's prison term is not substantively unreasonable, as it is below the Guidelines range, and there is no indication the district court overlooked a relevant factor, gave significant weight to an improper or irrelevant factor, or committed a clear error of judgment in weighing appropriate factors. See United States v. Feemster, 572 F.3d 455, 461-62 (8th Cir. 2009) (en banc) (discussing substantive reasonableness).

As to Soto-Garcia's pro se argument, we conclude that it was within the jury's province to resolve any inconsistencies in the officers' testimony, and that there is no indication he was deprived of a fair trial, given the overwhelming evidence of his guilt. See United States v. Bower, 484 F.3d 1021, 1026 (8th Cir. 2007) (it is within jury's province to resolve conflicting testimony); cf. United States v. Clayton, 787 F.3d 929, 933 (8th Cir. 2015) (to establish prosecutorial misconduct, defendant must show government's conduct was improper and affected his substantial rights so as to deprive him of fair trial).

Finally, having reviewed the record pursuant to Penson v. Ohio, 488 U.S. 75 (1988), we have found no non-frivolous issues. Accordingly, we grant counsel leave to withdraw, and affirm.

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHWESTERN DIVISION

UNITED STATES OF AMERICA,)
)
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Plaintiff,)
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)
v.) Case No. 15-05034-01-CR-SW-RK
)
)
SANTIAGO SOTO-GARCIA,)
)
)
Defendant.)

REPORT & RECOMMENDATION OF U.S. MAGISTRATE JUDGE

Pursuant to 28 U.S.C. § 636(b), the above-styled criminal action was referred to the undersigned for preliminary review. Defendant has filed a Motion to Suppress Evidence, (Doc. 77), and a Motion to Suppress an Unlawful Stop and Seizure, (Doc. 78). In the first Motion, Defendant argues that the stop of his vehicle was unreasonably extended for a drug dog sniff. (See Doc. 77.) In the second Motion, Defendant contends there was no reasonable suspicion or probable cause to stop him because he did not commit a traffic violation. (See Doc. 78.) Defendant therefore argues he suffered a violation of his Fourth Amendment rights and seeks suppression of evidence obtained as a result of the search and seizure. On June 21, 2016, the undersigned held a hearing on this matter. Defendant was present with his attorney, Adam Woody, and the United States was represented by Special Assistant United States Attorneys Josephine Larison and Assistant United States Attorney Randall Eggert. During the hearing on these Motions, the Court received evidence and heard testimony from Travis Hitchcock, a sergeant with the Missouri State Highway Patrol (“MSHP”) who worked with the Ozark Drug Enforcement Team (“ODET”); Brian Leeper, a former detective with the Webb City, Missouri Police Department and member of the ODET; and Adam Brannin, officer and K-9 handler with

the Joplin, Missouri Police Department who worked with the ODET. For the following reasons, it is hereby **RECOMMENDED** that the Motions to Suppress, (Docs. 77 and 78), be **DENIED**.

I. Findings of Facts¹

In 2014, the ODET began investigating Defendant Santiago Soto-Garcia. In February 2015, in connection with the ODET investigation, MSHP Sergeant Travis Hitchcock accompanied confidential informants to conduct undercover buys with Defendant. During the month of June 2015, Det. Brian Leeper also worked with a confidential informant to facilitate buys with Defendant. Both Sgt. Hitchcock and Det. Leeper observed Destiny O'Brien with Defendant² during a number of these buys.

On July 8, 2015, Officer Brannin was dispatched to an apartment on East College View Drive in Joplin, Missouri for a disturbance call. Upon arrival at the apartment, Officer Brannin found the front door of the apartment was damaged and appeared to have been kicked in. The door was not locked. At that time, Officer Brannin called his supervisor, who advised him to enter the apartment and conduct a well-being check. He then entered the apartment and conducted a protective sweep. He found no one in the studio apartment. During the sweep, Officer Brannin saw, in plain view, two bags containing a substance he suspected was crystal methamphetamine and some firearms. Upon viewing these items, Officer Brannin called members of the ODET team who arrived shortly thereafter with a warrant to search the apartment. During the course of that search, officers learned the apartment belonged to O'Brien and also found documents with O'Brien's and Defendant's names on them.

¹ The facts set forth herein are taken from the testimony adduced and evidence presented at the hearing on the instant Motions. The hearing transcript appears as Doc. 108; the Government's Exhibit Index appears as Doc. 106; and Defendant's Exhibit Index appears as Doc. 107.

² Destiny O'Brien is a co-defendant in the instant case, but for the purposes of this Motion "Defendant" refers only to Defendant Santiago Soto-Garcia.

On July 10, 2015, Det. Leeper and other members of the ODET were observing a vehicle, specifically a black Toyota Scion, in furtherance of their investigation of Defendant in Joplin, Missouri. After watching the vehicle leave a residence in Joplin, Missouri, Det. Leeper communicated to Officer Brannin via radio that the Scion made a lane violation.³ Officer Brannin proceeded to stop the Scion for the traffic violation, and identified the passenger of the vehicle as Defendant. He saw, in plain view, Defendant holding money in his hand and large stacks of money, which were bound together with rubber bands, on the floorboard between and under Defendant's seat. Defendant told Officer Brannin that the money was from a loan he had taken out.⁴ Officer Brannin obtained consent to conduct a dog sniff search of the vehicle from the driver of the Scion. He retrieved his K-9 Belgon from his patrol car, and the dog began a sniff search of the Scion. Belgon alerted to the odor of narcotics on the money in the floorboard and under the passenger seat.⁵ The money, which amounted to approximately \$7,000, was subsequently seized. Neither the driver of the Scion nor Defendant was arrested. Both Det. Leeper and Officer Brannin testified that the amount of cash, the way it was stacked and sorted, as well as the odor of narcotics on it is indicative of narcotic sales.

On August 11, 2015, the ODET members were again observing a vehicle, specifically a silver BMW, in furtherance of their investigation of Defendant. Defendant was driving the BMW, and the ODET members observed him parking it in a driveway at a residence on Roosevelt Street in Joplin, Missouri, just off an alley. Defendant and a woman then exited the BMW and entered the residence. The woman then emerged from the residence, got into the

³ The ODET members were unable to make this stop themselves as they were conducting ongoing surveillance and were not in a vehicle equipped to make traffic stops.

⁴ Defendant later told Officer Brannin that his wife took out the loan.

⁵ Defendant does not contest the reliability of K-9 Belgon. Nonetheless the Court notes that Officer Brannin testified he is certified to work with K-9 dogs and that K-9 Belgon has received special training in illegal narcotics. In fact, K-9 Belgon was recertified in May 2015, prior to the events at issue in this Motion. Officer Brannin has been working with K-9 Belgon for approximately years. During that time, K-9 Belgon has conducted numerous dog sniffs and has proven to be reliable when it comes to identifying the presence of illegal narcotics.

same black Toyota Scion that had been stopped on July 10, and left. About eight minutes after entering the residence, Defendant came back outside, got in the BMW, and drove the car northbound on the alley. The BMW turned east onto 10th Street and failed to signal. Det. Leeper then contacted Officer Brannin, who was asked to be nearby because of his previous work with ODET, and had him initiate a traffic stop for the failure to signal. However, Det. Leeper did not communicate any information about the events that he and the ODET team observed at the Roosevelt Street residence. Officer Brannin did not personally witness Defendant's failure to signal.

Shortly after receiving the radio communication from Det. Leeper, Officer Brannin saw the BMW and pulled his patrol car into the intersection behind it. He immediately initiated his warning lights. The BMW did not come to a full stop or pull over for several seconds, which led Officer Brannin to suspect that the occupants were concealing contraband. A backup officer arrived on scene approximately one minute after Officer Brannin had stopped the BMW. Officer Brannin approached the driver's side of the BMW and recognized the driver as Defendant, who he had previously stopped on July 10. He asked Defendant for his identification and insurance, which Defendant produced. Officer Brannin also saw a female in the passenger's seat and a male in the back seat behind the driver, and asked them both for identification. They both produced their driver's licenses, which identified them as Destiny O'Brien and Michael Gonzalez, respectively. Officer Brannin asked Gonzalez to roll down the window in the back seat to get his identification. Gonzalez rolled it down halfway, but then rolled it down all the way after asked to do so by Officer Brannin. At that point, Officer Brannin could see inside the vehicle and saw what appeared to be two rifles partially concealed under the driver's seat and

between Gonzalez's feet. By this time, approximately five minutes had passed since Officer Brannin stopped the BMW.

In order to make sure Gonzalez did not have a firearm on or near his person, Officer Brannin then opened the back passenger door of the BMW. He saw two magazine clips in the door. He removed them from the car, noted that they were loaded, and placed them on top of the BMW. He asked Gonzalez to step out of the car, and received consent to search him. He did not find anything on Gonzalez's person. Officer Brannin then had Gonzalez stand off to the side with another officer. He removed the rifles and placed them on the hood of the car. After removing the rifles, Officer Brannin asked O'Brien and Defendant to step out of the vehicle. He obtained consent to search Defendant's person, conducted a search, and found nothing. When O'Brien got out, he noticed a bulge in her pants that he suspected might be concealed contraband; however, Officer Brannin waited for a female officer to arrive to conduct a search of O'Brien. When the female officer arrived on scene, she searched O'Brien and found suspected marijuana, methamphetamine, and pills.

After all the occupants were out of the vehicle, Officer Brannin ran a warrant check that revealed none of the three individuals had active warrants. At that point, he re-contacted Defendant and asked for consent to search the BMW. Defendant initially consented to a search. However, when Officer Brannin removed his K-9 Belgon from his patrol vehicle, Defendant denied consent to search the vehicle. At that time, approximately 12 minutes had passed since Officer Brannin stopped the BMW.

Officer Brannin proceeded to conduct an exterior free air sniff around the BMW with K-9 Belgon. The dog began to sniff around the outside of the vehicle, eventually stopping and altering to the presence of narcotics at the driver's door. Officer Brannin tried to open the car

door, but it was locked. He then asked Defendant for the keys, but Defendant refused to give them to him. As another officer went to arrest Defendant, Defendant threw the keys under the car and yelled at O'Brien to get them. O'Brien reached under the car and retrieved them, but was subsequently arrested and had the keys taken from her. Officers used the keys to unlock the car and search the vehicle. In the course of the search, Officer Brannin and K-9 Belgon found a large quantity of suspected methamphetamine in a purse on the floorboard of the passenger's seat where O'Brien had been sitting.

II. Conclusions of Law

Defendant contends any evidence obtained as a result of his stop, search, and seizure should be suppressed. Specifically, he argues that the officers did not have reasonable suspicion or probable cause to stop his vehicle because Defendant was not required to signal when making a turn from the alley. (*See Doc. 78.*) He further contends that, even if there was cause to stop him, he was unlawfully detained by an illegal extension of the stop to conduct a drug dog sniff. (*See Doc. 77.*) The Court takes up these arguments below.

a. Probable Cause to Stop the Vehicle

With regards to Defendant's first argument, the evidence shows that there was probable cause to stop Defendant for the failure to signal. "Any traffic violation, however minor, provides probable cause for a traffic stop." *United States v. Wright*, 512 F.3d 466, 471 (8th Cir. 2008) (quotation omitted). The Joplin, Missouri, Code of Ordinances provides in Section 114-266 that "No person shall stop or suddenly decrease the speed of or turn a vehicle from a direct course or move right or left upon a roadway unless and until such movement can be made with reasonable safety, and then only after the giving of an appropriate signal in the manner provided in this division." Defendant contends that the alley from which he turned was not a "roadway"

and thus he was not required to signal; therefore, he argues that there was no probable cause to stop him for a traffic violation. The Government contends that, as a public way, an alley is considered a roadway that required signaling to turn off it.

The Court concludes that the Government's construction of § 114.266 is correct. The Joplin Code of Ordinances defines a roadway as "that portion of a highway improved, designed or ordinarily used for vehicular travel," and an alley as "a public way within a block primarily intended for service and access to abutting property." *Id.* at § 114-1. It also generally provides traffic laws governing alleys, one-way streets, public streets, streets, highways, public right-of-ways, public places, and public thoroughfares. *See* Joplin, Mo., Code of Ordinances, §§ 114.172 (no driving under the influence on any street, highway, alley, etc.); 114.173 (no careless driving in a street, highway, alley, etc.); 114-234 (setting a speed limit of 15 mph for an alley); and 114-204 (an owner of a motorcycle must have a license to operate it on a public street, alley, or public thoroughfares). The fact that the Code of Ordinances generally regulates alleys like any other public street or road leads the Court to conclude that § 114.266 would require signaling to turn off an alley.

However, even assuming § 114.266 does not apply to an alley like the one in this case, the officers still had probable cause to make a traffic stop. Because the Code of Ordinances generally regulates alleys like other public streets, it was objectively reasonable for Det. Leeper to believe that the failure to signal off a public alley was a violation of § 114.266. Thus, regardless of whether § 114.266 applied to the alley in this case, Defendant's failure to signal gave the officers probable cause to conduct a traffic stop of Defendant's vehicle. *See United States v. Grennell*, 148 F.3d 1051, 1052 (8th Cir. 1998) ("an officer has probable cause to stop a vehicle if he or she 'objectively has a reasonable basis for believing that the driver has breached

a traffic law.'"); *United States v. Washington*, 455 F.3d 824, 827 (8th Cir. 2006) ("if an officer makes a traffic stop based on a mistake of law, the legal determination of whether probable cause or reasonable suspicion existed for the stop is judged by whether the mistake of law was an 'objectively reasonable one.'"); *United States v. Martin*, 411 F.3d 998, 1001 (8th Cir. 2005) ("Any mistake of law that results in a search or seizure . . . must be objectively reasonable to avoid running afoul of the Fourth Amendment.").

The Government also contends that there was reasonable suspicion of drug activity, which would allow the officers to conduct a brief investigatory stop of Defendant's vehicle. However, the record indicates that Officer Brannin only had the information regarding Defendant's failure to signal off the alley.⁶ Det. Leeper did not provide him with any other information regarding their surveillance or the suspected drug trafficking prior to the time when Defendant was stopped. Therefore, though Officer Brannin had some past experiences with ODET and this particular Defendant, he apparently did not know the details of this particular surveillance. As such, he did not have reasonable suspicion that drug activity was occurring when he stopped the BMW. But, as discussed, there was probable cause to stop Defendant based on his failure to signal.

b. Reasonableness of the Stop and Detention

With regards to Defendant's second argument, the evidence shows that the stop was not unreasonably extended such that it was an illegal detention, and that Officer Brannin had

⁶ Though Defendant has not raised it as an issue in his brief, the Court nonetheless concludes that Officer Brannin did not need to witness the traffic violation in order to have probable cause to stop Defendant's vehicle. The Eighth Circuit has determined that communication between Det. Leeper and Officer Brannin is sufficient to impute knowledge of a traffic violation and provide probable cause to conduct a traffic stop. *United States v. Thompson*, 533 F.3d 964, 968-69 (8th Cir. 2008) ("The collective knowledge of law enforcement officers conducting an investigation is sufficient to provide reasonable suspicion, and the collective knowledge can be imputed to the individual officer who initiated the traffic stop when there is some communication between the officers."); *United States v. Williams*, 429 F.3d 767, 771-72 (8th Cir. 2005) (collective knowledge doctrine sufficient to impute knowledge of other officers on team to an officer who received a radio request from the team to stop the vehicle).

probable cause to ultimately search the vehicle and seize the items inside. During a lawful traffic stop, law enforcement officers may engage in an investigation reasonably related to the stop. *See United States v. Ramos*, 42 F.3d 1160, 1163 (8th Cir. 1994). “An investigative detention may turn into an arrest if it lasts for an unreasonably long time or if officers use unreasonable force. During an investigative stop, officers should employ the least intrusive means of detention and investigation, in terms of scope and duration, that are reasonably necessary to achieve the purpose of the stop.” *United States v. Donnelly*, 475 F.3d 946, 953 (8th Cir. 2007) (internal quotations and marks omitted). In determining whether a detention was reasonable, courts look to the law enforcement purposes to be served by the stop, the time reasonably needed to effectuate such purposes, and whether the police diligently pursued such purposes. *See Williams v. Decker*, 767 F.3d 734, 741-42 (8th Cir. 2014). While time is an important factor, courts have refused to establish rigid time limitations for investigative stops. *Id.* Further, “[i]f an officer’s suspicions are aroused in the course of such an investigation, the officer is entitled to expand the scope of the stop to ask questions unrelated to the original traffic offense, and consent given in the course of such questioning is valid so long as it is voluntary.” *United States v. Allegree*, 175 F.3d 648, 650 (8th Cir. 1999) (citation omitted).

As noted, there was probable cause to stop the BMW for a traffic violation. Shortly after pulling it over, Officer Brannin then approached the vehicle and asked Defendant and the other occupants for identification. When Gonzalez only partially rolled down his window, Officer Brannin asked him to lower it all the way to get his identification. These actions and questions are within the ordinary inquiries incident to a traffic stop. *See United States v. Foley*, 206 F.3d 802, 805 (8th Cir. 2000) (citation omitted) (stating that “a reasonable investigation of a traffic stop may include asking for the driver’s license and registration, requesting the driver to sit in the

patrol car, and asking the driver about his destination and purpose,” and that “an officer may undertake similar questioning of other vehicle occupants to verify information provided by the driver.”). Once Gonzalez had lowered his window, Officer Brannin saw, in plain view, the firearms partially concealed under the driver’s seat. At that point, because the BMW had taken some time to pull over and because it appeared that Gonzalez was attempting to hide the firearms, Officer Brannin had reasonable suspicion that criminal activity was afoot and was therefore entitled to expand the scope of the investigation. He properly expanded the scope of the investigation when he asked O’Brien and Gonzalez to step out of the vehicle, and then asked for and obtained consent to search Gonzalez. When Officer Brannin noticed a bulge in O’Brien’s pants, he reasonably waited for a female officer to arrive on scene to conduct a search of her person. While waiting for that officer to arrive, he ran a check for outstanding warrants on the occupants, an action that the Eighth Circuit has actually concluded is within the scope of a normal traffic stop. *See United States v. Jones*, 269 F.3d 919, 924 (8th Cir. 2001) (during the course of a normal traffic stop, an officer may “conduct computer inquiries to determine the validity of the license and registration [and] conduct computer searches to investigate the driver’s criminal history and to determine if the driver has outstanding warrants. . .”).

Almost immediately after Officer Brannin received the results of the warrant check, he asked for and obtained consent from Defendant to search the BMW. By that time, approximately 12 minutes had passed since Defendant, O’Brien, and Gonzales were initially detained. Defendant then revoked consent to search the BMW when he saw the K-9, so Officer Brannin instead conducted a constitutional free air sniff with K-9 Belgon that ultimately gave him probable cause to search the vehicle.⁷ *See United States v. Williams*, 429 F.3d 767, 772 (8th

⁷ Additionally, the officers had probable cause to search the vehicle after a search of O’Brien’s person revealed illegal narcotics.

Cir. 2005) (“The use of the drug-sniffing dog on the exterior of a vehicle during a valid traffic stop does not infringe upon any Fourth Amendment rights.”) (citing *Illinois v. Caballes*, 543 U.S. 405 (2005)); *United States v. Bloomfield*, 40 F.3d 910, 919 (8th Cir. 1994) (probable cause to search a vehicle when a drug dog alerts the presence of drugs). Thus, the Court concludes that the length of detention was not unreasonable. “In this case, [Officer Brannin] had not even had time to write any traffic citations at the point at which his suspicions were reasonably aroused. . . The traffic stop had not then been completed,” and the dog was on scene when Officer Brannin originally obtained consent to search the BMW from Defendant. *United States v. Linkous*, 285 F.3d 716, 721 (8th Cir. 2002) (reasonable length of detention when the total delay was 19 minutes, with only a seven to eight minute delay for the drug dog to arrive). Given the totality of the circumstances, the Court concludes that the stop and detention was reasonable and that Defendant’s detention was not unnecessarily extended. As such, any evidence derived as a result of the stop and detention need not be suppressed.

III. Recommendation

For the foregoing reasons, it is hereby **RECOMMENDED** that Defendant’s Motion to Suppress Evidence, (Doc. 77), and Motion to Suppress the Unlawful Stop and Seizure, (Doc. 78), be **DENIED**.

/s/ David P. Rush
DAVID P. RUSH
UNITED STATES MAGISTRATE JUDGE

DATE: August 24, 2016