

FILED
United States Court of Appeals
Tenth Circuit

PUBLISH

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

April 7, 2020

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOHN ELISHA MAYVILLE,

Defendant - Appellant.

No. 19-4008
(D.C. No. 2:16-CR-00266-JNP-1)
(D. Utah)

Appeal from the United States District Court
for the District of Utah
(D.C. No. 2:16-CR-00266-JNP-1)

Bretta Pirie, Assistant Federal Public Defender (Scott Keith Wilson, Federal Public Defender, with her on the brief), Salt Lake City, Utah, for Defendant-Appellant.

Stewart M. Young, Assistant United States Attorney (John W. Huber, United States Attorney, with him on the brief), Salt Lake City, Utah, for Plaintiff-Appellee.

Before **BACHARACH, BALDOCK**, and **MURPHY**, Circuit Judges.

BALDOCK, Circuit Judge.

Defendant-Appellant John Elisha Mayville pleaded guilty to possession of methamphetamine with intent to distribute in violation of 21 U.S.C. § 841(a)(1) and possession of an unregistered firearm silencer in violation of 26 U.S.C. § 5861(d). Exercising his right under the plea agreement, Defendant challenges the district court's

APPENDIX A

denials of his motions to suppress evidence of drugs and firearms seized from his car by Utah Highway Patrol troopers during a traffic stop. On appeal, Defendant argues the troopers violated his Fourth Amendment rights described in *Rodriguez v. United States*, 575 U.S. 348 (2015), because they unjustifiably prolonged the traffic stop beyond the time needed to complete the tasks incident to the stop's mission.

Our jurisdiction arises under 28 U.S.C. § 1291, and we affirm. The Supreme Court's decision in *Rodriguez* constrains what law enforcement officers may do during a routine traffic stop in the absence of additional reasonable suspicion. But *Rodriguez* does not require courts to second-guess the logistical decisions of officers so long as their actions were reasonable and diligently completed within the confines of a lawful traffic stop. This is because reasonableness—rather than efficiency—is the touchstone of the Fourth Amendment. Because the traffic stop here did not exceed the time reasonably required to execute the tasks relevant to accomplishing the mission of the stop, Defendant's nineteen-minute roadside detention accorded with the Fourth Amendment's dictates. Thus, the district court did not err in denying Defendant's motions to suppress.

I.

Around 1:45 a.m. on May 6, 2016, Utah Highway Patrol Trooper Jason Tripodi stopped a red Audi for traveling 71 m.p.h. in a 60-m.p.h. zone, in violation of state law. After the Audi came to a stop, Trooper Tripodi observed the driver hunched over in the vehicle as if he was “trying to stash something or hide something.” Trooper

Tripodi approached the Audi and spoke with Defendant, who was the driver and sole occupant of the vehicle, about his speeding.

During this initial interaction, which lasted about six minutes, Defendant informed Trooper Tripodi he was traveling to Grand Junction, Colorado, from Lake Havasu, Arizona. Trooper Tripodi asked for Defendant's license, registration, and proof of insurance. While Defendant searched for these documents, Trooper Tripodi noticed Defendant had trouble finding the requested paperwork. After several minutes, Defendant provided his out-of-state driver's license to Trooper Tripodi, but he was unable to produce any registration documents for the vehicle.

According to Trooper Tripodi, Defendant "seemed confused" and "wasn't able to multitask like a normal individual would be able to" during this initial interaction. Trooper Tripodi also observed that Defendant seemed like he "was drowsy, or something was wrong, something was up." Based on these observations, Trooper Tripodi asked Defendant if he "was okay" multiple times. Trooper Tripodi asked Defendant to accompany him to the patrol car to chat while he filled out the paperwork for the stop. Defendant declined this invitation and remained in his vehicle.

Around 1:52 a.m., seven minutes after the stop began, Trooper Tripodi returned to his patrol car and began filling out paperwork for the stop. He also radioed dispatch to run a records check on Defendant, which consisted of two components. First, Trooper Tripodi asked dispatch to run Defendant's license and check for warrants. Second, the trooper requested Defendant's criminal history through the Interstate Identification Index, commonly referred to as a Triple I check. After radioing dispatch

for the records, but before dispatch returned the results, Trooper Tripodi requested a narcotic detector dog. He then continued working on the citation, including “attempting to figure out whose vehicle it was because [Defendant] ha[d] no registration paperwork.”

At approximately 1:59 a.m., Trooper Scott Mackleprang arrived at the scene with his narcotic detector dog, Hasso. At this point, Trooper Tripodi backed up his patrol car because he anticipated possibly “run[ning] through sobriety tests or something like that at a later point in the stop.” After briefly speaking with Trooper Tripodi, who remained in his patrol car and continued to work on the citation, Trooper Mackleprang asked Defendant to exit the vehicle so he could screen it with Hasso. Because Defendant refused, Trooper Mackleprang requested Trooper Tripodi’s assistance. Trooper Mackleprang observed that Defendant was “real slow to answer” and had delayed reactions, “almost like a blank stare,” which caused him to suspect Defendant was impaired. Defendant ultimately exited the vehicle, and Trooper Tripodi patted him down for weapons.

Trooper Tripodi then stood with Defendant on the side of the road while Trooper Mackleprang had Hasso conduct a free-air sniff around the car. At approximately 2:05 a.m., Hasso alerted to the odor of narcotics in the vehicle. And less than thirty seconds later, dispatch responded to Trooper Tripodi’s records request with information indicating Defendant had a criminal record. The entirety of the traffic stop, from Trooper Tripodi’s initial contact with Defendant to Hasso’s alert, lasted approximately nineteen minutes.

The subsequent search of Defendant's vehicle revealed a methamphetamine pipe under the driver's seat and two guns, one equipped with a silencer, in the engine compartment. In the trunk, the troopers found roughly a pound of methamphetamine, an ounce of heroin, and a scale. After discovering the guns and drugs, the troopers placed Defendant under arrest.

The grand jury indicted Defendant for possession of methamphetamine with intent to distribute, possession of heroin with intent to distribute, possession of an unregistered firearm silencer, and being a felon in possession of a firearm. Defendant filed two motions to suppress in the district court, asserting several grounds for suppressing the evidence seized during the traffic stop. As relevant here, he moved to suppress evidence of the drugs and firearms as fruit of an unlawful seizure under the Fourth Amendment. Specifically, Defendant argued Trooper Tripodi's unreasonable extension of the traffic stop resulted in the dog sniff and subsequent search of his vehicle.

After evidentiary hearings and oral arguments, the district court found the troopers testified credibly and concluded Trooper Tripodi's decision to run a Triple I check through dispatch did not unconstitutionally extend the traffic stop. Alternatively, the district court held the troopers possessed reasonable suspicion to prolong the traffic stop to determine whether Defendant was impaired. The district court accordingly denied Defendant's motions to suppress.

Defendant later entered a conditional guilty plea, reserving the right to appeal the district court's denials of his motions to suppress. The district court accepted the

plea and sentenced Defendant to 126 months' imprisonment. Exercising his right to challenge the denials of his suppression motions, Defendant timely filed his notice of appeal.

II.

“When reviewing the denial of a motion to suppress, we view the evidence in the light most favorable to the government, accept the district court’s findings of fact unless they are clearly erroneous, and review de novo the ultimate question of reasonableness under the Fourth Amendment.” *United States v. McNeal*, 862 F.3d 1057, 1061 (10th Cir. 2017) (quoting *United States v. Lopez*, 849 F.3d 921, 925 (10th Cir. 2017)). Defendant does not contest the legality of the initial traffic stop. Rather, he contends the troopers’ actions—namely, Trooper Tripodi’s decision to run a Triple I criminal-history check—were unrelated to the mission of the traffic stop and extended its duration in violation of the Fourth Amendment. We disagree with Defendant’s arguments.

A.

A traffic stop, even if brief and for a limited purpose, constitutes a “seizure” under the Fourth Amendment and is subject to review for reasonableness. *Whren v. United States*, 517 U.S. 806, 809–10 (1996). To be reasonable, a “traffic stop must be justified at its inception and, in general, the officer’s actions during the stop must be reasonably related in scope to ‘the mission of the stop itself.’” *United States v. Cone*, 868 F.3d 1150, 1152 (10th Cir. 2017) (quoting *Rodriguez*, 575 U.S. at 356). Because Defendant does not contend the traffic stop was unjustified at its inception, our analysis

is limited to whether the stop's "manner of execution unreasonably infringe[d]" upon Defendant's Fourth Amendment rights. *Illinois v. Caballes*, 543 U.S. 405, 407 (2005).

An officer's authority to seize a driver "ends when tasks tied to the traffic infraction are—or reasonably should have been—completed." *Rodriguez*, 575 U.S. at 354. Officers may not prolong a stop beyond that point for the purpose of detecting evidence of ordinary criminal wrongdoing unless separate reasonable suspicion exists to justify further investigation. *Id.* at 354–55. Even *de minimis* delays caused by unrelated inquiries violate the Fourth Amendment. *Id.* at 355–57.

Defendant argues Trooper Tripodi unlawfully extended the stop because the Triple I criminal-history check had no relation to his speeding—the traffic infraction at issue—and is not one of the ordinary inquiries allowed under *Rodriguez*. But, as *Rodriguez* explained, an officer's mission during a traffic stop is both "to address the traffic violation that warranted the stop *and attend to related safety concerns*." *Id.* at 354 (emphasis added and citations omitted). To be sure, this mission "includes ordinary inquiries incident to" the traffic stop, which typically involve inspecting the driver's license, verifying the vehicle's registration and insurance coverage, and checking for any outstanding warrants against the driver. *Id.* at 355. Because, however, "[t]raffic stops are 'especially fraught with danger to police officers,'" *id.* at 356 (citation omitted), the Court has also included "negligibly burdensome" inquiries an officer needs to make "to complete his mission safely" among permissible actions incident to a traffic stop. *Id.* As *Rodriguez* explained, "[T]he government's officer safety interest stems from the mission of the stop itself." *Id.*

This court has routinely permitted officers to conduct criminal-history checks during traffic stops in the interest of officer safety. *See, e.g., United States v. Burleson*, 657 F.3d 1040, 1046 (10th Cir. 2011) (“[A]n officer may run a background check on a motorist to check for warrants or criminal history even though the purpose of the stop had nothing to do with the motorist’s history.”); *United States v. Rice*, 483 F.3d 1079, 1084 (10th Cir. 2007) (“While a traffic stop is ongoing . . . an officer has wide discretion to take reasonable precautions to protect his safety. Obvious precautions include running a background check on the driver” (citations omitted)). Notably, in *Rodriguez*, the Court cited with approval our decision in *United States v. Holt*, 264 F.3d 1215, 1221–22 (10th Cir. 2001) (en banc), *overturned on other grounds by Muehler v. Mena*, 544 U.S. 93 (2005), as an example of a proper inquiry during a traffic stop. *Rodriguez*, 575 U.S. at 356; *see also Cone*, 868 F.3d at 1153 (recognizing approval of *Holt* in *Rodriguez* and concluding an officer may reasonably ask questions about a driver’s criminal history during a routine traffic stop). Our *Holt* decision, the Court ably noted, “recogniz[ed] [an] officer safety justification for criminal record and outstanding warrant checks.” *Rodriguez*, 575 U.S. at 356. Thus, an officer’s decision to run a criminal-history check on an occupant of a vehicle after initiating a traffic stop is justifiable as a “negligibly burdensome precaution” consistent with the important governmental interest in officer safety.¹

¹ Several of our sister circuits have likewise concluded, post-*Rodriguez*, that an officer may conduct a criminal-history check as part and parcel of the mission of a traffic stop. *See, e.g., United States v. Dion*, 859 F.3d 114, 127 n.11 (1st Cir. 2017) (“[T]he Supreme Court has characterized a criminal-record check as a ‘negligibly

B.

Consistent with *Rodriguez* and circuit precedent, Trooper Tripodi was entitled to inquire into Defendant's criminal record during the traffic stop. But the question remains whether the troopers' conduct, including Trooper Tripodi's decision to request a Triple I check through dispatch rather than conduct the criminal-history check on the computer in his patrol car, was reasonable under the circumstances. See *United States v. Windom*, 863 F.3d 1322, 1327 (10th Cir. 2017) ("The touchstone of our analysis under the Fourth Amendment is always 'the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security.'") (citation omitted). Defendant argues it was not. Again, we disagree.

To repeat, an officer's authority to seize a motorist "ends when tasks tied to the traffic infraction are—or reasonably should have been—completed." *Rodriguez*, 575 U.S. at 354. Thus, even ordinary inquiries incident to a traffic stop and permissible safety precautions must be completed within a reasonable amount of time. *Id.* at 357. In determining whether the duration of a traffic stop was reasonable, we consider

burdensome precaution' that may be necessary in order to complete the mission of the traffic stop safely.") (quoting *Rodriguez*, 575 U.S. at 356)); *United States v. Palmer*, 820 F.3d 640, 651 (4th Cir. 2016) ("A police officer is entitled to inquire into a motorist's criminal record after initiating a traffic stop."); *United States v. Sanford*, 806 F.3d 954, 956 (7th Cir. 2015) ("The trooper checked the occupants' criminal history on the computer in his car—a procedure permissible even without reasonable suspicion."); *United States v. Frierson*, 611 F. App'x 82, 85 (3d Cir. 2015) (unpublished) ("Upon initially detaining the men, [the officer] reasonably addressed the traffic violation that warranted the stop and attended to safety concerns. For example, any preliminary delay in checking [the driver's] license, registration, and criminal history was justified as part of the stop.").

whether the officers diligently pursued the mission of the stop. *Id.* Accordingly, officers may not undertake safety precautions for the purpose of lengthening the stop to allow for investigation of unrelated criminal activity. *Id.* at 356.

With these principles in mind, and objectively considering the totality of the circumstances, we turn to examine Trooper Tripodi's decision to run a Triple I check. As explained above, an officer is permitted to run a criminal-history check as a safety precaution during a traffic stop so long as the check does not unreasonably prolong the stop. *See id.*; *Holt*, 264 F.3d at 1221–22. We see no reason to apply a different rule simply because an officer elects to conduct a Triple I check through dispatch rather than research a motorist's criminal history on the computer in his patrol car. *See United States v. McRae*, 81 F.3d 1528, 1536 n.6 (10th Cir. 1996) (indicating, *in dicta*, it is reasonable for officers to run Triple I checks through dispatch as part of a routine traffic stop); *see also United States v. Hill*, 852 F.3d 377, 380, 383 (4th Cir. 2017) (holding, in the context of a twenty-minute stop, officers reasonably may search an additional database for criminal history even though it “can be a lengthy process”).

Defendant argues the Triple I check unlawfully extended the traffic stop because Trooper Tripodi would have completed the stop sooner if he had confined himself to checking records via the computer in his patrol vehicle. The problem with Defendant's argument is twofold. First, the district court made a factual finding that the Triple I check did not extend the time period of the stop, and Defendant has not identified any evidence demonstrating the court's finding was clearly erroneous. Defendant points to evidence showing it took less than a minute for Trooper Tripodi's onboard computer

to return information that showed Defendant had a valid license, his car was insured, and the car was registered—though not to Defendant. But such a comparison is irrelevant to our analysis. As defense counsel conceded at oral argument, nothing in the record indicates how long it would have taken Trooper Tripodi to conduct either a criminal-history inquiry or warrants check on the computer in his patrol car.

Second, even if the Triple I check extended the duration of the stop, Trooper Tripodi's request for criminal-history records through dispatch was not unreasonable as a matter of law. Trooper Tripodi, who the district court deemed credible, testified that he conducted the Triple I check through dispatch because the computer in his patrol car provides limited information, especially with respect to out-of-state drivers. The record plainly shows Defendant provided an out-of-state license and was driving an out-of-state vehicle. Moreover, Trooper Tripodi developed concerns based on Defendant's apparent stashing of something under the driver's seat, Defendant's demeanor during their initial six-minute interaction, and Defendant's inability to provide registration paperwork for the vehicle. Given these circumstances, Trooper Tripodi's decision to run a Triple I check through dispatch—as opposed to limiting his records check to the computer in his patrol car—did not unreasonably prolong the stop.

Although Trooper Tripodi could have executed the traffic stop without running the records check through dispatch, and instead relied exclusively on the information available on the computer in his patrol car, his actions did not violate Defendant's Fourth Amendment rights. As the Court has repeatedly admonished, the Fourth Amendment does not require officers to use the least intrusive or most efficient means

conceivable to effectuate a traffic stop. *United States v. Sharpe*, 470 U.S. 675, 687 (1985) (“The question is not simply whether some other alternative was available, but whether the police acted unreasonably in failing to recognize or to pursue it.”). While we can imagine other situations in which an officer’s decision to run a Triple I check through dispatch would unreasonably prolong a traffic stop, that is not the case here. The evidence in this case shows the troopers acted reasonably diligent in executing the tasks incident to the traffic stop, and their actions did not unlawfully extend the stop beyond the pursuit of the stop’s mission.²

In sum, the district court determined dispatch responded to Trooper Tripodi’s records request shortly after Hasso alerted to the presence of narcotics in Defendant’s vehicle. Defendant has not shown, and we have not found, evidence in the record demonstrating this factual finding was clearly erroneous. Because the dog sniff and alert were contemporaneous with the troopers’ reasonably diligent pursuit of the stop’s

² Approximately twelve minutes passed between the time Trooper Tripodi returned to his patrol car after his initial interaction with Defendant and when Hasso alerted to the odor of narcotics in the vehicle. During this period, Trooper Tripodi radioed dispatch for records, worked on filling out paperwork for the stop, backed up his vehicle to possibly perform sobriety tests, assisted Trooper Mackleprang after Defendant refused to exit his vehicle, patted down Defendant for weapons, and further questioned Defendant outside of the vehicle during the dog sniff. Before Trooper Mackleprang arrived on the scene, Trooper Tripodi can be heard on his dash cam asking a voice-activated google device about Lake Havasu, Arizona. Defendant argues this shows Trooper Tripodi sat idle rather than performing the tasks incident to the traffic stop. The district court, however, credited Trooper Tripodi’s testimony that during this time he was also filling out paperwork for the citation and attempting to figure out ownership of the vehicle. Defendant does not attempt to show this factual finding was clearly erroneous. Based on the record before us, none of the trooper’s individual actions suggest a lack of diligence in pursuing the mission of the stop.

mission, the subsequent search of Defendant's vehicle and discovery of evidence did not violate his Fourth Amendment rights. The district court, therefore, properly denied Defendant's motions to suppress.³

* * *

For the foregoing reasons, the judgment of the district court is AFFIRMED.

³ Because Trooper Tripodi did not unconstitutionally extend the traffic stop by conducting the Triple I check through dispatch, we need not consider whether the troopers possessed reasonable suspicion to prolong the stop to investigate Defendant's potential impairment. We also summarily dispose of Defendant's meritless argument that the troopers acted unreasonably in removing Defendant from his vehicle during the traffic stop. *See Maryland v. Wilson*, 519 U.S. 408, 413–15 (1997) (reaffirming rule that an officer may order a driver out of a vehicle during a traffic stop for officer safety reasons); *Holt*, 264 F.3d at 1222 (explaining an officer “may order the driver and passengers out of the vehicle in the interest of officer safety, *even in the absence of any particularized suspicion of personal danger*”) (emphasis added).

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN ELISHA MAYVILLE,

Defendant.

Case No. 2:16-CR-266 JNP

**MEMORANDUM DECISION AND
ORDER DENYING DEFENDANT'S
SECOND MOTION TO SUPPRESS**

District Judge Jill N. Parrish

After the court denied defendant John Elisha Mayville's first motion to suppress evidence, he filed a second motion to suppress. In his second motion, he argues that the drug and firearm evidence that officers discovered in his car should be suppressed pursuant to the Fourth Amendment, the Utah Government Records Access and Management Act (GRAMA), and the Privileges and Immunities Clause. The court concludes that the search of Mayville's car did not violate any of these constitutional or statutory provisions. The court therefore DENIES his motion to suppress.

FINDINGS OF FACT

1. On May 6, 2016, Trooper Jason Tripodi stopped a red Audi for going 71 miles-per-hour in a 60 miles-per-hour zone.
2. Trooper Tripodi approached the vehicle, made contact with Mayville, and spoke to him about his speeding. Mayville stated that he was travelling to Grand Junction, Colorado, from Lake Havasu, Arizona.

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3. Trooper Tripodi's initial contact with Mayville lasted a couple of minutes. During this initial contact, Trooper Tripodi asked for Mayville's license, registration, and proof of insurance. While Mayville searched for these documents, Trooper Tripodi observed that he "had a lot of trouble coming up with that requested paperwork." Trooper Tripodi noted that the length of time he spent at the passenger side window was due to Mayville searching for the paperwork. Trooper Tripodi observed that Mayville seemed like he "was drowsy, or something was wrong, something was up." Mayville "seemed confused almost" and Trooper Tripodi noticed that Mayville "wasn't able to multitask like a normal individual would be able to." Trooper Tripodi asked Mayville on multiple occasions if he was okay, based on his interaction with him.
4. Trooper Tripodi became concerned that Mayville may have been impaired or drowsy.
5. Trooper Tripodi asked Mayville if he would mind coming back to his vehicle to talk to him while he filled out his paperwork. Mayville declined this invitation.
6. Trooper Tripodi returned to his vehicle and began filling out the paperwork for the stop. He also radioed dispatch in order to run a records check on Mayville. The records check consisted of two main components. First, Trooper Tripodi requested that dispatch run his license and check for warrants. Second, he requested a criminal record check through the Interstate Identification Index, which is commonly called a triple-I check. Trooper Tripodi conducted this check through dispatch because UHP computers only provide
 - limited information.
7. About a minute later, Trooper Tripodi also radioed for a narcotic detector dog and handler.

8. After radioing dispatch for records and for a narcotic detector dog, Trooper Tripodi continued filling out the citation, including "attempting to figure out whose vehicle it was because [Mayville] had no registration paperwork."
9. Approximately four minutes later, prior to dispatch returning any records check information on either Mayville or the vehicle, Trooper Mackleprang arrived with his narcotic detector dog.
10. Once Trooper Mackleprang arrived, Trooper Tripodi briefly informed him about what had occurred. Trooper Mackleprang then asked Mayville to exit the vehicle so that he could run his dog around the car. Mayville refused.
11. Trooper Mackleprang observed that Mayville had delayed reactions, "almost like a blank stare," which caused him to suspect that Mayville was impaired.
12. Trooper Mackleprang requested Trooper Tripodi's presence. Mayville exited the vehicle, and Trooper Tripodi patted Mayville down to check for weapons. Trooper Tripodi instructed Mayville to stand on the side of the road a few feet in front of Mayville's vehicle.
13. The dog sniffed around the vehicle and alerted to the presence of narcotics.
14. Shortly after the dog had alerted to the presence of narcotics in the vehicle, dispatch returned the information about Mayville and his vehicle, indicating that he had a criminal record.
15. Trooper Mackleprang explained to Mayville that his dog had indicated to the odor of narcotics, at which point Mayville stated "there's no way, there's no way." The troopers explained that they were going to search the vehicle and moved Mayville to Trooper Tripodi's vehicle.

16. The troopers conducted a search and found two handguns and a homemade suppressor inside the engine area (one wrapped in a cloth bag, another vacuum sealed with the suppressor); a yellow plastic container with three packages of methamphetamine, totaling approximately one pound (453 grams) behind the carpeted wall of the trunk on the passenger side; and another vacuum sealed package behind the carpeted wall with a scale and one ounce (28 grams) of heroin.
17. After finding the firearms and the suppressor, the troopers placed Mayville under arrest.
18. Mayville's blood was drawn at the station. He tested positive for methamphetamine in his bloodstream.

ANALYSIS

Mayville seeks to exclude the evidence discovered in his car under the Fourth Amendment, Utah's GRAMA statute, and the Privileges and Immunities Clause. The court addresses each of these arguments in turn.

I. THE FOURTH AMENDMENT

The Fourth Amendment to the U.S. Constitution provides that "[t]he right of the people to be secure in their houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." U.S. CONST. amend. IV. The issue presented in this case is whether Mayville's seizure by state troopers, which led to the discovery of the drug and firearm evidence, was reasonable.

Because Mayville was speeding, Trooper Tripodi's decision to initiate a traffic stop was constitutionally sound. Mayville argues, however, that the troopers violated his Fourth Amendment rights by unreasonably extending the length of the traffic stop, allowing the troopers

time to run a narcotics dog around his car. For two independent reasons, the court determines that the troopers did not unconstitutionally extend the traffic stop.

A. The Scope of the Traffic Stop

First, the court must determine whether the troopers unreasonably extend the length of the traffic stop. In analyzing the reasonableness of the length of detention, courts focus on two factors (1) “whether the officer’s action was justified at its inception,” and (2) “whether it was reasonably related in scope to the circumstances which justified the interference in the first place.” *United States v. Shareef*, 100 F.3d 1491 (10th Cir. 1996). A court reviews the actions of the police and the reasonableness of the stop under the totality of the circumstances. *United States v. Hunnicutt*, 135 F.3d 1345, 1349-50 (10th Cir. 1998).

Mayville argues that the troopers unconstitutionally prolonged the traffic stop until the drug dog arrived. He contends that but for this unconstitutional extension of the stop, the drug dog would not have alerted and the troopers would not have had probable cause to search his vehicle.

The troopers, however, did not unconstitutionally extend the traffic stop. “[T]he tolerable duration of police inquiries in the traffic-stop context is determined by the seizure’s ‘mission’—to address the traffic violation that warranted the stop, and attend to related safety concerns.” *Rodriguez v. United States*, 135 S. Ct. 1609, 1614 (2015) (citations omitted). In addition to addressing the violation, an officer may also conduct “ordinary inquiries incident to [the traffic] stop.” *Id.* at 1615 (alteration in original) (citation omitted). “Typically such inquiries 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.*; accord 4 WAYNE R. LAFAYE, SEARCH AND SEIZURE § 9.3(c) (5th ed. 2016) (“This kind of checking of

government records incident to a 'routine traffic stop,' which usually takes a matter of minutes, is well-established as a part of the 'routine,' and has consistently been approved and upheld by both federal and state courts." (footnotes omitted)). These incidental inquiries do not unconstitutionally prolong the stop.

Here, Trooper Tripodi requested that dispatch check for outstanding warrants and perform a triple-I check to see if Mayville had a criminal history. The warrants check is explicitly authorized by the Supreme Court as one of the ordinary inquiries incident to a traffic stop that does not improperly extend the stop. The question here is whether the triple-I check is also an ordinary inquiry incident to the traffic stop.

The Tenth Circuit has not discussed at great length the use of criminal background checks during routine traffic stops. But the cases that do specifically mention background checks include them with other routine electronic records searches incident to traffic stops. In *United States v. Lyons*, for example, the Tenth Circuit held that because an officer had initiated a valid traffic stop, he "could temporarily detain [the motorist], while requesting his driver's license and vehicle registration, running a criminal history check and issuing him a warning ticket." 510 F.3d 1225, 1235 (10th Cir. 2007). And in *United States v. Holt*, an *en banc* panel of the Tenth Circuit held that a "motorist may be detained for a short period while the officer runs a background check to see if there are any outstanding warrants or criminal history pertaining to the motorist even though the purpose of the stop had nothing to do with such prior criminal history. The justification for detaining a motorist to obtain a criminal history check is, in part, officer safety." 264 F.3d 1215, 1221 (10th Cir. 2001) (*en banc*). In dicta, *United States v. McRae* further explained the justification for the use of criminal background checks as part of a routine traffic stop:

Triple I checks are run largely to protect the officer. Considering the tragedy of the many officers who are shot during routine traffic stops each year, the almost simultaneous computer check of a person's criminal record, along with his or her license and registration, is reasonable and hardly intrusive.

81 F.3d 1528, 1535 n.6 (10th Cir. 1996).

Thus, the Tenth Circuit has decided that criminal background checks, such as the triple-I, are part of the routine records checks that are incident to a routine traffic stop. Such records checks do not unconstitutionally extend the scope of the stop.

In this case, moreover, there is no indication that the triple-I check extended the stop. Trooper Tripodi testified that he radioed dispatch to request both a warrants check and a criminal background check. Nothing in the evidence presented to the court suggested that the triple-I portion of the records check delayed dispatch's response to Trooper Tripodi's inquiry. Thus, there is no indication that the criminal background check actually caused any extension of the traffic stop.

In sum, the court finds that Officer Tripodi did not unconstitutionally extend the traffic stop by conducting a records check pursuant to the valid stop of Mayville's car. Because the drug sniff and indication by the drug dog occurred during this period of time, the subsequent search and discovery of evidence in the car did not violate Mayville's Fourth Amendment rights.¹ See *Illinois v. Caballes*, 543 U.S. 405, 409 (2005) ("[T]he use of a well-trained narcotics-detection dog—one that 'does not expose noncontraband items that otherwise would remain hidden from

¹ After the drug dog indicated, Trooper Mackleprang signaled to Trooper Tripodi. Soon thereafter, dispatch contacted Trooper Tripodi and notified him that the records check was complete. Trooper Tripodi quickly confirmed that Trooper Mackleprang was signaling that the dog had indicated before responding to the radio transmission from dispatch. Mayville suggests that the delay of a few seconds in Officer Tripodi's response to dispatch constituted an unconstitutional extension of the stop. But once the dog indicated, Trooper Mackleprang had sufficient probable cause to further detain Mayville and search his car. The time that it took to communicate this development to Trooper Tripodi did not unconstitutionally extend the traffic stop.

public view,’—during a lawful traffic stop, generally does not implicate legitimate privacy interests.” (citation omitted)).

B. Reasonable Suspicion to Investigate Mayville’s Potential Impairment

In the alternative, the troopers possessed reasonable suspicion to prolong the traffic stop in order to determine whether Mayville was incapacitated or inebriated. *See United States v. West*, 219 F.3d 1171, 1176 (10th Cir. 2000) (“A driver must be permitted to proceed after a routine traffic stop if a license and registration check reveal no reason to detain the driver unless the officer has reasonable articulable suspicion of other crimes or the driver voluntarily consents to further questioning.”). In this case, Trooper Tripodi and Trooper Mackleprang noted Mayville’s demeanor, his inability to focus, his difficulty in answering simple questions, as well as the lack of paperwork for the vehicle. As Trooper Tripodi stated, he believed that Mayville “had some impairment issues.” The troopers were therefore justified in continuing their investigation to determine whether Mayville was driving under an impaired state. Indeed the trooper’s suspicions were later confirmed when a subsequent blood draw tested positive for methamphetamine.

Mayville argues that the court should disbelieve the trooper’s testimony regarding indications of impairment because the evidence shows that that Trooper Tripodi and Trooper Mackleprang were stopping cars that night with the purpose of looking for drugs. Mayville argues that because the troopers had this purpose in mind, they only manufactured their observations of impairment in order justify a search of the vehicle.

The court rejects this argument. The court had the opportunity to assess Trooper Tripodi and Trooper Mackleprang’s demeanor when they testified and finds that they were credible.

Additionally, their testimony is corroborated by a subsequent test that showed that Mayville did in fact have methamphetamine in his system.

Mayville also suggests that because the troopers did not begin their investigation of his impairment before the drug dog indicated, the trooper's suspicions either could not extend the stop or should be disbelieved. But the troopers could properly complete the records check pursuant to the traffic stop before investigating their suspicions about Mayville's impairment. Indeed, Trooper Tripodi testified that he backed up his police car, likely because he wanted to give himself room to conduct a field sobriety test.

Thus, even if the troopers had slightly prolonged the traffic stop, they did so based on their reasonable concern that Mayville was driving while impaired. Because the troopers had reasonable suspicions that permitted them to further detain Mayville, the drug dog indication and subsequent search of his car did not violate his Fourth Amendment rights.

II. GRAMA

Next, Mayville argues that the evidence should be suppressed because the state of Utah violated its GRAMA statute when it provided his criminal records pursuant to the triple-I request made by Trooper Tripodi. The court rejects this argument for two reasons.

First, state officials did not violate the GRAMA statute by providing criminal records pursuant to Trooper Tripodi's request. The GRAMA statute restricts Utah agencies from revealing to the public certain protected records. Mayville points to Utah Code section 63G-2-305(31), which defines protected records to include "records provided by the United States or by a government entity outside the state that are given to the governmental entity with a requirement that they be managed as protected records if the providing entity certifies that the

record would not be subject to public disclosure if retained by it.” Mayville argues that because a triple-I check is provided by the FBI, it is a protected document under this provision.

Mayville has not made a showing that the FBI requires triple-I checks to be managed as protected documents. But the court need not address Mayville’s argument that the triple-I became a protected document when the FBI provided it to Trooper Tripodi or decide whether any Utah agency unlawfully disclosed a protected document in this case. Utah Code section 63G-2-206 lists several circumstances under which a Utah agency may disclose a protected document. This statute provides: “Records that may evidence or relate to a violation of law may be disclosed to a government prosecutor, peace officer, or auditor.” UTAH CODE § 63G-2-206(9). Mayville’s Utah criminal records by definition “relate to a violation of law,” and Trooper Tripodi is a peace officer. Therefore, even if the triple-I background check was a protected document, no Utah agency violated GRAMA by providing Mayville’s criminal record to the FBI or to Trooper Tripodi.

Second, even if Mayville could show that the GRAMA statute had somehow been violated, the remedy is not the exclusion of evidence. The GRAMA statute provides criminal penalties for a public employee who intentionally discloses a protected document. UTAH CODE § 63G-2-801. A party can also obtain an injunction to prevent disclosure. UTAH CODE § 63G-2-802. But GRAMA does not include as a remedy the exclusion of evidence in a criminal proceeding. Because GRAMA enumerates the remedies available for a violation, there is no cause for this court to announce an exclusionary rule as a judicially-created remedy.

For these reasons, Utah’s GRAMA statute is not a basis for excluding the drug and firearm evidence discovered in Mayville’s car.

III. The Privileges and Immunities Clause

Finally, Mayville argues that the court should exclude the evidence against him pursuant to the Privileges and Immunities Clause of the Constitution, which provides: "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States." This clause protects an individual's right to travel among the various states. This right to travel encompasses three different components:

It protects the right of a citizen of one State to enter and to leave another State, the right to be treated as a welcome visitor rather than an unfriendly alien when temporarily present in the second State, and, for those travelers who elect to become permanent residents, the right to be treated like other citizens of that State.

Saenz v. Roe, 526 U.S. 489, 500 (1999).

Mayville produced evidence that during the period of time that Trooper Tripodi was patrolling I-70, he mostly stopped cars with out-of-state license plates. From this evidence, Mayville argues that Trooper Tripodi engaged in a pattern of pulling over cars registered in other states. He asserts that this practice of selectively enforcing traffic law violations committed by the citizens of other states deprived those travelers of the privileges and immunities enjoyed by Utah citizens.

The government contests the inference of selective enforcement drawn by Mayville, arguing that many out-of-state vehicles pass through the stretch of highway Trooper Tripodi was patrolling. The court, however, need not address the factual question of whether Trooper engaged in a pattern of pulling over out-of-state vehicles. Even if he had done so, such a pattern would not violate the Privileges and Immunities Clause.

In *State v. Chettero*, the Utah Supreme Court addressed the same argument made by Mayville. At least 95% of the vehicles pulled over by the trooper in that case bore out-of-state

plates. *State v. Chettero*, 297 P.3d 582, 584 (Utah 2013). The trooper's decision to stop so many cars from other states was based on information that individuals were transporting a high volume of marijuana recently harvested in California. The defendant claimed that the trooper who pulled him over violated the second component of the right to travel—the right to be treated as a welcome visitor—by engaging in a practice of selectively enforcing traffic laws. *Id.* at 585–86. Noting that the cases that deal with this right indicate that it implicates “only the rights of non-residents to exercise fundamental economic rights . . . or to seek important services,” the Utah Supreme Court concluded that the right to be treated as a welcome visitor did not apply to the selective enforcement of traffic laws based upon out-of-state license plates. *Id.* at 586 (citing *Saenz*, 526 U.S. at 501–02). This court agrees that the second component of the right to travel has no application here.

The first component of the right to travel—the right to enter and leave another state—is likewise inapplicable. The Supreme Court has held that this right is violated when a state erects actual barriers to entry. *See Edwards v. California*, 314 U.S. 160, 174 (1941) (finding a statute to be unconstitutional where its “express purpose and inevitable effect [was] to prohibit the transportation of indigent persons across the California border”). Being legally stopped for a traffic violation while travelling through a foreign state does not constitute such “an ‘actual barrier’ to interstate travel.” *Maryland State Conference of NAACP Branches v. Maryland Dep’t of State Police*, 72 F. Supp. 2d 560, 568 (D. Md. 1999) (holding that a traffic stop did not violate the first component of the right to travel).

Mayville does not cite any cases that support the proposition that the Privileges and Immunities Clause prohibits police officers from selectively enforcing traffic violations committed by out-of-state travelers. The only authority he cites, *Saenz*, 526 U.S. 489, 502–04,

addresses restrictions on state benefits provided to new residents. It does not speak to traffic stops of citizens of other states. Absent any authority for the proposition that selective traffic stops violate the right to travel embraced by the Privileges and Immunities Clause, and with persuasive authority to the contrary, the court concludes that Trooper Tripodi did not violate this clause of the Constitution.

Finally, even if Mayville could make out a claim, he has not provided any authority or argument for the proposition that the exclusionary rule applied to violations of the Fourth Amendment also applies to violations of the Privileges and Immunities Clause. Mayville cites *Mapp v. Ohio*, but that case specifically holds that the exclusionary rule must be applied to violations of the Fourth Amendment, not to any violation of any provision of the Constitution. 367 U.S. 643, 655 (1961). Absent any authority for extending the exclusionary rule to violations of the Privileges and Immunities Clause, the court declines to do so here. *See United States v. Burnett*, No. 4:06CR00271-01 SWW, 2007 WL 2711021, at *2 (E.D. Ark. Sept. 13, 2007) (“[E]ven if [an officer] violated [a motorist’s] right to travel [by targeting out-of-state motorists], suppression of evidence pursuant to the exclusionary rule is a remedy for violations of the Fourth Amendment, and the Court declines to extend the rule as a remedy for other constitutional violations.”).

The court, therefore, rejects Mayville’s argument that the Privileges and Immunities Clause requires the suppression of the evidence recovered from his car.

CONCLUSION

For the foregoing reasons, the court DENIES Mayville’s motion to suppress.

DATED March 7, 2018

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN ELISHA MAYVILLE,

Defendant.

Case No. 2:16-CR-266 JNP

**MEMORANDUM DECISION
AND ORDER DENYING
DEFENDANT'S MOTION TO
SUPPRESS**

District Judge Jill N. Parrish

Defendant John Elisha Mayville filed a motion to suppress. Following an evidentiary hearing, the parties briefed the legal issues raised by the motion. Mr. Mayville argues that the traffic stop conducted by the Utah Highway Patrol troopers was unreasonably prolonged, thereby resulting in a Fourth Amendment violation and a warrantless search. Based on the evidence and case law relating to these issues, the court hereby DENIES Mr. Mayville's motion to suppress. [Docket 40]

I. FINDINGS OF FACT

1. On May 6, 2016, Trooper Jason Tripodi stopped a red Audi for speeding on I-70. It was going 71 miles per hour in a 60-miles-per-hour zone.¹
2. Trooper Tripodi approached the vehicle, made contact with Mr. Mayville, and spoke to him about his speeding.² Mr. Mayville stated that he was travelling to Grand Junction, Colorado, from Lake Havasu, Arizona.³
3. Trooper Tripodi's initial contact with Mr. Mayville lasted a couple of minutes.⁴ During this initial contact, Trooper Tripodi asked for Mr. Mayville's license, registration, and proof of insurance.⁵ While Mr. Mayville searched for these documents, Trooper Tripodi observed that he "had a lot of trouble coming up with that requested paperwork."⁶ Trooper Tripodi noted that the length of time he spent at the passenger side window was due to Mr. Mayville searching for the paperwork.⁷ Trooper Tripodi observed that Mr. Mayville seemed like he "was drowsy, or something was wrong, something was up."⁸ Mr. Mayville "seemed confused almost" and Trooper Tripodi noticed that Mr. Mayville "wasn't able to multitask like a

¹ Tr. at 7:25-8:25. Additionally, references are made to UHP Trooper Tripodi's dash cam video, entered into evidence as Exhibit 1. It will be referred to as "Video, at ____." The times listed are approximations.

² Tr. at 10:16-23; Video, at 1:46:45-1:47:14.

³ Tr. at 10:24-11:5; Video, at 1:46:54-1:47:35.

⁴ Tr. at 11:6-8.

⁵ *Id.* at 11:9-15.

⁶ *Id.*

⁷ *Id.*; *Id.* at 27:23-28:12.

⁸ *Id.* at 11:16-18.

normal individual would be able to.”⁹ Trooper Tripodi asked Mr. Mayville on multiple occasions if he was okay, based on his interaction with him.¹⁰

4. Trooper Tripodi became concerned that Mr. Mayville may be impaired or drowsy.¹¹
5. Trooper Tripodi asked Mr. Mayville if he would mind coming back to his vehicle to talk to him while he filled out his paperwork.¹² Mr. Mayville declined this invitation.
6. Trooper Tripodi returned to his vehicle and began filling out the paperwork for the stop.¹³ He also radioed dispatch in order to run a records check on Mr. Mayville. Trooper Tripodi requested that dispatch run Mr. Mayville’s license and check for warrants.¹⁴ Trooper Tripodi conducted this check through dispatch because the UHP computers in patrol cars cannot conduct a complete warrant check.¹⁵
7. About a minute later, Trooper Tripodi radioed for a Narcotic Detector Dog (NDD) and handler.¹⁶

⁹ *Id.* at 11:18-12:1.

¹⁰ Tr. at 13:7-12; 27:19-22; 28:13-18; Video, at 1:47:50 (first time); 1:49:26-35 (second time); 1:49:35-40 (Mr. Mayville’s response about being tired); 1:52:12 (third time); 1:52:15-55 (Trooper Tripodi remarking that Mr. Mayville seemed really out of it).

¹¹ Tr. at 12:16-25. Intoxicated driving, or drowsy driving, are both concerns for UHP and the motoring public in general, as testified to by Trooper Tripodi. *Id.* at 13:1-6.

¹² Tr. at 13:13-18; Video, at 1:50:40.

¹³ Tr. at 13:19-22; 14:13-18; 28:19-24.

¹⁴ *Id.* at 13:22-14:12; 28:25-29:5; 41:24-42:19; Video, at 1:53:25-1:54:00.

¹⁵ Tr. at 14:3-12.

¹⁶ *Id.* at 14:19-15:6; 26:11-23; 29:22-30:2; Video, at 1:55:16-44.

8. After radioing dispatch for records and for a NDD, Trooper Tripodi continued filling out a citation for Mr. Mayville, including “attempting to figure out whose vehicle it was because [Mr. Mayville] had no registration paperwork.”¹⁷
9. Approximately four minutes later, prior to dispatch returning any records check information on either Mr. Mayville or the vehicle, Trooper Mackleprang arrived with his NDD.¹⁸
10. Once Trooper Mackleprang arrived, Trooper Tripodi briefly informed him about what had occurred.¹⁹ Trooper Mackleprang then walked up to Mr. Mayville’s car and asked him to exit the vehicle so that he could run his NDD around the car. Mr. Mayville refused.²⁰ Trooper Mackleprang observed that Mr. Mayville had delayed reactions, “almost like a blank stare,” which caused him to suspect that Mr. Mayville was impaired.²¹
11. Trooper Mackleprang requested Trooper Tripodi’s assistance.²² The two troopers convinced Mr. Mayville to exit the vehicle, and Trooper Tripodi patted Mr. Mayville down to check for weapons. Trooper Tripodi instructed

¹⁷ Tr. at 30:13-31:6. Trooper Tripodi attempted to ascertain this information by running either the plate or the VIN through his computer. *Id.*

¹⁸ Tr. at 15:7-11; 57:18-58:18; Video, at 1:59:54. NDD Hasso is a trained dog who can detect the odors of marijuana, methamphetamine, heroin and cocaine. Tr. at 48:20-49:17. He has undergone extensive certification and trainings, including bi-weekly current trainings. *Id.*

¹⁹ Tr. at 15:15-19; 31:9-15; 50:4-11; 58:19-59:6; Video, at 2:00:20-30.

²⁰ Tr. at 15:18-23; 31:19-22; 50:4-51:11; Video, at 2:00:35-02:35.

²¹ Tr. at 66:21-68:10.

²² Tr. at 15:25-16:8; 51:12-22; Video, at 2:02:40-03:15. Records checks had not yet returned from dispatch. Tr. at 16:9-11.

Mr. Mayville to stand on the side of the road a few feet in front of the vehicle.²³

12. The NDD sniffed around the vehicle and alerted to the presence of narcotics.²⁴

13. After the NDD had alerted to the presence of narcotics in the vehicle, dispatch returned the information about Mr. Mayville and his vehicle, indicating that Mr. Mayville had a criminal record.²⁵

14. Trooper Mackleprang explained to Mr. Mayville that his NDD had indicated to the odor of narcotics, at which point Mr. Mayville stated, "there's no way, there's no way."²⁶ The troopers explained that they were going to search the vehicle and moved Mr. Mayville to Trooper Tripodi's vehicle.²⁷

15. The troopers conducted a search and found two handguns and a homemade suppressor inside the engine area (one wrapped in a cloth bag, another vacuum sealed with the suppressor); a yellow plastic container with three packages of methamphetamine, totaling approximately one pound (453 grams) behind the carpeted wall of the trunk on the passenger side; and

²³ Tr. at 16:18-17:7.

²⁴ Tr. at 31:23-32:3; 51:19-54:24; Video, at 2:04.

²⁵ Tr. at 22:8-24; 32:4-10; Video, at 2:05:45-2:06:00. The Triple III check from dispatch informed Trooper Tripodi about Mr. Mayville's criminal history.

²⁶ Video, at 2:06:10-2:07.

²⁷ Tr. at 32:11-15; Video, at 2:06:30-45.

another vacuum sealed package behind the carpeted wall with a scale and one ounce (28 grams) of heroin.²⁸

16. After finding the firearms and the suppressor, the troopers placed Mr. Mayville under arrest.²⁹

17. Mr. Mayville's blood was drawn at the station. He tested positive for methamphetamine in his bloodstream.³⁰

II. CONCLUSIONS OF LAW

A. The Troopers Did Not Unreasonably Prolong the Traffic Stop.

Mr. Mayville concedes that the initial traffic stop did not violate his Fourth Amendment rights. Instead, he argues that the troopers unconstitutionally prolonged the stop until the NDD arrived. Mr. Mayville contends that but for this unconstitutional extension of the stop, the NDD would not have alerted and the troopers would not have had probable cause to search his vehicle.

The troopers did not unconstitutionally extend the traffic stop. “[T]he tolerable duration of police inquiries in the traffic-stop context is determined by the seizure’s ‘mission’—to address the traffic violation that warranted the stop, and attend to related safety concerns.” *Rodriguez v. United States*, 135 S. Ct. 1609, 1614 (2015) (citations omitted). In addition to addressing the violation, an officer may also conduct “ordinary inquiries incident to [the traffic] stop.” *Id.* at 1615

²⁸ Tr. at 17:22-22:7; 32:16-22; 55:21-57:11; Video, at 2:08:00-26:35.

²⁹ Tr. at 22:15-24; Video, at 2:26:30-27:15.

³⁰ Tr. at 47:1-5; 57:13-17; 69:5-8.

(alteration in original) (citation omitted). These incidental inquiries do not unconstitutionally prolong the stop. “Typically such inquiries 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.*; accord 4 WAYNE R. LAFAVE, SEARCH AND SEIZURE § 9.3(c) (5th ed. 2016) (“This kind of checking of government records incident to a ‘routine traffic stop,’ which usually takes a matter of minutes, is well-established as a part of the ‘routine,’ and has consistently been approved and upheld by both federal and state courts.” (footnotes omitted)).

Here, Trooper Tripodi radioed dispatch to run Mr. Mayville’s license and to check for outstanding warrants. While Trooper Tripodi was waiting for the results of the license and warrants check, Trooper Mackleprang circled the perimeter of the car with a NDD, which alerted upon detecting the scent of illicit drugs inside of the vehicle. The dog sniff did not violate Mr. Mayville’s privacy rights. *See Illinois v. Caballes*, 543 U.S. 405, 409 (2005) (“[T]he use of a well-trained narcotics-detection dog—one that ‘does not expose noncontraband items that otherwise would remain hidden from public view,’—during a lawful traffic stop, generally does not implicate legitimate privacy interests.” (citation omitted)). And it is well-established that the routine records check did not unconstitutionally extend the traffic stop. Therefore, because the dog sniff occurred while Trooper Tripodi

was still waiting for dispatch to conduct the routine license and warrants check, the troopers did not violate Mr. Mayville's Fourth Amendment rights.

B. In the Alternative, the Troopers Had Reasonable Suspicion to Continue their Investigation Based on Mr. Mayville's Demeanor.

In the alternative, the troopers possessed reasonable suspicion to prolong the traffic stop in order to determine whether Mr. Mayville was incapacitated or inebriated.

A "driver must be permitted to proceed after a routine traffic stop if a license and registration check reveal no reason to detain the driver unless the officer has reasonable articulable suspicion of other crimes or the driver voluntarily consents to further questioning." *United States v. West*, 219 F.3d 1171, 1176 (10th Cir. 2000). In this case, Trooper Tripodi and Trooper Mackleprang noted Mr. Mayville's demeanor, his inability to focus, his difficulty in answering simple questions. As Trooper Tripodi stated, he believed that Mr. Mayville "had some impairment issues."³¹ Trooper Mackleprang independently came to the same conclusion.³²

Based upon the testimony of these two troopers, whom the court found to be credible, the court finds that the troopers had a reasonable articulable suspicion that Mr. Mayville was driving while impaired. Accordingly, the troopers were justified

³¹ Tr. at 14:22-15:3; 16:18-24.

³² Tr. at 66:21-68:10.

in continuing their investigation to determine whether Mr. Mayville had been driving in an impaired state. For this independent reason, the troopers did not violate Mr. Mayville's Fourth Amendment rights by continuing to detain him while they investigated further.

III. CONCLUSION

For the foregoing reasons, the court DENIES Mr. Mayville's motion to suppress. [Docket 40]

49 days remain on the Speedy Trial clock. The court, therefore, sets the trial in this case for **May 22, 2017 at 8:30 am**.

DATED April 3, 2017

HONORABLE JILL N. PARRISH
United States District Court Judge

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

FILED
United States Court of Appeals
Tenth Circuit

June 19, 2020

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOHN ELISHA MAYVILLE,

Defendant - Appellant.

No. 19-4008
(D.C. No. 2:16-CR-00266-JNP-1)
(D. Utah)

ORDER

Before **BACHARACH, BALDOCK, and MURPHY**, Circuit Judges.

Appellant's petition for rehearing is denied.

The petition for rehearing en banc was transmitted to all of the judges of the court who are in regular active service. As no member of the panel and no judge in regular active service on the court requested that the court be polled, that petition is also denied.

Entered for the Court



CHRISTOPHER M. WOLPERT, Clerk