

No.: _____

SUPREME COURT OF THE UNITED STATES

REGINALD E. BLANDFORD,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent.

On Petition for a Writ of Certiorari to
The New York State Court of Appeals

PETITIONER'S APPENDICES

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APPENDIX 1

State of New York Court of Appeals

MEMORANDUM

This memorandum is uncorrected and subject to revision before publication in the New York Reports.

No. 84 SSM 17

The People &c.,
Respondent,
v.
Reginald Blandford,
Appellant.

Submitted by Peter D. Salton, for appellant.
Submitted by William D. Vandelinder, for respondent.

MEMORANDUM:

The order of the Appellate Division should be affirmed.

Defendant Reginald Blandford challenges the denial of his motion to suppress marihuana found during a traffic stop of his vehicle. In the course of a stop predicated on

the observation of traffic violations—the legality of which defendant does not contest before this Court (*see generally People v Robinson*, 97 NY2d 341, 349 [2001])—defendant consented to a search of the backseat of his vehicle. Instead of conducting that search, the police officer walked his canine around the exterior of the vehicle and, in mere seconds, the canine alerted to the trunk. Defendant argues that law enforcement lacked founded suspicion that criminal activity was afoot and, thus, unlawfully conducted the exterior canine sniff search.

A canine sniff search of a vehicle’s exterior is lawful if police possess a founded suspicion that criminal activity is afoot (*see People v Devone*, 15 NY3d 106, 110 [2010]). Determinations regarding the existence of a founded suspicion of criminality involve mixed questions of law and fact (*see People v Mercado*, 25 NY3d 936, 937 [2015]; *see also People v Garcia*, 20 NY3d 317, 324 [2012]). Therefore, our review is “limited to whether there is evidence in the record supporting the lower courts’ determinations” (*People v McIntosh*, 96 NY2d 521, 524 [2001]; *see also People v Britt*, 34 NY3d 607, 617 [2019]). As pertinent here, “[t]his rule applies where the facts are disputed, where credibility is at issue or *where reasonable minds may differ as to the inference to be drawn*” (*People v Howard*, 22 NY3d 388, 403 [2013] [internal quotation marks and citation omitted]).

Based on the evidence presented at the suppression hearing, including the officers’ observations prior to and during the stop, there is record support for the determination that a founded suspicion of criminal activity existed here and, thus, the issue is beyond further review (*Mercado*, 25 NY3d at 937; *People v Martin*, 19 NY3d 914, 916 [2012]; *Devone*,

15 NY3d at 113-114).¹ Defendant's remaining contentions, to which the dissent alludes, are unpreserved (*see People v Gates*, 31 NY3d 1028, 1029 [2018]).

¹ Our reading of the facts differs from that of the dissent, and in any event, the dissent does not apply the proper standard of review.

WILSON, J. (dissenting):

When people meet, they often shake hands. If more familiar, they may clasp hands and bring their bodies momentarily together, tapping each other on the back. Sometimes, people fully embrace, acknowledging their companionship before beginning a conversation or parting ways. Those common greetings are among the most basic and

bedrock forms of human interaction, more profound than words. They are how we greet each other, acknowledging our shared connections as acquaintances, friends, or family.

On an ordinary November afternoon, outside the On the Way convenience store in Elmira, New York, Reginald Blandford greeted someone thusly. Instead of seeing his handshake or hug as greeting, however, two officers interpreted his actions as a drug sale. They already suspected Mr. Blandford might be involved in drug sales, and they knew the On the Way store was in an area where drug sales occurred.

A state trooper followed Mr. Blandford as he drove away. When he noticed that one of Mr. Blandford's two rear license plate lamps was out, the trooper pulled Mr. Blandford over. The trooper then relied on Mr. Blandford's behavior outside the On the Way store, along with other observations before and during the traffic stop, to determine he had the appropriate level of suspicion to detain Mr. Blandford while he brought a drug-detection dog to sniff the exterior of Mr. Blandford's car. That canine sniff led to the discovery of marijuana in the car. Because both the New York and U.S. constitutions protect individuals from such intrusions on their reasonable expectations of privacy under these circumstances, I dissent.

I.

Mr. Blandford caught the attention of law enforcement before the afternoon of his arrest. Investigator Backer “knew [Mr. Blandford] was involved in the illegal sale of narcotics” from “general police knowledge.” On the afternoon of Mr. Blandford’s arrest, Investigator Backer attempted to summon a state trooper to stop Mr. Blandford, whom

Investigator Backer believed was driving without wearing his seatbelt. No trooper arrived before Mr. Blandford parked at the On the Way convenience store, which Investigator Backer described as a “trouble spot in the city.” The Investigator radioed Trooper Shive, describing Mr. Blandford’s car, noting the alleged seat belt infraction, and telling Trooper Shive that he thought “there may be some criminal activity afoot” outside the On the Way store. Trooper Shive understood that to mean actions that might suggest potential “hand-to-hand dealing,” but that “could be just as simple as loitering.”

By the time Trooper Shive arrived, Mr. Blandford was inside the store. Several other people were outside the store. After a few minutes, Mr. Blandford emerged. As Mr. Blandford walked to his car, Investigator Backer observed him doing “a handshake, type hug thing” before entering the driver’s side of his car. Trooper Shive similarly observed “hand shakes, high fives, hugs, whatever,” along with the “exchanging of [unheard] verbiage.” Though the behavior “in and of itself” did “not necessarily mean[] anything,” Trooper Shive’s suspicion was aroused.

Trooper Shive and Investigator Backer observed someone exit the store and sit in the front passenger seat of Mr. Blandford’s car. After Trooper Shive began following Mr. Blandford’s car, he noticed that one of its two license plate lamps was out, a violation of Vehicle and Traffic Law § 375 (2) (a) (4) under certain conditions. Trooper Shive activated his emergency lighting. According to Trooper Shive, Mr. Blandford then did a “slow roll response,” where his vehicle “didn’t immediately come to a stop.” While “the slow roll was going on,” Trooper Shive saw Mr. Blandford make “furtive movements” inside the

car, “ducking down in his seat, moving about within his seat, and at a point reaching over the passenger’s seat, doing something appearing to be down in the floorboard area and/or the backseat,” though he could not “see physically where [Mr. Blandford’s] final reach [was].”

When Mr. Blandford stopped, Trooper Shive had him exit the car to conduct a roadside interview. Mr. Blandford explained that he was giving the person in his car, Mr. Gerdeep Singh, a ride home and that Mr. Singh’s family owned the On the Way store. Mr. Blandford also mentioned his wallet, money and going to the store to make purchases. Despite those innocuous responses, Trooper Shive felt that he and Mr. Blandford “kind of talked in a circle.” He recognized that giving Mr. Singh a ride home and going to the On the Way store to buy items were plausible explanations for why Mr. Blandford went to and exited the store. Nevertheless, Trooper Shive found it suspicious that Mr. Blandford said he went to the store to buy something but exited with no visible purchases. Based on the foregoing, Trooper Shive decided he had a “founded suspicion that criminal activity was afoot” and asked Mr. Blandford for consent to search his vehicle. Mr. Blandford gave “mixed consent,” granting Trooper Shive permission to search the backseat area, his driver’s seat area, and part of the passenger compartment only—the very areas in which Trooper Shive said he saw “furtive movements.” After receiving that consent, Trooper Shive looked into the car. The passenger compartment produced nothing of interest; he did see Mr. Blandford’s wallet in the rear. Finding no hint of criminality so far, Trooper Shive did not tell Mr. Blandford he was free to go. Instead, he retrieved his drug-detection dog

(“Clark,” an impressively beautiful and regal animal) and had the dog sniff the exterior of the car. The dog alerted to the trunk, leading the trunk to be opened. Once the trunk was opened, the dog alerted to a bag inside the trunk. Trooper Shive then conducted a warrantless search of the bag, in which he found marijuana. He released Mr. Singh and detained Mr. Blandford.

Mr. Blandford was charged with one count of criminal possession of marijuana in the second degree, a violation of Penal Law § 221.25. He moved to suppress the marijuana, arguing that Trooper Shive did not have the proper level of suspicion to detain him to conduct the canine search of his car. After the court denied suppression, Mr. Blandford pleaded guilty to one count of attempted criminal possession of marijuana. He was sentenced to 1.5 years in prison, in a “shock incarceration” program, followed by two years of supervision.

Mr. Blandford appealed. The Appellate Division, with one Justice dissenting, affirmed, holding that “taken together, the trooper’s observations of defendant . . . created a founded suspicion that criminal activity was afoot” and that Trooper Shive therefore “properly extended the stop beyond its initial justification” to “conduct[] the canine search” (*People v Blandford*, 190 AD3d 1033, 1037 [3d Dept 2021]).

II.

When Trooper Shive was asked why he stopped Mr. Blandford, he answered under oath: “I’m conducting a pretext stop.” Given his candor, I suspect Trooper Shive and Investigator Backer would not quarrel with the following summary of the record, which I

recite in the light most favorable to the prosecution. Without any real evidence, but just “general police knowledge,” the officers believed Mr. Blandford was selling marijuana. So they watched him. They were almost able to stop him for a seatbelt violation, but Trooper Shive and his dog did not arrive in time. When following him after he left the store, it was their good fortune that one of his two license plate lights was not illuminated, giving Trooper Shive a basis to stop him. In a further bit of luck, Mr. Blandford consented to let them search part of his car. In a bit of bad luck, that produced no results. But they ended up getting what they had wanted: the ability to have a drug detection dog sniff the car, the result of which gave them a reason to arrest Mr. Blandford and seize the evidence against him.

Of course, Mr. Blandford’s car was parked for a while, in plain view of Trooper Shive and Investigator Backer, outside the convenience store. The store was known as a trouble spot. A handshake or hug is sometimes used to convey drugs. Why couldn’t Trooper Shive have just walked up with his dog and had the dog sniff the car? Well, the Fourth Amendment would prohibit that. How about the handshake and hugs, the passenger, Mr. Blandford exiting the store with no purchases – all that happened before Mr. Blandford left the parking lot – why not just take a stroll by and let Clark get a good whiff? Sorry, the Fourth Amendment still would have prohibited that. Once Mr. Blandford’s car was moving again, the officers needed some basis to stop it. This time, one infers that Mr. Blandford was wearing his seatbelt, because the officers did not stop him on that basis and issued no citation for that infraction. Driving with one nonfunctioning license plate light bulb is a

traffic infraction, so Trooper Shive had a basis to stop the car to issue a citation. I think it fair to say, though, that Trooper Shive did not stop the car because he wanted Mr. Blandford to get a new lightbulb.

Mr. Blandford's case illustrates a troubling aspect of police behavior: law enforcement can pursue someone they suspect of criminal behavior without a founded suspicion of criminality, wait for the right moment to stop that person for a minor traffic infraction, and then serve up a stew of flavorless facts to transform a stop in which they have no intrinsic interest into the search they sought before they had any evidentiary basis to suspect wrongdoing. Although this case illustrates that problem, its resolution should be much simpler than resolution of the systemic problem: here, the officers did not possess information sufficient to justify the canine search.

A. The traffic stop.

The police may stop a vehicle 30 minutes or later after sunset if one of its license plate lights is not working. Although one might question the cost/benefit calculus of permitting police stops on that basis, that is a legislative choice. However, it is worth noting that a minor change in factual findings would have rendered the stop unlawful.

The first traffic infraction allegedly observed by law enforcement was Mr. Blandford driving without a seatbelt while Mr. Blandford was on his way to the convenience store. The Appellate Division upheld the denial of suppression in part because Trooper Shive “was entitled to rely upon [Investigator Backer’s] previous observation that [Mr. Blandford] was driving without a seatbelt – a separate traffic violation that also

provided probable cause for [Trooper Shive's] stop" (*Blandford*, 190 AD3d at 1036 [internal citations omitted]). That analysis is incorrect. Although Trooper Shive could ordinarily rely on Investigator Backer's information about the alleged seatbelt violation to pull Mr. Blandford over (*People v Ramirez-Portoreal*, 88 NY2d 99, 113 [1996]; *People v Horowitz*, 21 NY2d 55, 60 [1967]), Mr. Blandford parked and exited his car before Trooper Shive arrived. Once Mr. Blandford exited his car, entered and exited the store, and began driving anew, the prior seatbelt infraction cannot be used to justify a later stop. The Appellate Division's rationale would allow officers to pull someone over hours or even days after they originally observed that person driving without a seatbelt or committing any other traffic infraction.

Trooper Shive may have understood what the Appellate Division did not – that he could not stop Mr. Blandford based on the prior seatbelt infraction. Accordingly, Trooper Shive followed Mr. Blandford in the hope of finding a new traffic infraction or some other basis to stop the car. New York's Vehicle and Traffic Law states that motor vehicles, excepting motorcycles, are required to have a white light illuminate their license plate for at least fifty feet from the rear of the car under certain conditions (VTL § 375 [2] [a] [4]). Those conditions include when the vehicle is driving on a public highway from one half-hour after sunset to one half-hour before sunrise, "or . . . at such other times as visibility for a distance of one thousand feet ahead of [the] motor vehicle is not clear" (*id.*).¹ On the

¹ The plainest reading of the 1000-foot visibility provision is that it is meant to apply to situations where weather conditions – such as rain, fog or wind – impair forward visibility,

evening that Trooper Shive pulled Mr. Blandford over for his allegedly unilluminated license plate, a half-hour had not yet passed since sunset (*Blandford*, 190 AD3d at 1035). Nevertheless, the Appellate Division credited Trooper Shive's testimony that "it was fully dark at the time of the stop," on which basis the Appellate Division found that it was "'objectively reasonable' for the trooper to conclude that the requisite visibility did not exist and that a traffic violation had been committed" (internal citations omitted) (*id.*).²

Thus, the legality of this stop cannot be justified by the prior seatbelt infraction or by more than 30 minutes passing from sunset; it turns not on Trooper Shive's testimony that forward visibility was less than 1000 feet, but on the Appellate Division's conclusion that it was reasonable to believe that, if it was "fully dark," visibility was less than 1000 feet.

I conclude from the above that the stop of Mr. Blandford was pretextual. But you needn't believe me—Trooper Shive swore it was. The officers guessed correctly that Mr. Blandford possessed drugs; whether a seatbelt infraction or license plate bulb failure or some other flaw existed was irrelevant to the officers, so long as it provided a basis to stop his car. Pretextual, however, does not mean unlawful.

B. The canine search.

not by darkness outside of the times prescribed in the statute. However, Mr. Blandford has not advanced that interpretation of the statute, so I do not address it further.

² For Elmira, NY, on November 17, 2017, total darkness began at 6:23 PM, or well over an hour from when Mr. Blandford was stopped (see <http://suncalc.net/#/42.1055,-76.8041,6/2017.11.17/08:09>).

Though the stop was lawful, the canine search for which Trooper Shive prolonged the stop violated Mr. Blandford's constitutional rights under the New York and federal constitutions.

Under the New York Constitution, the level of suspicion required before law enforcement can conduct a canine search of the exterior of a lawfully stopped vehicle is a “founded suspicion that criminal activity is afoot” (*People v Devone*, 15 NY3d 106 [2010]). That level of suspicion is “level two” in a four-level framework this Court explicated for various police-civilian encounters (*People v DeBour*, 40 NY2d 210, 223 [1976]). The Appellate Division held that “taken together, the trooper’s observations of defendant engaging in behaviors commonly seen in outdoor drug transactions at a location known for such activity, his ‘slow roll response’ and furtive movements after the trooper initiated the stop and his evasive, inconsistent answers to the trooper’s questions created a founded suspicion that criminal activity was afoot” (*Blandford*, 190 AD at 1036). For the Appellate Division, Trooper Shive therefore properly extended the stop beyond its initial justification to conduct the canine search (*id.*). Because determinations regarding the existence of a founded suspicion of criminality involve mixed questions of law and fact (see *People v Mercado*, 25 NY3d 936, 937 [2015]), our standard of review is “whether there is evidence in the record supporting the lower courts’ determinations” (*People v McIntosh*, 96 NY2d 521, 524 [2001]). In affirming the Appellate Division, the majority holds that “[t]here is record support for the determination that a founded suspicion of criminal activity was afoot” justifying Trooper Shive’s canine search. I disagree. The facts relied upon by the

lower courts do not support a founded suspicion that Mr. Blandford was engaged in criminal activity.

First, Mr. Blandford’s handshake or hug to at least one person outside the convenience store does not support any suspicion of criminality. Notably, neither officer observed Mr. Blandford deliver or receive any contraband when they saw him greet at least one person outside the store; instead, each acknowledged that his conduct could have been completely innocent. Unless we are prepared to say that the police may detain anyone who hugs or shakes hands outside of a store known to the police to have been the site of drug transactions, those facts cannot be a basis for stopping Mr. Blandford. We should also keep in mind that such a rule would fall more harshly on communities of color and low-income communities: shaking hands as you enter Saks will likely not result in your detention. Because neither Trooper Shive nor Investigator Backer observed any exchange of contraband, it was improper for County Court to consider Mr. Blandford’s handshake or hug as a factor supporting its finding that there was a founded suspicion of criminality afoot justifying Trooper Shive’s canine sniff.

Second, contrary to the holding of the majority and the Appellate Division, the record does not support a finding that Mr. Blandford gave “inconsistent answers to the trooper’s questions” (*Blandford*, 190 AD3d at 1036). According to Trooper Shive, Mr. Blandford told him that he was giving Mr. Gerdeep Singh, his fellow passenger, a ride home and that Mr. Singh’s family owned the store. Nothing in the record suggests those statements were untrue. Mr. Blandford talked about his wallet and money, and he indicated

that he was in the store to buy items. The trooper observed his wallet in the car, which matches Mr. Blandford's statement that his wallet was in the back of the car. Because Trooper Shive "didn't observe anything that [Mr. Blandford] bought," he claimed that he and Mr. Blandford "just kind of talked in a circle." Again, nothing is inconsistent or suspicious about entering a store and leaving emptyhanded. Perhaps the store did not have what Mr. Blandford wanted; perhaps it cost too much; perhaps he got diverted by giving Mr. Singh a ride home. Indeed, the statements made by Mr. Blandford are very different from the statements in *Devone*, where inconsistency contributed to a finding that a founded suspicion existed (15 NY3d at 113 [a driver told officers that his cousin owned the vehicle but did not know his cousin's name; then said that male passenger was his cousin though the vehicle was registered to a female]). Even if Mr. Blandford's statements had been inconsistent, which they were not, discrepancies are not enough to give rise to a founded suspicion of criminality afoot (see *People v Milaski*, 62 NY2d 147, 156 [1984] [Defendant's reasons for his presence in a parking area, along with his "nervousness and other inconsistencies in his statements, provided no indication of criminality"]; *People v Dealmeida*, 124 AD3d 1405, 1407 [4th Dept 2015] [Nervousness and "discrepancies in describing where (someone) was coming from and going are not enough" to meet the second level in the *DeBour* framework]). Mr. Blandford's statements were not inconsistent, and the Appellate Division erred in factoring his statements into its ultimate finding that a founded suspicion of criminality afoot existed for Trooper Shive to conduct the canine search.

What remains is Mr. Blandford’s “slow roll” while making “furtive movements.”

Perhaps those observations would justify stopping Mr. Blandford, but that is not at issue here: he was stopped for a nonfunctioning license plate lightbulb. Trooper Shive concluded that the slow roll and furtive movements around the floorboards and back seat made him suspicious that criminal activity was afoot.³ The issue here is whether, at the time Trooper Shive determined to continue the stop and fetch his drug-sniffing dog, he had a reasonable suspicion that criminality was afoot. At that point, Mr. Blandford had consented to a search of the passenger section of his car. Trooper Shive found no contraband. He found Mr. Blandford’s wallet in the rear, which would explain the “furtive movements” and slow roll. He learned that Mr. Blandford was driving home someone related to the owner of the On the Way store. Those facts must also be taken into account in determining whether, at the time the trooper decided to prolong the stop and conduct a canine sniff, he had a founded suspicion that criminality was afoot. Whatever suspicions he might have had from the slow roll and furtive movements had proved unfounded. The officers can point to no fact whatsoever suggesting that drugs might have been squirreled away in an inaccessible part

³ According to Trooper Shive, Mr. Blandford was “ducking down in his seat, moving about within his seat, and at a point reaching over the passenger’s seat, doing something, appearing to be down in the floorboard area and/or the backseat.” The trooper could not “see physically where [Mr. Blandford’s] final reach [was].” When searching the car on consent, the trooper saw Mr. Blandford’s wallet in rear. The slow roll and furtive movements could easily have been Mr. Blandford’s attempt to retrieve his license before he came to a stop. Additionally, the “slow roll stop” by Mr. Blandford is not of the sort that suggests criminality. The Appellate Division relied on *People v Sanders* (185 AD3d 1280 [3d Dept 2020]), which involved a slow roll stop by a motorist stopped by Trooper Shive after the defendant “rapidly accelerated,” “squared the block” and cut through one-way markers in a parking lot before he “slow roll[ed]” for an entire city block before stopping (*id.* at 354). No such evidence appears in the record here.

of the passenger compartment or in the trunk. Instead, the facts as known to Trooper Shive after he conducted the search and spoke with Mr. Blandford unequivocally suggested that no criminal activity was afoot.

III.

Mr. Blandford also raises two arguments under the U.S. Constitution. First, he argues that Trooper Shive was not permitted to conduct the canine search under the federal constitutional standard, which Mr. Blandford argues requires reasonable suspicion, a higher threshold than “a founded suspicion of criminal activity afoot.” Second, Mr. Blandford argues that this Court’s application of the *DeBour* level two standard of suspicion to canine searches during traffic stops through *Devone* is therefore unconstitutional.

The majority concludes that Mr. Blandford failed to preserve those arguments. I disagree. In the suppression court, Mr. Blandford’s attorney argued that the canine search was improper under *Rodriguez v United States* (575 US 348 [2015]), which concerns the U.S. Constitution’s protections during traffic stops. Mr. Blandford again cited *Rodriguez* in his brief to the Appellate Division as presenting “another legal issue” raised by his case, arguing that “there is no authority” for police to conduct a canine sniff under the facts and proposition of the case (Brief of Appellant to the Appellate Division at 20). Thus, Mr. Blandford sufficiently argued below that the canine search was improper under the constitutional standard articulated in *Rodriguez*. In the suppression court, Mr. Blandford does not appear to have argued explicitly that the *DeBour* and *Devone* standards are

unconstitutional. Nevertheless, the argument is necessarily raised by what he did say in the suppression court. By arguing that the canine search violated both New York and federal constitutional standards, which are higher, Mr. Blandford necessarily raised the question whether our state standard is preempted by the federal constitution and therefore unconstitutional. Although our state constitution can provide greater protections than the U.S. Constitution (*People v Weaver*, 12 NY3d 433, 445 [2009]; *People v Scott*, 79 NY2d 474, 502-06 [1992]; *People v Torres*, 74 NY2d 244, 228 [1989]), it cannot provide less. Thus, Mr. Blandford’s argument that a judicial interpretation of our state constitution – here, *Devone*’s holding that canine searches should be analyzed under level 2 of *DeBour* – that permits canine searches where the U.S. Constitution would deem them unlawful, unmistakably means that he is challenging the constitutionality of *Devone*. In any event, the second issue is only semantically different from the first: if Mr. Blandford is correct that the canine search violates the U.S. Constitution, New York constitutional law cannot save the sniff.

In *Rodriguez*, the U.S. Supreme Court held that “a police stop exceeding the time needed to handle the matter for which the stop was made violates the [U.S.] Constitution’s shield against unreasonable seizures” (575 US at 350). The Court specifically held that a canine sniff conducted by an officer after a traffic stop was completed, without the owner’s permission, was improper (*id.* at 352). The Court noted that “[a]n officer may conduct certain unrelated checks during an otherwise lawful traffic stop” but “may not do so in a way that prolongs the stop, absent the reasonable suspicion ordinarily demanded to justify

detaining an individual” (*id.* at 355). A canine search for drugs is not among the “ordinary inquiries incident to [the traffic] stop” (*id.*, quoting *Illinois v Caballes*, 543 US 405, 408 [2005]). Thus, “[t]he critical question . . . is not whether the dog sniff occurs before or after the officer issues a ticket . . . but whether conducting the sniff ‘prolongs’ – *i.e.*, adds time to – ‘the stop’” (*id.* at 357 [internal citations omitted]). Because the officer in *Rodriguez* prolonged the traffic stop to conduct the canine sniff, the Court held that there needed to be a “reasonable suspicion of criminal activity” to “justif[y] detaining Rodriguez beyond completion of the traffic infraction investigation” (*id.* at 358). *Rodriguez* thus stands for the proposition that, under the federal constitution, an officer must have “reasonable suspicion of criminal activity” to justify prolonging a traffic stop to conduct a canine search of an automobile.

Determining whether Trooper Shive’s canine search passes muster under *Rodriguez* involves two central questions: first, whether Trooper Shive prolonged the traffic stop to effectuate the canine search and second, if he did, whether he had a reasonable suspicion of criminal activity to justify it. There is no question that Trooper Shive prolonged the stop to conduct the canine search—he had to return to his vehicle to get the canine, with Mr. Blandford not free to leave in the interim. Indeed, the Appellate Division made a factual finding that the trooper “extended” the traffic stop “beyond its initial justification” to conduct the canine search (*Blandford*, 190 AD3d at 1036).

Thus, the issue devolves to the second question: did the trooper have a reasonable suspicion to warrant a canine search? The “reasonable suspicion” standard is higher than

the “founded suspicion” standard under the New York Constitution (*see DeBour*, 40 NY2d at 223 [describing a four-tiered framework for levels of suspicion, with the second level of suspicion (required for police officers to make inquiries) as “a founded suspicion that criminal activity is afoot” and a third, higher level of suspicion (required for police officers to complete a forcible stop and detention) as a “reasonable suspicion that a particular person has committed or is about to commit a felony or misdemeanor”]; *Devone*, 15 NY3d at 110 [holding that the second *DeBour* level of suspicion applies to canine sniffs of cars during lawful traffic stops]). As discussed earlier, the record does not support a finding that there was a founded suspicion, and therefore it also cannot support a finding that there was a reasonable suspicion, which is a higher standard.

Because the federal standard in *Rodriguez* requires a higher level of suspicion than does level 2 of *DeBour*, *Devone*, which was decided 5 years before *Rodriguez*, can no longer be good law. Whether articulated in that way or, instead, by saying that the canine search here was unlawful under the federal standard but not the New York standard does not have any practical importance. Regrettably, the majority concludes that neither way of phrasing the issue was properly preserved, which means that officers and civilians alike must live with uncertainty about the proper test to be applied to canine searches. I would point those in doubt to the Supremacy Clause and the incorporation of the Fourth Amendment through the Fourteenth.

IV.

Mr. Blandford's letter brief raises several policy considerations about police practices in communities of color, arguing that “[t]his case is about . . . how we as a society want to treat persons of color in their neighborhoods and when they step into cars.” He contends that existing laws, and their judicial interpretations, have led law enforcement officers to “stitch together disparate innocuous facts” to satisfy the founded suspicion standard they need to meet for certain intrusions. An objective reader of the facts would have to conclude that the officers here were not concerned that Mr. Blandford would be injured because he was not wearing a seatbelt, or that his license plate could not be read with only one working lightbulb. Rather, they suspected—for reasons we don’t know—that he was dealing drugs. It is not reasonable to believe their suspicion was based on his hugs, his fruitless shopping at a convenience store or his giving a friend a ride. After searching his car and speaking with him, it could not have been based on a slow roll or furtive movements. It must have been based on something else—something they suspected well before that November afternoon. Because that “something else” is not in the record, we are left to wonder how benign or pernicious that suspicion may have been.

On review of submissions pursuant to section 500.11 of the Rules, order affirmed, in a memorandum. Chief Judge DiFiore and Judges Garcia, Singas and Cannataro concur. Judge Wilson dissents in an opinion, in which Judges Rivera and Fahey concur.

Decided October 14, 2021

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May 25, 2021

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**Re: *People v Blandford (Reginald)* – Rule 500.11 Letter
APL-2021-00040**

May It Please The Court:

My name is Peter Daniel Salton and I represent the Appellant, Reginald E. Blandford. I respectfully submit the following letter to set forth Appellant's continued and additional legal arguments in support of the instant appeal for which Appellant was granted leave to appeal to the Court of Appeals by the Hon. Christine M. Clark, Associate Justice, Supreme Court, Appellate Division, Third Department, following an appeal from a suppression hearing.

This letter is also respectfully submitted in support of Appellant's objection to the placement of this appeal on the Alternative Track under Rule 500.11 for the reasons stated below.

It is Appellant's position that as a matter of law, both the suppression court

and Appellate Division were incorrect. The law was incorrectly applied to the facts as settled in the proceedings below. As such, this Court must remove this case from the Rule 500.11 Alternate Track and allow the case to be fully briefed and scheduled for oral argument. This Court reviews questions of law, *de novo* where the lower courts commit an error of law. (NY Const, art VI, § 3[b]).

When this Court determines appeals which involve a mixed question of law and fact, this Court has the power to correct errors of law, including a finding of fact predicated on misapplication of the governing law. (*See People v. Garcia*, 20 NY3d 317, 324 [2012]) (upholding the lower court's determination that the police lacked level two founded suspicion based on the defendants' nervousness).

Whether probable cause, reasonable suspicion, founded suspicion, and similar determinations exist presents a question of law for this Court to decide. (*People v. Harrison*, 57 NY2d 470, 477-478 [1982]). In examining these mixed questions of law and fact “the truth and existence of the facts and circumstances bearing on the issue [is] a question of fact, and the determination of whether the facts and circumstances found to exist and to be true constitute probable cause [is] a question of law”. (*People v Oden*, 36 NY2d 382, 384, [1975]). Only where no view of the factual evidence in the record supports the determination below can this court step in. Otherwise, this Court is bound by the lower court's findings. (*People v Wheeler*, 2 NY3d 370, 373 [2004]).

There are several issues governing this appeal. The first is that as a matter of existing law, there was no founded suspicion of criminal activity afoot. The legal standards developed in the “low level” *People v DeBour*, and *People v Devone*, context have evolved into an unmanageable set of contradictory rules that have made it very difficult for law enforcement officers to know what they are allowed to do and where to draw the line. The second issue is that when the police dog was taken out of the police car to sniff for drugs, it was not permitted to do so under the federal constitutional standard requiring reasonable suspicion. Significantly, the *DeBour* framework affords people less protection than the federal standard. Finally, the third issue is one of public policy. It is increasingly apparent that police action is overwhelmingly geared to enforcement in neighborhoods of color. At a time in this Nation’s history where an individual’s right to be secure from unreasonable searches and seizures by the government is on public display, this case is too important to be fast tracked

I. AS A MATTER OF LAW, THE FACTS IN THE RECORD DID NOT GIVE RISE TO A FOUNDED SUSPICION THAT CRIMINAL ACTIVITY WAS AFOOT

When Appellant stepped out of his car at the “On the Way” convenience store there was nothing that gave rise to a founded suspicion that criminal activity was afoot. What was happening was a targeted operation in a poor section of town frequented by people of color. Appellant was shaking hands, hugging and

socializing, with people he knew, in front of the store. The police conceded that there was no particularized suspicion about Appellant's observed actions (A-086).

The suppression court improperly cited, (*People v Nichols*, 277 AD2d 715 [3d Dept, 2000]), as authority to justify a legal finding of founded suspicion that criminal activity was afoot. The record in this case contains no particularized inculpatory facts such as the ones in *Nichols*.

In *Nichols*, a CNET team arrived in response to a citizen complaint. The police observed two co-defendants soliciting and selling drugs to pedestrians and others driving by in cars. One defendant on one side of the street and one on the other. The situation escalated towards reasonable suspicion when one of the co-defendants was seen to spit from his mouth a clear bag containing a white substance into someone's hand (*Nichols* at 716).

Later, the other co-defendant was pursued leaning towards passing cars and gesturing with his hands, which combined with what the officers saw before reinforced that suspicion (*id.*). Finally, armed with an articulable suspicion, the observing police officer summoned other officers to the scene and when another officer approached one of the defendants, defendant ran by bumping into the officer who forcibly pushed defendant to the ground. This force led the defendant to spit out bags of drugs resulting in arrest (*id.* at 717).

Unlike the situation that unfolded in *Nichols*, the police in this case simply

saw Reginald Blandford get out of his car, go inside the store, pick up an acquaintance (a relative of the store owner) (A-073), talk to some friends or acquaintances in the parking lot and leave with his passenger. There was no citizen complaint. There was no observation of drugs or anything else in Appellant's hand. Unlike the *Nichols* defendants, Appellant was not approached, was not questioned and did not run away.

Trooper Shive vaguely testified that Blandford made movements within the vehicle such as reaching over the seat as if searching for something. This is entirely consistent with looking through the area he could reach within the car for his papers. None of this activity gave rise to increase scrutiny to a *DeBour* level two founded suspicion and, moreover, Appellant's consent to a search of the driver's seat area and backseat would have negated any such suspicion (A-073, 087, 088).

There was as a matter of record no particularized suspicion of criminal activity at all. Just a bare assertion that in this neighborhood, known for drug activity, an African American was observed shaking hands, doing what [they] do (A-093). There was nothing observed changing hands in any way (A-059, 067, 092). The suppression court erred in citing the rationale of *Nichols*. At this point the ante of suspicion towards *DeBour* level two was still at zero.

Because the police did not find anything inside the car, the canine could not be lawfully used absent that founded suspicion they were looking to have. *People v Sanders*, 185 AD3d 1280 [3d Dept 2020], is another automobile case involving the use of a police dog. In *Sanders*, the court held that founded suspicion existed and the police dog was deployed. Prior to that, Defendant tried to elude. Defendant rapidly accelerated his car and drove into a KFC parking lot driving the wrong way through the drive-through lane, kept on going out of the fast-food restaurant and did not stop. He drove on for another city block before stopping. Defendant gave contentious and evasive testimony upon being stopped. The dog alerted to the driver's side of the car, leading to a bag of heroin being discovered in the KFC parking lot. In addition, drugs were found inside the car. (*People v Sanders*, 185 AD3d 1280, 1281-82).

The instant appeal is clearly distinguishable as noted above. Unlike the record in *Sanders*, there was no eluding, no evasive testimony and there was consent to search inside the passenger compartment of the car.

Other cases are instructive on the issue of founded suspicion as well. In *People v Banks*, 148 AD3d 1359, [3d Dept 2017], a canine sniff case like this one, the 3-2 divided court barely affirmed a *DeBour* level two modicum of suspicion, sufficient to permit a dog sniff. The totality of circumstances in *Banks* yielded a richer set of suspicious facts than in this case. Like the *Banks* court, the Appellate

Division in the instant case was similarly divided, albeit on a scant record where the testimony was so unclear that dissenting Justice Clark cited the insufficiency of the record and pointed out that Appellant Blandford's actions had not risen to the level of founded suspicion. (*People v Blandford*, 190 AD3d 1033 [3d Dept 2021]).

The *Banks* case hinged on the Appellant's car which had excessively tinted windows being detained for approximately 30 additional minutes awaiting a canine unit, his parole status, nervousness and inconsistent statements at the scene. (*Id.*, 1360-62). The founded suspicion stemmed from a combination of evidence that is conspicuously absent in this instant appeal.

Reginald Blandford was on his way home, stopped at a store, picked up a relative of the owner because it was not too far out of the way, thereby stanching any possible suspicion from the stop at the store. (*People v Blandford*, 190 AD3d 1033, 1037-38 [Clark, J., dissenting]). The police let the passenger go after the stop for the equipment violation. There was an innocuous reason for what the police observed. Blandford was picking someone up at the neighborhood store and taking him home.

Unlike the defendant in *Banks*, Appellant Blandford herein was not on parole, and therefore was not driving anywhere in violation of parole restrictions, was not nervous and should have been directed to fix his broken license plate lamp

and sent on his way. Moreover, conspicuously absent in the instant record is the “[steady] diet of [testimonial] inconsistencies” that was found in *Banks*. (*Id.* at 1362). Like the instant appeal, *Banks* was decided by a divided court – using the *DeBour* level two founded suspicion standard/test. (*Id.*).

Even though *Banks* (supra) involved more adverse evidence of record, it was wrongly decided for many of the same reasons as the instant appeal. It is respectfully submitted that the Third Department’s decision *People v Banks* could have been appealed to this court. At a minimum, the decision shows the unintended consequences of the founded suspicion standard. (Emily J. Sack, *Police Approaches and Inquiries on the Streets of New York: The Aftermath of People v DeBour*, 66 NYU L Rev 512 [1991]).

In *People v Irizarry*, 168 AD2d 377, 379 [1st Dept 1990], the appellate court held that a police officer’s poor recollection of the facts testified to at a suppression hearing, the order of events during the encounter with the defendant at a train station and no observation of suspicious behavior; i.e.: defendant put his bag down, walked into a restaurant, looked at the arrivals and departures board and then returned to his luggage, which warranted reversal of the suppression court and suppression of the evidence because there was no founded suspicion as a matter of law.

Behavioral observations of persons and occupants of vehicles which are innocuous in and of themselves do not cumulatively support a finding of reasonable or level two founded suspicion. Examples of such behavior include, occupant turning his head, reaching under a seat, leaning into the front seat, looking around, or slouching in a car seat. (See 31 NY Jur 2d Crim L § 135.) Similarly, walking in and out of a store with the bag and his ensuing did not justify further interference to obtain explanatory information. (See *People v De Bour*, 40 NY.2d 210, 223 [1976]). Even passing bags back and forth and looking through them while in car was deemed innocuous behavior. (See *People v Layou*, 71 AD3d 1382 [4th Dept 2010]) and (*People v Stevenson*, 7 AD3d 820, 821 [2nd Dept 2004]).

In the instant case, the officers' testimony is unclear and inconsistent, and only explained police procedure, but not what actually happened. What is clear is that a series of innocuous actions took place that did not constitute level two founded suspicion. Here, Blandford was observed shaking hands and hugging and laughing outside a store, entering into a store and giving the store owner's relative a ride home, and reached in the back seat of the car. The furtive movements within the vehicle and outside of the store do not constitute level two founded suspicion as a matter of law. Blandford even consented to search of the passenger compartment that failed to yield contraband. Moreover, the fact that the officers in the instant case released the passenger only provides further evidence that the

officers intended to prolong the traffic stop to bootstrap and create suspicion, where none initially existed.

Finally, being in a high crime area, without more, is not sufficient in and of itself to constitute reasonable suspicion, let alone the lower standard of level two founded suspicion. (*People v Boulware*, 130 AD2d 370 [1st Dept 1987] *citing* *People v Cornelius*, 113 AD2d 666, 671[1st Dept 1986]), “[it] may very well be possible that a random search of all passersby on the street in this particular neighborhood at this time of night would have yielded a lot of contraband. But the individual liberties in our Constitution are not based upon statistical probabilities. The constitutional protections against unwarranted intrusion by an agent of the State are not to be relaxed when an individual goes for a walk, or engages in otherwise innocent behavior, in a public area statistically known for a high incidence of crime. The 4th Amendment has never been so amended.”

In the instant case, we have the poor recollection of two police officers and their testimony at the suppression hearing that should have yielded a different outcome as documented by Justice Clark in her dissent. As a matter of law, a combination of innocuous facts cannot give rise to a level two founded suspicion.

Subsequent to the filing of this appeal with the Third Department, that court heard and decided (*People v Blanche*, 183 AD3d 1196 [3d Dept 2020]). In *Blanche*, again the court had grounds on which to arrive at a founded suspicion of

criminal activity. First, the driver was on parole and second, the defendant passenger had an open arrest warrant in the City of Troy, near where the vehicle was stopped. (*People v Blanche*, 183 AD3d 1196, 1197). In addition, after these checks were run, the police asked for consent to search the car and the driver refused, thereby leading to deployment of a police dog, which found drugs in a backpack on the rear seat of the car. (*Id.* at 1196, 1198).

In *Blanche*, the police received testimony of “partying all weekend,” observed bloodshot eyes of both people in the car and a lack of luggage in the car, leading to a conclusion that the police had founded suspicion. (*Id.*) None of this kind of evidence was present in the instant case involving Appellant Blandford. Instead, we have a situation with a nearly empty record of articulable, particularized suspicion that has been deemed “good enough” to arrive at the result under appeal. We need a bright line rule because the law demands it.

Upon information or belief, there are no cases decided in New York appellate courts in which a car was stopped on pretext where the facts are so absent as this one. Without objective articulable facts upon which to found a level two suspicion of criminality as a matter of pure law, justification to use a dog sniff does not exist and did not exist in the instant case.

A bare assertion concerning Reginald Blandford’s past reputation for drug activity cannot be that basis of a determination of founded suspicion. The record

reflects that Appellant was investigated more than a month earlier for drug sale activity. The majority opinion goes on to cite *People v Hawkins*, 45 AD3d 989 [3d Dept 2007] to stand for the proposition that past activity can be used to found a suspicion of current criminal activity. However, in *Hawkins*, the basis for that suspicion was predicated on a sale to an undercover agent the day before. (45 AD3d 990-91). There is no equivalency between that fact and the state of the record in this case. Reginald Blandford as a matter of record was not so observed.

An investigation based on stale information of drug activity gathered more than a month before this encounter is insufficient as a matter of law to serve as a basis of a determination of founded suspicion. In addition, any testimonial inconsistencies during the road side interview needed to be specifically stated by the police officer at suppression, otherwise those statements are also nothing more than bare assertions. The fact that Blandford picked up a passenger at the store makes the entire course of events at the store an innocuous event, especially given that the police officer released the passenger from the traffic stop within the minutes of the stop and let him walk home. Releasing the passenger right away is further evidence of the police officers' intent to prolong the traffic stop before founded suspicion of criminality had even been established. (*People v Wheeler*, 2 NY3d 370, 373 [2004]).

Living in a neighborhood of color, frequenting a store where there is drug

activity, without some evidence of objective suspicious behavior does not permit the police to get a drug sniffing dog out during a routine traffic stop. The police cannot use a drug sniffing dog because there was no founded suspicion. As a matter of law, there is nothing in this record to support what happened to warrant the use of the drug sniffing dog. The People's attempt to engraft the innocuous behavior at the convenience store, even though a known problem area for drug dealing, into the chain of events of the traffic stop for a bad license plate light is an attempt to stack and build disparate innocuous facts into a structure of founded suspicion.

We need a bright line rule because our society demands it. A sea change in our national and state public policy has increased the scrutiny into matters such as the *DeBour-Hollman* framework. For both legal and policy reasons, it's in need of re-evaluation.

In *People v Garcia*, 20 NY3d 317 [2012], this Court did look to the record below to see if there was evidence of a founded suspicion sufficient to ask the occupants of a car lawfully stopped with a defective brake light whether anyone had a weapon on them. The court held that there was an insufficient amount of suspicion to ask the question. (20 NY3d at 324).

We have long placed paramount importance on promoting “predictability and precision in judicial review of search and seizure cases and the protection of the individual

(*Id.*)

rights of our citizens’ ” (see *People v P.J. Video*, 68 NY2d 296, 304 [1986], quoting *People v Johnson*, 66 NY2d 398, 407 [1985]). We have also “sought to provide and maintain ‘bright line’ rules to guide the decisions of law enforcement and judicial personnel who must understand and implement our decisions in their day-to-day operations in the field” (*P.J. Video*, 68 NY2d at 305).

This Court has long recognized the need for a bright line test to guide all stakeholders to promote predictability, justice, and efficiency. The time to provide such guidance is now.

II. FEDERAL AUTOMOBILE CASES USING A POLICE DOG GRANT A GREATER LEVEL OF FOURTH AMENDMENT PROTECTION THAN DO NEW YORK AUTOMOBILE CASES

The *DeBour/Devone* framework has strained interpretation of the New York State Constitution and now provides citizens less protection than those afforded under the United States Constitution by allowing police officers rights to unconstitutionally extend the business of a traffic stop. *DeBour* level two is unconstitutional. So is the legal standard in *People v Devone*, 15 NY 106.

The standard that should have been applied by the courts below is a question of law for this court to decide because the courts below have either misapplied the law or they have been constrained to do so based on *stare decisis*. Only this court can remedy the situation by changing the law and modifying the *DeBour/Devone* framework so that it tracks the U.S. Constitution.

In New York, the standard for a dog sniff of a stopped automobile is announced in *People v Devone*, 15 NY3d 106. In order for the police to deploy a canine to sniff around a validly stopped car, a founded suspicion that criminal activity is afoot must exist. (*People v Devone*, 15 NY3d 106, 113) [using the New York State Constitution].

However, it is time to move the use of a drug dog out of the murky waters of level two founded suspicion to the more workable standard under level three. Under level three of *DeBour*'s four prong analysis, which is the federal *Terry v Ohio* standard, “[r]easonable suspicion ‘may not rest on equivocal or ‘innocuous behavior’ that is susceptible of an innocent as well as a culpable interpretation.’” *People v Hinshaw*, 35 NY3d 427, 438 (citing *People v Brannon*, 16 NY3d 596, 602).

The standard under New York law for use of a drug sniffing dog at an automobile stop should be *DeBour* level three or reasonable suspicion.

Clearly, under *DeBour* level two, the police should be even more constrained to not found their suspicion of criminal behavior afoot based on innocuous behavior. However, that did not happen here even though none of Reginald Blandford's behavior was susceptible to any other interpretation but innocuous behavior. Thus, the suppression court's denial of Reginald Blandford's

suppression motion was clear error as a matter of law, because no founded suspicion existed to support the use of the canine.

Under Federal constitutional standards and case law, the standard for a dog sniff of a stopped car is reasonable suspicion. (*Rodriguez v United States*, 575 U.S. 348, 349 [2015]). This is a higher standard than the state of law and jurisprudence in New York which employs the *DeBour* framework. In *Rodriguez*, the U.S. Supreme Court held that absent reasonable suspicion the police cannot prolong a traffic stop to conduct a dog sniff because a dog sniff cannot be fairly characterized as part of an officer's traffic mission. (*Rodriguez* at 355-356).

According to the U.S. Supreme Court, “[b]eyond determining whether to issue a traffic ticket, an officer's mission includes ‘ordinary inquiries incident to [the traffic] stop.’” (*Rodriguez* at 355 citing *Caballes*, 543 U.S. at 408). These inquiries include checking the driver's license, determining whether there is an outstanding warrant against the driver, and inspecting the automobile's registration and insurance documents. “These checks serve the same objective as enforcement of the traffic code: ensuring that vehicles on the road are operated safely and responsibly.” (*Rodriguez*, at 355 citing *Delaware v Prouse*, 44 U.S. 648, 658-660). However, using a dog sniff is not an ordinary incident to a traffic stop because the dog sniff is aimed at detecting evidence of a crime unconnected to roadway safety. (*Id.* at 355.)

In sum, ordinary inquiries incident to the traffic stop and issuance of a traffic ticket are allowed because these inquiries are closely connected to roadway safety. By contrast, “[l]acking the same close connection to roadway safety as the ordinary inquiries, a dog sniff is not fairly characterized as part of the officer’s traffic mission.” (*Rodriguez* at 356).

In *Rodriguez*, the officer made three separate inquiries related to the traffic stop and then issued a warning for driving on the shoulder of the road. (*Rodriguez* at 351-351). After the third trip to Rodriquez’s car when the officer returned the driver’s license, the traffic stop was concluded. (*Id.* at 352). Nevertheless, the officer continued his inquiries beyond the traffic stop to conduct a dog sniff after a second officer arrived approximately seven to eight minutes later. (*Id.* at 352).

The facts here are similar to those in *Rodriguez*. Both Rodriguez and Blandford were pulled over for simple traffic infractions. Neither driver’s actions aroused reasonable suspicion. Once Blandford had been stopped for the license plate light bulb violation, the officers could have easily issued the traffic ticket and made certain allowable inquiries, such as conducting a warrant check, and checking his driver’s license. Moreover, the police in Blandford took the time to release the passenger from the traffic stop. This action clearly indicates that the traffic stop was unnecessarily prolonged because the officer’s mission was to have written a ticket and sent Blandford and his passenger on their way.

The dichotomy between state and federal constitutional standards alone as applied to the instant appeal involves a question of law that demands full briefing and oral argument.

III. POLICY CONSIDERATIONS

Reginald Blandford became ensnared in a “quality of life patrol.” That is another name for saturating certain socioeconomic and racially comprised neighborhoods with police presence. It is about the long since lost “War on Drugs.” The people of color in New York State and elsewhere are weary of heavy-handed police presence meant to rain down on them and systemically incarcerate them in an outsized way. Suspicionless arrests and convictions need to be stopped. Appellant is seeking a bright-line rule on what a founded suspicion of criminal activity is in New York in the context of an automobile stop involving a canine sniff.

Back in the mid-1970s, *People v DeBour* was hailed as a significant step in affording people protection from police abuses that frequently happened during street interactions. It was thought that New Yorkers would have greater protection from police questioning than what they got under the Federal framework under *Terry v Ohio*, because it was thought that a *Terry* stop was open season on whomever the police chose to target for questioning. In the 45 years since this

court crafted the four-level *DeBour* test, it has become apparent that at the lower levels, particularly level two, the standard is not workable and subjects the person being questioned to allow law enforcement officers to stitch together disparate innocuous facts and create a level two situation. This has created situations under the *DeBour* level two precedents where people are allegedly not seized, yet they do not feel free to leave and become subject to questioning that is more suited to a level three seizure. Commentators have suggested that certain questioning categories be taken out of the *DeBour* level two realm of acceptable inquiries. (See e.g., Emily J. Sack, *Police Approaches and Inquiries on the Streets of New York: The Aftermath of People v DeBour*, 66 NYU. L. Rev 512, 557-558 [1991]).

In the aforementioned article, the writer strongly suggests that factors such as “race,” “high crime area,” “furtive behavior,” be removed as factors leading to intensification of law enforcement interaction. *Id.* Unfortunately, the trend is towards not enough suspicion under level two with defendants being aggressively questioned, leading to inevitable arrest and Fourth Amendment violations that have gone largely unheeded. It has become exceedingly apparent that there are unintended consequences associated with *DeBour* level two stops.

More recently, in New York City, in a class-action Civil Rights case under 42 USC § 1983, city residents of certain private apartment buildings moved for an injunction to prevent the NYPD who were trying to reduce criminal activity in

neighborhoods of color from stopping and questioning people allegedly trespassing on private property without reasonable suspicion under *Terry v Ohio*. *Ligon v City of New York*, 925 F Supp 2d 478 [SD NY 2013]. Judge Shira Scheindlin, in a well-known opinion granted the temporary injunction to stop the practice in a lengthy and scholarly opinion. Relevant to this appeal is a continuation of the commentary about the shortcomings of the sliding-scale *DeBour* standard. *Ligon v City of New York*, 925 F Supp 2d 478, 533 n 398, in addition to citing the Emily Sack NYU. Law Review article *supra*, the following is a modern summary of the problem:

The mere existence of *DeBour* Level 2, and the inevitable difficulty of clearly distinguishing an encounter on the more intrusive end of Level 2, from an encounter on the less intrusive end of Level 3, creates problems of administrability. In practice, the possibility of classifying a stop as Level 2 or even Level 1 may lead police to perform a large number of stops – in the ordinary sense of the word, but inevitably often in the *Terry* sense as well – without the minimal foundation in reasonable suspicion required by the U.S. Constitution.

In addition, the constitutional framework for the *ex post* evaluation of highly individualized, discretionary stops, where exclusion is the only remedy, may not be appropriate to the *ex ante* evaluation of routinized, highly scripted, largely predictable stops, where the remedy can involve changes in training. Ultimately, ‘the central inquiry under the Fourth Amendment [is] the reasonableness in all the circumstances of the particular governmental invasion of a citizen’s personal security.’

(citing *Terry v Ohio*, 392 US 1, 19 [1968]).

The analysis in *Ligon* continues with New York City's stop and frisk policies, the lack of police training, the lack of sensitivity in targeting people of color, high crime areas, and the systemic nature of the long-standing police policies as an overzealous infringement on people's constitutional rights. *Id.* This is germane to the above discussion and legal analysis of the instant appeal and the lines of cases that represent ever-increasing targeting of individuals with a decreasing level of suspicion.

This case is about an issue of public policy and how we as a society want to treat persons of color in their neighborhoods when they step into cars. How does a "quality of life patrol" intersect with the people's basic rights to come and go in their neighborhoods? It is appropriate to question whether or not to aggressively police against residents in lower income neighborhoods, disproportionately targeting Blacks and other persons of color. We as a country have watched how Black people have been treated as the George Floyd case unfolded before our eyes. In particular, when vague, difficult to use legal standards such as *DeBour* and *Devone* are involved we need court guidance that better separates the legal from the illegal. This can only help to defuse the situation on the streets in communities of color.

We are at an inflection point in our Nation's history. As a direct result of the George Floyd case, New York's cities, counties and municipalities were mandated to provide plans to reimagine law enforcement by April 1, 2021. At the forefront of this issue is the New York State government's effort to reevaluate police interactions with the public. Reimagining *DeBour* low-level interactions falls squarely within the effort to improve things in neighborhoods of color and could foster a better sense of equality for all citizens.

The intersection of law and policy is apparent here. Appellant seeks a bright line rule of law in the application of *People v Devone* and *People v DeBour*.

The complexity and interplay demand briefing and arguing, if not *amicus curiae* briefing. This matter is before this Honorable Court at the right time in our national, social and political history and Appellant wishes to be fully heard.

It is respectfully submitted that expediting and suppressing a full airing of all the remaining issues, specifically the lack of a bright line rule for a *DeBour* "level two" automobile stop involving a canine sniff needs to be fully addressed. The courts and people of New York need a better standard of what behavior is innocuous as a matter of law. The proper Constitutional standard needs to be applied to low and no suspicion stops as in the instant case. People need to know they won't be automatically confronted because of what they look like and where they live.

Appellant respectfully requests that the instant appeal be taken off the Rule 500.11 track and restored to the regular Court of Appeals calendar, briefing and oral argument track.

In the alternative, for the reasons stated in the record below and in this submission, Appellant seeks reversal of the Appellate Division decision entered on January 7, 2021, to vacate all judgments entered, return of all seized property, including his cash, and for such other and further relief as the court may determine.

Respectfully submitted,



Peter D. Salton, Esq.
Attorney for Appellant

cc: Chemung County District Attorney
Susan Rider-Ulacco, Esq., Executive Assistant District Attorney

COURT OF APPEALS OF THE STATE OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK,
Respondent,

-against-

WORD COUNT CERTIFICATION

No.: **APL-2021-00040**

REGINALD E. BLANDFORD,
Appellant.

This letter brief was prepared on a computer with 14 point, Times New Roman typeface, double-spaced, and has a word count of 5,411.

Ithaca, New York

May 25, 2021



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COURT OF APPEALS OF THE STATE OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK,
Respondent,

-against-

AFFIRMATION OF SERVICE

No.: **APL-2021-00040**

REGINALD E. BLANDFORD,
Appellant.

STATE OF NEW YORK)
) ss.
COUNTY OF TOMPKINS)

PETER D. SALTON, a duly licensed attorney, affirms the following under penalties of perjury:

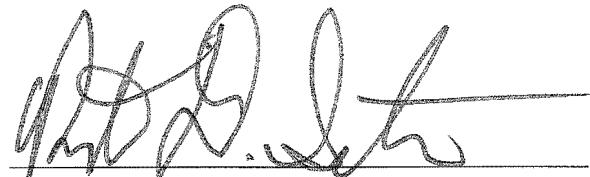
That he is not a party to the above-entitled action, is over 18 years of age and conducts business at 309 North Tioga Street, Ithaca, New York.

That on May 25, 2021, deponent served the within:

► **APPELLANT'S RULE 500.11 LETTER BRIEF**

on the Party whose name and address is set forth below by mailing a true and correct copy of said documents to her office located at the Chemung County Courthouse, at the address listed below.

CHEMUNG COUNTY DISTRICT ATTORNEY
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APPENDIX 2

*State of New York
Supreme Court, Appellate Division
Third Judicial Department*

Decided and Entered: January 7, 2021

111005

THE PEOPLE OF THE STATE OF
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

REGINALD E. BLANDFORD,
Appellant.

Calendar Date: November 16, 2020

Before: Garry, P.J., Lynch, Clark, Mulvey and Reynolds
Fitzgerald, JJ.

Peter D. Salton, Ithaca, for appellant.

Weeden A. Wetmore, District Attorney, Elmira (Susan Rider-Ulacco of counsel), for respondent.

Garry, P.J.

Appeal from a judgment of the County Court of Chemung County (Baker, J.), rendered March 25, 2019, convicting defendant upon his plea of guilty of the crime of attempted criminal possession of marihuana in the second degree.

In November 2017, state troopers conducted a traffic stop of defendant's vehicle, followed by a canine sniff search that disclosed marihuana and paraphernalia associated with drug sales in the vehicle. Defendant was charged with one count of criminal possession of marihuana in the second degree. After County Court denied defendant's motion to suppress the evidence

found in the vehicle, defendant pleaded guilty to one count of attempted criminal possession of marihuana in the second degree. In accordance with the plea agreement, the court sentenced defendant, as a second felony offender, to a prison term of 1½ years, to be followed by two years of postrelease supervision, and ordered his enrollment in a shock incarceration program pursuant to Penal Law § 60.04 (7). Defendant appeals.

We reject defendant's contention that County Court should have found that the traffic stop and the canine search were unlawful. The testimony at the suppression hearing established that a State Police investigator in the City of Elmira, Chemung County saw defendant drive past him at about 5:00 p.m. without wearing a seatbelt. Based upon past surveillance and general police knowledge, the investigator knew that defendant was involved in the illegal sale of narcotics. As the investigator followed defendant's vehicle, he contacted a state trooper who was a canine handler, advised the trooper of what he had seen and asked the trooper to come to the scene to conduct a traffic stop of defendant's vehicle. The investigator watched defendant drive into the parking lot of a convenience store that was familiar to the investigator as a "trouble spot" for drug transactions. Defendant got out of his vehicle and entered the store, where he remained for about five minutes. When defendant left the store, he made physical contact with at least one of several people outside the store, which the investigator described as "a handshake, type hug thing." The investigator did not see anything in defendant's hands during this contact, but he testified that, in his professional experience, it was common for participants in outdoor drug transactions to "hug somebody, tap them up, and make an exchange" of currency and narcotics. He described the convenience store as "notorious" for such activity. Defendant and a male passenger then got into defendant's car and drove away.

After being contacted by the investigator, the trooper drove with his canine partner to the convenience store. As he arrived, he saw defendant leaving the building with no purchases in his hands. The trooper watched defendant conversing with people outside the store and "giving hand shakes, high fives,

[and] hugs," behaviors that, in the trooper's experience, occurred "routinely" during drug transactions. The trooper followed defendant's vehicle and, at 5:10 p.m., observed that the license plate was inadequately lit. The trooper turned on his emergency lights to initiate a stop and observed a "slow roll response," in which defendant slowed down but did not immediately stop his vehicle. The trooper saw defendant make "furtive movements" inside the car, ducking down in his seat, moving around, reaching over the passenger seat and doing something that the trooper could not see "in the floorboard area and/or the backseat." He stated that, in his professional experience, this behavior was not typical of most drivers, who usually came to an immediate stop and "s[alt] easy within the seat" when pulled over.

After the vehicle stopped, the trooper spoke with defendant at the driver side window and obtained identification information for defendant and the passenger. The trooper permitted the passenger to leave, asked defendant to step out of the vehicle and spoke with him briefly about such matters as his reason for visiting the store without making a purchase and the movements he had made in the vehicle. In response, defendant "talked in a circle" and gave inconsistent answers. The trooper then asked defendant for permission to search the vehicle. Defendant gave limited consent, agreeing only to a search of the backseat and passenger seat area. The trooper retrieved his canine partner from his vehicle and, at 5:19 p.m., conducted a canine sniff search of the outside of defendant's car. The canine alerted to the outside of the trunk and, when the trunk was opened, to a bag that contained multiple bags of marihuana, digital scales and other paraphernalia associated with drug sales.

First addressing the traffic stop, a police officer who has probable cause to believe that a driver has committed a traffic infraction may stop a vehicle without violating either the Fourth Amendment of the US Constitution or article I, § 12 of the NY Constitution, even if the officer's primary motivation is to conduct another investigation (see People v Robinson, 97 NY2d 341, 346 [2001]). The Vehicle and Traffic Law requires

vehicles to have "a white light which shall illuminate the numerals on [the rear license] plate in such manner as to render such numerals legible for at least [50] feet from the rear" (Vehicle and Traffic Law § 375 [2] [a] [4]). This requirement applies in certain circumstances, including the period between 30 minutes after sunset and 30 minutes before sunrise – but also "at such other times as visibility for a distance of [1,000] feet ahead of such motor vehicle is not clear" (Vehicle and Traffic Law § 375 [2] [a]). Thus, contrary to defendant's argument, the fact that 30 minutes had not yet passed after sunset did not render the stop improper.¹ The trooper testified that it was fully dark at the time of the stop and that he and defendant had their vehicles' headlights on, as did other vehicles passing on the roadway. When the trooper turned off his headlights briefly to check the license plate light, he observed that it did not illuminate the plate. Thus, it was "objectively reasonable" for the trooper to conclude that the requisite visibility did not exist and that a traffic violation had been committed (People v Guthrie, 25 NY3d 130, 134 [2015]).² Additionally, the trooper was entitled to rely upon the investigator's previous observation that defendant was driving without a seatbelt – a separate traffic violation that also provided probable cause for the stop (see Vehicle and Traffic Law § 1229-c [3]; People v Patterson, 173 AD3d 1737, 1738 [2019], affd 34 NY3d 1112 [2019]; People v Robinson, 134 AD3d 1538, 1539 [2015]). Accordingly, County Court did not err in finding that the traffic stop was lawful (see People v Gibbs,

¹ We find that the time of sunset is a fact that "may be determined by resort to easily accessible sources of indisputable accuracy" (Matter of National Fuel Gas Supply Corp. v Schueckler, 35 NY3d 297, 329 [2020] [internal quotation marks and citations omitted]), and thus take judicial notice of the fact that sunset took place at 4:45 p.m. in Elmira on the day in question, less than 30 minutes before the stop at 5:10 p.m.

² As the stop was objectively reasonable for these reasons, the trooper's testimony about his inaccurate belief regarding the applicability of the 30-minute time period does not affect the stop's lawfulness (see People v Pena, ___ NY3d ___, ___, 2020 NY Slip Op 06836, *2 [2020]).

167 AD3d 1580, 1580 [2018], lv denied 33 NY3d 976 [2019]; People v Williams, 132 AD3d 1155, 1155-1156 [2015], lv denied 27 NY3d 1157 [2016]).

Turning to the canine search, the detention of a motorist after a traffic stop "must be reasonably related in scope, including its length, to the circumstances which justified the detention in the first instance, unless circumstances arise which furnish the police with a founded suspicion that criminal activity is afoot" (People v Banks, 148 AD3d 1359, 1360 [2017] [internal quotation marks and citations omitted]). Such a founded suspicion permits the extension of the stop beyond its original purpose and "authorizes a request for consent to search and [a] canine search of the vehicle's exterior" (People v Boler, 106 AD3d 1119, 1122 [2013]; see People v Devone, 15 NY3d 106, 113-114 [2010]; People v Blanche, 183 AD3d 1196, 1199 [2020], lv denied 35 NY3d 1064 [2020]). We agree with County Court that, taken together, the trooper's observations of defendant engaging in behaviors commonly seen in outdoor drug transactions at a location known for such activity, his "slow roll response" and furtive movements after the trooper initiated the stop and his evasive, inconsistent answers to the trooper's questions created a founded suspicion that criminal activity was afoot (see People v Devone, 15 NY3d at 113-114; People v Sanders, 185 AD3d 1280, 1282 [2020], lv denied 35 NY3d 1115 [2020]; People v Hawkins, 45 AD3d 989, 991 [2007], lv denied 9 NY3d 1034 [2008]). Thus, the trooper properly extended the stop beyond its initial justification and conducted the canine search – which, in any event, took place only nine minutes after the initial stop and, according to the trooper, was completed in less than a minute (compare People v Blanche, 183 AD3d at 1199; People v Banks, 148 AD3d at 1361-1362). Finally, the search of the trunk's interior was justified when the canine alerted to the outside of the trunk (see People v Sanders, 185 AD3d at 1282; People v Boler, 106 AD3d at 1122). Accordingly, County Court did not err in denying defendant's suppression motion.

Lynch, Mulvey and Reynolds Fitzgerald, JJ., concur.

Clark, J. (dissenting).

I agree with the majority that the initial traffic stop was valid. However, in my view, the evidence fell short of establishing a founded suspicion that criminality was afoot, so as to justify the canine search. Accordingly, I respectfully dissent.

As the majority notes, testimony at the suppression hearing established that, prior to the traffic stop, a State Police investigator and a state trooper observed defendant at a convenience store that is known to be a "trouble spot" for drug sale activity and that defendant spent a few minutes in the store, but did not walk out with any observable merchandise. The testimony also demonstrated that, after exiting the store, defendant engaged at least one person in a "hand shake, type hug thing." At no point, however, was defendant observed to have exchanged money, drugs or anything else. The evidence established that defendant then got back into his car and that someone from the store got into his front passenger seat. As discussed by the majority, the trooper thereafter initiated a lawful traffic stop of defendant's vehicle. The trooper testified that defendant did not immediately stop in response to his emergency lights and that, upon coming to a stop, defendant engaged in "furtive movements" within the vehicle.

The trooper's testimony regarding his ensuing interaction with defendant was general, vague and, at times, confusing. The trooper testified that he asked defendant various questions, including why he visited the convenience store and that, in response, defendant "talked in a circle." However, the trooper's testimony revealed that defendant had provided an explanation for his presence at the store. Indeed, according to the trooper, defendant indicated that he was giving a ride home to his passenger, who was related to the owner of the convenience store. The trooper's testimony did not reveal why he was dissatisfied with defendant's explanation. Rather, without providing any specificity as to defendant's statements, the trooper stated that defendant's statements were "not consistent" with what he had observed of defendant. The trooper

did not identify those inconsistencies, and merely emphasized that he did not observe defendant leave the store with any merchandise. Defendant's seemingly plausible explanation for visiting the store, corroborated by the presence of the passenger, could dispel – at least in part – any suspicion of criminality arising from defendant's presence and interactions at the store. In my opinion, the remaining circumstances, including the "slow roll" stop and the furtive movements, did not give rise to a founded suspicion that criminality was afoot, so as to justify the canine search (compare People v Devone, 15 NY3d 106, 113-114 [2010]; People v Sanders, 185 AD3d 1280, 1282 [2020], lv denied 35 NY3d 1115 [2020]; People v Blanche, 183 AD3d 1196, 1198-1199 [2020], lv denied 35 NY3d 1064 [2020]). As such, I would grant defendant's motion to suppress the physical evidence.

ORDERED that the judgment is affirmed, and matter remitted to the County Court of Chemung County for further proceedings pursuant to CPL 460.50 (5).

ENTER:



Robert D. Mayberger
Clerk of the Court

To be argued by: Peter D. Salton, Esq.
Time Requested: 15 minutes

C
111005

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : THIRD DEPARTMENT

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

v

Case # 111005

REGINALD E. BLANDFORD,

Appellant.

APPELLANT'S BRIEF AND APPENDIX

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PART 1250.11(d)1 STATEMENT

This appeal is taken from the judgment of conviction and sentence rendered in Chemung County Court, on March 25, 2019. Appellant was sentenced to a determinate sentence of one and one-half years, along with two years of post-release supervision. The Chemung County Court directed that the sentence be served pursuant to PL §60.04(7), pursuant to an offered Shock Incarceration. Pursuant to Criminal Procedure Law §460.50, the sentenced Defendant filed a motion on order to show cause for stay of sentencing and continuation of bail on March 25, 2019. On March 29, 2019, said motion was granted and an order was issued by Hon. Robert C. Mulvey, Associate Justice of the Supreme Court, Appellate Division, Third Department, staying the execution of the judgment of conviction of the Chemung County Court pursuant to CPL §460.50. Bail was set in the amount of \$40,000.00 cash or insurance company bail bond and Appellant is currently free on bail. Several Motions for Extension of Time to Perfect Appeal have been applied for and granted which have continued the operation of the March 29, 2019, order granting a stay of execution of judgment and continuing release on bail until determination of this appeal. The most recent Decision and Order on Motion issued by Clark, J.P., Mulvey, Pritzker and Reynolds Fitzgerald, JJ., concurring was decided and entered on February 6, 2020. There were no codefendants in the Chemung County Court.

QUESTIONS PRESENTED

1. Did County Court err when it found that police observations of Appellant were sufficient to raise a founded suspicion of criminal activity necessary to employ a canine search of a vehicle?

Answer: Yes, the County Court erred when it determined that the Appellant's observed actions were sufficient to raise a founded suspicion of criminal activity.

2. Did County Court err when it found that the police had probable cause to initiate the traffic stop and write a traffic ticket for an Inadequate License Plate Lamp under VTL § 375(2)(a)(4)?

Answer: Yes, the County Court erred because the sixteen-year veteran Trooper made an unreasonable mistake of law when he issued a very routine traffic ticket outside the permitted timeframe for the offense and his subsequent testimony confirmed his misapprehension of the plain text of VTL §375(2)(a)(4), and therefore lacked probable cause.

3. Did the County Court err when it found that the business of the traffic stop was not unreasonably extended by the canine search?

Answer: Yes, the County Court erred when it found that the traffic stop was not unreasonably extended by the canine search because the police had no founded suspicion of criminal activity.

SUMMARY OF ARGUMENT

The Appellant, a person of color, known by the police, was observed driving into the parking lot of his neighborhood convenience store. He picked up a passenger he knew, shook hands and hugged some acquaintances and got into his car to give his passenger a ride home. No drug activity was observed. No specific particularized suspicious activity of Appellant was observed.

The arresting officer lacked probable cause to stop Appellant's car because he made an unreasonable mistake of law concerning a key element of a simple traffic infraction, VTL §375(2)(a)(4), Inadequate License Plate Lamp. One of the requirements is that it be 30 minutes or more after sunset. Here, it was not.

After the improper traffic stop was made, and consent to search the whole car was not given, a canine was employed to sniff around the perimeter of Appellant's car and alerted to what was later determined to be marijuana in a duffle in the trunk. There is no authority for employment of a canine sniff absent a founded suspicion of criminal activity. Here there was not.

The County Judge declined to suppress the evidence improperly obtained and Appellant was convicted after a plea of guilty. This appeal ensued.

PROCEDURAL HISTORY

On May 14, 2018, the Appellant was arraigned with counsel on Indictment No. 2018-113 in the Chemung County Court on one count of Criminal Possession of Marihuana in the Second Degree in violation of § 221.25 of the Penal Law (A-003, 040).

There was also a Uniform Traffic Ticket written for an Inadequate License Plate Lamp in violation of Vehicle and Traffic Law § 375(2)(a)(4) (A-018).

All appearances in this matter have been before Chemung County Judge, the Hon. Christopher P. Baker.

At Appellant's arraignment with counsel on May 14, 2018, pleas of not guilty to all charges were entered (A-041). At arraignment, this matter was scheduled on the usual track for discovery and motions (A-042, 043).

On June 12, 2018, Appellant filed a Demand for Discovery (A-006). Appellant was duly served the People's Response to Appellant's Demand for Discovery (A-009). On June 28, 2018, Appellant filed Omnibus Motions (A-014). Appellant was duly served the People's Response to Omnibus Motions (A-023).

On July 16, 2018, an appearance was held in the Chemung County Court and a suppression/*Mapp* and *Huntley* hearing was scheduled and held on August 24, 2019 (A-046, 047). The main issue of the hearing was whether there was reasonable suspicion to stop Appellant's vehicle and bring out a police dog (K-9)

to sniff around it to detect drugs (A-015, 049). The K-9 signaled there were drugs in the trunk of Appellant's car (A-076). Approximately 2.45 pounds of Marihuana, the amount the Appellant was accused of possessing, were found in a duffle in the trunk (A-011).

Following the hearing, from the bench, without a formally written Decision and Order, Judge Baker denied all of the Defense's Omnibus Motions (A-095-106). Now the marihuana would be admissible at trial. The court indicated that a trial would be scheduled in the future (A-106, 107). Your deponent inquired about Judicial Diversion pursuant to § 216 of the Criminal Procedure Law (A-049-053).

After the August 24, 2018 *Mapp* hearing, on or about August 31, 2018, Reginald Blandford enrolled himself in drug treatment at Trinity of Chemung County (A-027-029).

On September 11, 2018, pursuant to CPL § 216, Appellant filed a Request for Judicial Diversion with County Judge Baker along with a proposed Order to evaluate Appellant for suitability in the Drug Treatment Court (A-030).

Per the signed Order, the County Court proceeding was then transferred to Elmira City Court, where Chemung County has consolidated all of its Drug Court programs before City Court Judge, Hon. Steven W. Forrest (A-033).

On October 4, 2018, in the Drug Treatment Court, Appellant again applied for Judicial Diversion under CPL § 216 (A-035). The People opposed (A-036).

A Judicial Diversion hearing was held on October 12, 2018 during which the Appellant testified concerning his personal history and his desire to participate in the Judicial Diversion program (A-109).

On November 13, 2018, Appellant returned to Drug Court for its decision (A-110). He was denied entry into the CPL § 216 Diversion program because the court found Appellant's behavior was not driven by addiction (A-111).

On December 3, 2018, Appellant's case was transferred back to Chemung County Court (Baker, J.) for further proceedings (A-112, 113). The court scheduled a February 2019 Trial (A-113).

On February 6, 2019, Appellant Reginald Blandford pleaded guilty to Attempted Criminal Possession of a Marihuana Second Degree under PL §§ 110.00 and 221.25 (A-114, 115). The People and the Court committed to a sentence of Shock Incarceration pursuant to PL § 60.04(7) (A-115, 116). Sentencing was adjourned to March 18, 2019 pending receipt of the Pre-Sentence Investigation Report (A-116, 117). At the March 18, 2019 appearance when Appellant was to be sentenced, the People failed to produce the correct Predicate Felony Statement (A-118-120). Sentencing was adjourned and Appellant was finally sentenced on March 25, 2019 (A-121, A-123).

STATEMENT OF FACTS

On November 16, 2017, New York State Community Narcotics Enforcement Team (CNET) investigator, Kevin Backer, in plain clothes, was working in the City of Elmira, NY (A-054). In his patrol car was also partner Investigator, Amanda Giles (A-055). Both Backer and Giles and all the police personnel mentioned herein were working a “quality of life patrol,” the purpose of which was to investigate narcotics sales and possessions in a given neighborhood (A-054).

Investigator Backer and Investigator Giles, were sitting in the patrol car finishing up assisting on another stop, parked on the south side of Hudson Street in Elmira (A-055, 056). Investigator Backer observed a white Lincoln being driven by Appellant, Reginald Blandford (A-055, 056). Appellant’s car was a 2012 Lincoln MKZ, plate number (NY) GWE-2532 (A-018). According to Backer, Appellant was not observed to be wearing a seatbelt (A-056). However, no ticket for any seatbelt infraction was ever written. Investigator Backer was familiar with Appellant as “involved in the illegal sale of narcotics” based on “general police knowledge” (A-056, 057). Investigator Backer radioed to Trooper Bruce Shive, who was on patrol with his canine (“K-9”) partner, that he had observed Appellant not wearing a seat-belt and that he was parking at the “On-The-Way” convenience store (A-057).

After observing the Appellant drive by his patrol unit, Backer followed Appellant from his position on Hudson Street, eventually heading north on South Main Street (A-057). Appellant continued driving on South Main until he stopped and parked at the On-The-Way convenience store at the intersection of South Main Street and West Chemung Place (A-057). Investigator Backer parked his car in the Happy Family Chinese Restaurant parking lot across the street (A-057). According to Investigator Backer the On-The-Way was a known “trouble spot” for drug sales (A-057). After Appellant parked his Lincoln, he got out of the Lincoln and went into the convenience store for about five (5) minutes (A-058).

Investigator Backer then observed Appellant come out of the store, make physical contact with at least one of a group of individuals standing outside the store (A-058). Backer observed a handshake or a hug involving Appellant. As mentioned earlier, by this time Trooper Shive, a certified K-9 officer, had been contacted and started observing the Appellant from the time after he walked out of the store back to his Lincoln (A-068, 069).

Investigator Backer saw no money or drugs change hands in the convenience store parking lot (A-059). Investigator Backer saw another person named Singh get into the car with Appellant. The passenger’s name was Gurdeep Singh and was a person familiar to Appellant because he lives in the neighborhood and Singh’s family owned the convenience store (A-073). Singh was getting a ride home from

Appellant (A-073). Investigator Backer then handed off the investigation of Appellant to Trooper Shive after turning onto Fulton Street from the convenience store (A-060, 061). All this time involving the Appellant going into and out of the convenience store, Investigator Backer was parked and posted at the Happy Family Chinese Restaurant across the street from the convenience store.

After Appellant got back in his car, he went down West Chemung Street, followed by Trooper Shive and his K-9 partner until being stopped by Trooper Shive after turning onto Fulton Street (A-070, 071). Trooper Shive activated his emergency lights on Fulton St. (A-073). Shive's patrol car with the K-9 in it was parked behind Blandford's Lincoln (A-070). The purpose of the stop was to inform Appellant of an inadequate license plate lamp (A-070). The time of the offense, as written on the traffic ticket, was 5:10 p.m. on November 16, 2017, only 25 minutes after sunset which occurred at 4:45 p.m. on that date (A-018, 021, 026, 082). Trooper Shive approached Blandford's vehicle with Blandford still in it and made the *DeBour* level one inquiries such as comings and goings, license, registration and what he had been doing at the convenience store (A-037). Trooper Shive then asked Blandford out of the car (A-037).

Trooper Shive testified at the August 24, 2018 suppression hearing that he did not observe Appellant carrying any purchases when walking out of the store. He said he saw Appellant doing hugs and handshakes out front with at least one

individual and saw furtive movements in his car while stopped on Fulton Street. These observations gave him from a law enforcement perspective the right to a *DeBour* level two encounter at the subsequent traffic stop (A-074). Suspecting criminal activity after this brief encounter, Trooper Shive ordered Appellant out of the car (A-074). This was a “couple minutes” after the 5:10 PM traffic stop (A-089). Shive asked for consent to search the entire car and was only given permission to search the driver’s seat and rear seat area (A-075).

Based on Trooper Shive’s suspicion of criminal activity, the canine was outside the car and was employed immediately prior to his backseat search and alerted to something being in the trunk (A-076). The canine alerted to a multicolored bag in the trunk which had marijuana in various bags (A-077).

After the canine alerted to and found the marijuana in the trunk, both Trooper Shive and Investigator Backer who was also at the scene, participated in searching the trunk and interior of Blandford’s car (A-077, 079, 094).

According to Trooper Shive’s notes, the canine “alert” to the trunk was at 5:19 PM (A-026). The subject multicolored bag containing marijuana, in the trunk, is logged at 5:24 PM (A-026). The bag is then transferred to Shive’s Trooper unit at 5:36 PM (A-026). From Trooper Shive’s custody, the bag is then transferred to Investigator Backer at 5:53 PM (A-026).

The police released Gurdeep Singh (A-080). Appellant was detained with handcuffs after the large multicolored bag was found to contain marijuana (A-080). Appellant was then transported to the State Police barracks in Horseheads (A-080).

At the stationhouse, Reginald Blandford was processed for the marijuana charge and read his Miranda rights at 7:09 PM (A-081).

LEGAL ARGUMENT

New York has a four-level test for assessing encounters commenced by police officers in carrying out their law enforcement duties (*People v. DeBour*, 40 N.Y.2d 210 [1976]). In common legal vernacular, it is known as the “*DeBour*” analysis. The first level is for a request for information such as identity, request for license, registration and where one is coming from or going to. There must be an “objective, credible reason for the request not necessarily indicative of criminality.” (*DeBour* at 223). A “level two” *DeBour* police interaction, particularly relevant in this case, is the common-law right to inquire, triggered by a founded suspicion that criminal activity is afoot. This right to inquire allows the police to ask for explanations of observed behavior and activity but short of a legal seizure (*DeBour* at 223). At a “level three” *DeBour* interaction, the police officer must have a reasonable suspicion that a particular person has, is, or is about to commit a felony or misdemeanor (*DeBour* at 223; CPL § 140.50[1]). Finally, at

“level four,” the police must have probable cause to believe that a crime has been committed in his/her presence (*DeBour* at 223; CPL § 140.10).

Sixteen years later, the Court of Appeals refined the difference between a level one and level two police interaction (*People v. Hollman*, 79 N.Y.2d 181[1992]). In *Hollman*, the police officer was at a level one *DeBour* posture with the questions he was asking one of the defendants and right after asking for information, asked permission to search his bag. This was held to be consent invalidly obtained because the police officer did not have enough to reach a founded suspicion that criminal activity was afoot when all he observed was a nervous, pacing defendant. The evidence found in the bag was suppressed (*Hollman* at 194).

Under New York Law, level one and level two *DeBour* interactions are not in and of themselves seizures under the Fourth Amendment of the United States Constitution or Article I, § 12 of the New York Constitution (*DeBour* at 223).

POINT I

NONE OF THE FACTS TESTIFIED TO BY INVESTIGATOR BACKER AND TROOPER SHIVE GAVE RISE TO A FOUNDED SUSPICION THAT CRIMINAL ACTIVITY WAS AFOOT.

When Reginald Blandford stepped out of his car at the “On the Way” convenience store there was nothing that gave rise to a founded suspicion that criminal activity was afoot. What was happening was a targeted operation in a

poor section of town frequented by people of color. Appellant was shaking hands, hugging and socializing, with people he knew, in front of the store. The police conceded that there was no particularized suspicion about Appellant's observed actions (A-086).

The suppression court improperly cited, *People v. Nichols*, 277 A.D.2d 715 (3d Dept, 2000), as authority to justify a legal finding of reasonable suspicion that criminal activity was afoot. The facts in the instant case are entirely different from *Nichols*.

In *Nichols*, a CNET team arrived in response to a citizen complaint. The police observed two co-defendants soliciting and selling drugs to pedestrians and others driving by in cars. One defendant on one side of the street and one on the other. The situation escalated towards reasonable suspicion when one of the co-defendants was seen to spit from his mouth a clear bag containing a white substance into someone's hand (*Nichols* at 716).

Later, the other co-defendant was pursued leaning towards passing cars and gesturing with his hands, which combined with what the officers saw before reinforced that suspicion (*id.*). Finally, armed with an articulable suspicion, the observing police officer summoned other officers to the scene and when another officer approached one of the defendants, defendant ran by bumping into the

officer who forcibly pushed defendant to the ground. This force led the defendant to spit out bags of drugs resulting in arrest (*id.* at 717).

Unlike the situation that unfolded in *Nichols*, the police in this case simply saw Reginald Blandford get out of his car, go inside the store, pick up an acquaintance (Gurdeep Singh), talk to some friends or acquaintances in the parking lot and leave with his passenger. There was no citizen complaint. There was no observation of drugs or anything else in Appellant's hand. Unlike the *Nichols* defendants, Appellant was not approached, was not questioned and did not run away.

Trooper Shive vaguely testified that Blandford made movements within the vehicle such as reaching over the seat as if searching for something. This is entirely consistent with looking through the area he could reach within the car for his papers. None of this activity gave rise to increase scrutiny to a *DeBour* level two founded suspicion. (A-073, 087, 088).

There was as a matter of record no particularized suspicion of criminal activity at all. Just a bare assertion that in this neighborhood an African American was observed shaking hands, doing what [they] do (A-093). There was nothing observed changing hands in any way (A-059, 067, 092). The suppression court erred in citing the rationale of *Nichols*. At this point the ante of suspicion towards *DeBour* level two was still at zero.

Although there was testimony from Investigator Backer that Appellant was not wearing a seatbelt before he arrived at the convenience store, no such infraction was ticketed by Backer (A-064). Neither was one issued by Investigator Shive after Appellant got back into his car and left the store (*id.*). This just seems to be an attempt to stack things together to get to a founded suspicion of criminality. The uncharged seatbelt violation should not be credited towards moving the *DeBour* needle from level one to level two (A-095).

The police officers, already familiar with Appellant, knew they did not have enough to escalate their inquiry beyond a request for information. So Appellant was not questioned in the first place (*See, People v. Hollman*, 79 N.Y.2d 181 [1992]; *People v. Bailey*, 204 A.D.2d 751 [3d Dept, 2000] [in a non-automobile case, explaining the modicum of suspicion required to obtain a founded suspicion so as to make a common law inquiry]).

POINT II

TROOPER SHIVE MADE AN UNREASONABLE MISTAKE OF LAW AND LACKED PROBABLE CAUSE TO INITIATE THE TRAFFIC STOP OF APPELLANT'S CAR.

When Appellant got back in the car with his passenger he drove towards his home, closely followed by the “K-9” SUV driven by Investigator Shive (A-070). According to Shive’s notes, offered for the first time by the People at the *Mapp* hearing held on August 24, 2018, the stop happened at 5:10 PM (A-026). The ticket for Inadequate License Plate Lamp was using 5:10 PM as the time of the

violation and stop (A-018). It is respectfully submitted that Judicial notice be taken that on November 16, 2017, sunset in Elmira, New York was at 4:45 P.M (A-019-022).

Under questioning, it is likely that the actual observation of the traffic infraction was closer to 5:00 PM (A-082). The time of the stop is significant because all the infractions under VTL §375(2)(a) are triggered only when it is thirty (30) minutes or more after sunset. The statute reads as follows:

2. (a) Every motor vehicle [], driven upon a public highway during the period from one-half hour after sunset to one-half hour before sunrise or at any other time when windshield wipers are in use, as a result of rain, sleet, snow, hail or other unfavorable atmospheric condition, and at such other times as visibility for a distance of one thousand feet ahead of such motor vehicle is not clear, shall display:

[* * * * *]

4. if required to display a number plate on the rear, a white light which shall illuminate the numerals on such plate in such manner as to render such numerals legible for at least fifty feet from the rear.....[other text omitted].

Investigator Shive had a mistaken knowledge of the license plate law and incorrectly testified that the 30 minutes after sunset provision only applies to headlights (A-083, 084). The mistake of law standard is whether the mistake is objectively reasonable (*People v. Guthrie*, 25 N.Y.3d 130, 138-39 [2015], *citing Heien v. North Carolina*, 574 U.S. 54 [2014]).

It is important to note that the police may stop a car if the officer has probable cause to believe that the driver has committed a traffic violation, regardless of whether it is the primary motive for the stop (*People v. Robinson*, 97 N.Y.2d 341, 349[2001]).

The prerequisite of the traffic stop in this case is whether it was supported by probable cause that each and every element of VTL § 375(2)(a)(4) had been violated. Investigator Shive was supposed to have probable cause to believe a traffic infraction had occurred to make a valid stop of Appellant's car. He testified at the *Mapp* hearing that he was searching for a pretext to pull Appellant's car over because of a "viable" traffic violation (A-090).

In *Robinson*, the police officer had probable cause to stop the defendant because he radioed ahead and found out the truck's registration had expired – a clear violation of the law. Unlike in *Robinson*, Investigator Shive's probable cause was based on a mistake of what VTL § 375(2)(a)(4) actually says.

An instructive illustration of how an unreasonable mistake of law is interplayed with probable cause is documented in a 2018 Gloversville City Court case, *People v. Paniccia*, 61 Misc.3d 397 [Gloversville City Ct, 2018, DiMezza, J.]. In *Paniccia*, the driver of the car was ticketed for a violation of VTL § 375(2)(a)(3), "insufficient tail light." At suppression, the court determined that the police officer did not have probable cause to stop the defendant's vehicle because

of an objectively unreasonable mistake of law. The mistake of law made by the officer was that one non-essential taillight being out on a side of the car that still has a functioning taillight is not illegal. Therefore, the court ruled that the arresting officer made an unreasonable mistake of law (*Paniccia* at 402). The officer just should have known VTL 375(2)(a)(3) was not violated. Not knowing the most basic of traffic equipment laws was an objectively unreasonable mistake of law (*Paniccia* at 402).

The *Paniccia* court distinguished *People v. Guthrie*, 25 N.Y.3d 130 [2015] from its own case for an important reason. In *Guthrie*, the Court of Appeals reversed both lower courts when it held that the while the arresting officer should be charged with a detailed knowledge of the contours of VTL § 1100(b), he or she could not be charged with knowing which of a Village's stop signs were registered pursuant to another body of law, the Village Code (*Guthrie* at 136). The defendant in *Guthrie* was stopped and arrested for failing to stop at a sign that appeared to be perfectly installed but was not registered under Village Code – an objectively reasonable mistake of law (*Guthrie* at 139).

It is respectfully asserted that Appellant Reginald Blandford's situation is closer to that of the defendant in *Paniccia* than it is to the defendant in *Guthrie*. On November 16, 2017 at around 5:00 PM Appellant was stopped for a license plate lamp that was out. Although the two CNET investigators have styled what

they saw before the traffic stop as drug dealing, none of the activity observed at the convenience store indicated it (A-059, 067, 092). Like the police officer in *Paniccia*, Investigator Shive had to have probable cause of a violation based on a correct grasp of the Vehicle and Traffic Law before he could have stopped Reginald Blandford's car. He did not because he made a mistake of law.

At the *Mapp* hearing, when the defense attorney began to question Investigator Shive about whether he knew that in order to charge a violation of VTL § 375(2)(a)(4), it had to be thirty minutes after sunset, Investigator Shive mistakenly understood that provision to apply only to having one's headlights turned on (A-083). The plain text of the law is set forth above and the thirty minutes after sunset clause applies to the subsections below it. Interestingly, the suppression court would not allow any questioning on the issue of the timing of the observation of the license plate violation ticket having been sworn to as being less than one half-hour after sunset as required (A-019-022, 084). This is clear error. Based on this legal error, the court found that Investigator Shive had the requisite probable cause based on no mistake of law to stop the car and allow a *DeBour* level two common law inquiry of Appellant after the stop.

POINT III

TROOPER SHIVE HAD NO FOUNDED SUSPICION OF CRIMINAL ACTIVITY AND THEREFORE THE CANINE SEARCH UNREASONABLY DELAYED THE TRAFFIC STOP

Even if the traffic ticket were written under no mistake of law, another legal issue exists. If the business of the traffic stop is extended too far based on the legal restraints, using the reasonable suspicion standard, taking into account the nature of the duties involved in the writing of a traffic ticket, the U.S. Supreme Court has found that even an eight minute extension of the stop for purposes of allowing a canine sniff of the car is unconstitutional (*Rodriguez v. United States*, 575 U.S. 348 [2015]).

There is no authority in New York or U.S. Supreme Court jurisprudence for the police to get a K-9 out to sniff a car on these facts. *Rodriguez* stands for the proposition that even an eight (8) minute lengthening of the traffic stop beyond the issuance of a traffic ticket and the business of issuing that ticket, such as a routine check of license and registration is impermissible.

In *Rodriguez*, a “dog sniff” automobile traffic ticket case like this one, the U.S. Supreme Court held that the police’s extension of the traffic stop in order to conduct a dog sniff was an unconstitutional seizure and any extension of time to effectuate the sniff is outside the scope of a traffic ticket case (*Rodriguez* at 357; *People v. Banks*, 85 N.Y.2d 558 [1995]; compare, *People v. Trevaughn Banks*,

148 A.D.3d 1359 [3d Dept, 2017][defendant's parole status and untruthfulness and inconsistent story gave rise to court's allowance of dog sniff evidence which extended mission of traffic stop]). In this case, we do not even have a traffic ticket that should have been issued. It follows that the K-9 should have stayed in the unit and not been employed to search for drugs.

New York's law is not contradictory regarding dog sniffs of a car (*People v. Devone*, 57 A.D.3d 1240 [3d Dept, 2008], *aff'd*, 15 N.Y.3d 106 [2010]). A canine sniff cannot be unreasonably delayed (*Devone* at 1242). The legal requirement for utilizing a canine in an automobile case is a founded suspicion that criminal activity is afoot (*Devone* at 1242).

There is no evidence of anything other than a mistaken stop for a simple traffic ticket for an inadequate license plate light in the instant case. Investigator Backer testified on the stand at the *Mapp* hearing that he had no particularized suspicion about Reginald Blandford engaging in any criminal activity based on his observation of seeing neither drugs nor money changing hands in front of the On-The-Way convenience store. There was no evidence of extended loitering or hanging out at the store. The situation never should have been categorized as a level two inquiry. The evidence seized as a result of the dog sniff should have been suppressed.

CONCLUSION

Based upon the foregoing, the lower court's decision to deny Appellant's Omnibus Motion in its entirety and to not suppress the evidence unlawfully searched for and seized during the unlawfully initiated traffic stop should be overturned, the indictment should be dismissed, and Appellant's seized cash be returned to him.

PART 1250.8(j) PRINTING SPECIFICATIONS STATEMENT

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Dated: March 18, 2020

Respectfully submitted,



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APPENDIX 3

1 STATE OF NEW YORK

2 COUNTY COURT : COUNTY OF CHEMUNG

3 THE PEOPLE OF THE STATE OF NEW YORK

4 Plaintiff, Indictment No.
5 2018-113

6 -against-

7 HEARING

8 REGINALD BLANDFORD,

9 Defendant. Crim. Poss.

10 Marijuana

11 Courthouse
12 Lake Street
13 Elmira, New York
14 August 24, 2018

15 B E F O R E: HONORABLE CHRISTOPHER P. BAKER,
16 Judge

17 A P P E A R A N C E S:

18 For the People: Weeden A. Wetmore
19 Chemung County District Attorney
20 By: John R. Thweatt, Assistant

21 For the Defendant: Peter D. Salton Esq.
22 309 N. Tioga Street
23 Ithaca, NY 14850

24 The Defendant: In Person

25 Court Reporter: Kathleen A. Rohan

* * * * *

7 MR. SALTON: Yes, Judge. Submitting a
8 letter dated today on behalf of defendant as an
9 application for the Chemung County Drug Court
10 Diversion Program under 216.05. And, in
11 particular, there are factors in Section 3(b) of
12 that statute that I haven't written on, but I
13 orally would say this man has a very long criminal
14 history, all involving drug offenses, involving
15 drug use. This isn't a sale case. He's had
16 several DWI's. He's had a drug -- he has another
17 drug case in city court right now, marijuana.
18 They're all marijuana cases. No hard drugs.

24 And in the alternative, you know, we're
25 ready to proceed with the evidentiary hearing.

9 MR. SALTON: Yes.

10 MR. THWEATT: -- supervision, or possibly
11 two, I can't remember.

12 MR. SALTON: I think it might have been
13 two, but --

19 MR. SALTON: Yeah, that wouldn't be a
20 lawful sentence.

21 MR. THWEATT: He would not be eligible
22 for that. And that's kind of where our discussions
23 were left off.

24 THE COURT: So he is a predicate felony
25 offender then?

1 MR. THWEATT: Correct.
2 THE COURT: Okay.
3 MR. THWEATT: Notably, it's a drug
4 offense from 2007.
5 MR. SALTON: Right.
6 THE COURT: So the offer at this point in
7 time is a plea to the sole count, one and a half
8 year determinate?
9 MR. SALTON: That would be an E Felony,
10 Judge, that's an attempt.
11 THE COURT: Oh, to an attempt?
12 MR. SALTON: Yes.
13 MR. THWEATT: I think you're right.
14 MR. SALTON: It would be an attempt.
15 THE COURT: Plea to attempt.
16 MR. SALTON: Attempted, 221.25.
17 THE COURT: And post-release supervision
18 and sentence of what?
19 MR. THWEATT: Two.
20 THE COURT: Two years?
21 MR. SALTON: Two post, yeah.
22 THE COURT: Okay. All right. At this
23 point in time, I'm not inclined to grant the
24 application for Judicial Diversion. I intend at
25 this point in time it, due to the lack of

1 evidentiary support regarding the request under
2 216, at this point in time, I'm declining the
3 request to transfer this matter, although the Court
4 does have discretion to do so. The Court intends
5 to proceed forward today with the combined Mapp and
6 Huntley hearing.

7 MR. SALTON: Sure.

8 THE COURT: Okay.

9 MR. THWEATT: Okay.

10 THE COURT: Do you have your witnesses
11 ready?

12 MR. THWEATT: I do.

13 MR. SALTON: Well, I should get my
14 client, or can --

15 THE COURT: Let me ask you another
16 question. Is this offer -- once we begin the
17 commencement of the hearing, is this offer no
18 longer on the table?

19 MR. SALTON: We haven't had anything in
20 writing yet, so --

21 MR. THWEATT: Yeah. What I don't want to
22 get in the position of doing is litigating all of
23 this, and then still negotiating, negotiating.

24 THE COURT: I know that usually the
25 Court, if we're going to go through this hearing,

1 the Court is going to probably be inclined not to
2 abide by any plea offers following the conclusion
3 of the hearing. So I don't know if that makes any
4 difference, Mr. Salton, if you need some time to
5 talk to your client.

6 MR. SALTON: I could talk to him, yes.

7 The other thing, though, I would
8 respectfully point out, I believe I could still
9 apply for Judicial Diversion upon a better
10 submission after this hearing.

11 THE COURT: You certainly could.

12 MR. SALTON: And that way, that would get
13 transferred to those that hear these things.

14 THE COURT: If I were to grant that.

15 MR. SALTON: If you were to grant that,
16 right.

17 THE COURT: Okay. I'm ready to go
18 forward if everyone else is. If you need some time
19 to speak with your client, Mr. Salton --

20 MR. SALTON: I would, yes.

21 THE COURT: Why don't you take five
22 minutes or so.

23 MR. SALTON: Thank you.

24 (Brief break in proceedings.)

25 THE COURT: Okay. We're back on the

1 record on People versus Reginald Blandford,
2 scheduled today for a combined Mapp and Huntley
3 hearing. People ready?

4 MR. THWEATT: People are ready, your
5 Honor. I just want to place on the record the
6 Rosario materials I'm turning over to Mr. Salton.

7 First, there is two Grand Jury
8 testimonies, one from Trooper Shive, and one from
9 Investigator Kevin Backer.

10 MR. SALTON: Thank you.

11 MR. THWEATT: Further, we're turning over
12 a felony complaint that was authored by
13 Investigator Backer. Here is a two-page seized
14 property report regarding a sum of currency that
15 was taken. There was supporting deposition
16 authored by Trooper Bruce Shive regarding a traffic
17 offense. There is the written 710.30 prepared by
18 Trooper Shive. There is the primary -- let's see,
19 it's a five-page New York State Police incident
20 report containing entries from both Trooper Shive
21 and Investigator Backer.

22 I'm handing over two pages of handwritten
23 notes from Trooper Shive. I'm turning over a
24 one-page search summary. And there is a one-page
25 separate incident report regarding the deployment

1 of Trooper Shive's canine partner.

2 THE COURT: Do you acknowledge receipt,
3 Mr. Salton?

4 MR. SALTON: I acknowledge on the record
5 that I have received the documents as indicated.

6 THE COURT: All right. Court also has
7 indicated that the plea offer that was relayed to
8 Attorney Salton recently, which was a plea to the
9 attempt, criminal possession of marijuana in the
10 second degree, a Class E Felony, with a sentence
11 recommendation of one and a half years determinate
12 and two years post-release supervision as a second
13 felony offender, that offer will not be entertained
14 by the Court following the commencement of the
15 hearing.

16 Call your first witness, please.

17 MR. THWEATT: Your Honor, our first
18 witness is going to be Investigator Kevin Backer.

19 KEVIN BACKER, having been first duly
20 sworn to speak the truth, testified as follows:

DIRECT EXAMINATION

22 BY MR. THWEATT:

23 Q. And tell us your name, please?

24 A. Kevin Backer.

25 Q. And you're employed how?

1 A. I am an investigator with the New York State
2 Police.

3 Q. Okay. What particular unit of the State
4 Police do you work with?

5 A. I am assigned to CNET, which is the State
6 Police narcotics unit.

7 Q. Okay. How long have you been with the State
8 Police all told, all together?

9 A. Ten and a half years.

10 Q. Now, how much of that time have you served in
11 the capacity as an investigator with CNET?

12 A. Almost two years.

13 Q. Okay. Back November 16th of 2017, did you
14 have occasion to be working some sort of a detail here
15 in the City of Elmira?

16 A. Yes.

17 Q. What was going on that date?

18 A. We had a quality of life patrol, which is a
19 saturation, basically patrol of the City of Elmira to
20 address issues of narcotics sales, possessions, use,
21 things that are disrupting the everyday life of citizens
22 in the City of Elmira.

23 Q. Okay. Were you working in a plainclothes
24 capacity on that day?

25 A. Yes.

1 Q. All right. At around 5:00 o'clock that
2 afternoon, did you have occasion to be anywhere near
3 Hudson Street in the City of Elmira?

4 A. I did.

5 Q. What were you doing over there?

6 A. There was a unit that had made a traffic stop
7 on Hudson Street, and we were in a parking lot on the
8 south side of Hudson Street near the corner of Sly and
9 Hudson, and we were basically providing them with cover.

10 Q. Okay. That was an unrelated incident to what
11 we are here now?

12 A. Correct.

13 Q. Okay. So during the time you were in that
14 position -- by the way, when you say we, were you by
15 yourself, were you with a partner?

16 A. I was with a partner.

17 Q. Okay.

18 A. I had another investigator seated in the car
19 with me.

20 Q. Do you know who that was?

21 A. It was Investigator Amanda Giles, G-I-L-E-S.

22 Q. Is she also State Police?

23 A. Yes.

24 Q. As you were providing cover for this other
25 traffic stop, did you encounter Reginald Blandford?

1 A. I did.

2 Q. How did that happen?

3 A. As this traffic stop was clearing up, we felt
4 we weren't needed anymore, we started to pull from the
5 parking lot and observed Reginald Blandford driving a
6 white Lincoln sedan past our position in which we were
7 at. And he was not wearing a seatbelt.

8 Q. Okay. So you were in what parking lot was it?

9 A. It's a parking lot just to the -- I'm not a
10 hundred percent sure the business, but it's just to the
11 south side of Hudson Street.

12 Q. Okay. And when you saw Mr. Blandford
13 operating a vehicle, was that on Hudson Street?

14 A. Yes.

15 Q. Okay.

16 A. West on Hudson.

17 Q. He was going west; right?

18 A. Yes.

19 Q. Did he pass by you?

20 A. Yes.

21 Q. All right. You observed what about him?

22 A. He was not wearing a seatbelt.

23 Q. All right. Were you at all familiar with or
24 did you have prior information regarding Mr. Blandford?

25 A. Yes.

1 Q. Such as what?

2 A. That he was involved in the illegal sale of
3 narcotics.

4 Q. Okay. How did you come by this information?

5 A. General police knowledge.

6 Q. So as he passed by your position, what action
7 did you take?

8 A. We surveilled him, followed him. After we
9 left the parking lot and observed him -- at this time, I
10 was contacting a patrol, trying to get a patrol that was
11 nearby to effect a traffic stop for the seatbelt
12 violation, and he had proceeded to turn north on South
13 Main Street, and then turn west into the parking lot of
14 the On the Way.

15 Q. On the Way is what?

16 A. Is a small convenient store at the corner of
17 Chemung and North Main -- I'm sorry, South Main.

18 Q. Okay. Are you familiar with that location,
19 this On the Way store?

20 A. Yes.

21 Q. How are you familiar with that?

22 A. On the Way has always been a trouble spot in
23 the city, as far as narcotic sales and things go, that's
24 a hot spot that we've watched for a long time, people
25 make hand-to-hand transactions, people make drops, and

1 similar activity. Whether it be on foot or in a
2 vehicle, that's always been a trouble spot.

3 Q. So you've had prior experience conducting
4 surveillance at this location?

5 A. Surveillance, traffic stops, police
6 interactions, yes.

7 Q. Okay. So when the Lincoln pulled into that
8 parking lot, where did you go?

9 A. I parked across the street in the Happy Family
10 parking lot, which is a Chinese restaurant, which is
11 directly across the street.

12 Q. Okay. From that position, could you still see
13 the Lincoln in the parking lot across the street?

14 A. Yes.

15 Q. Can you describe what activity, if any, you
16 observed while conducting your surveillance there?

17 A. So we observed Mr. Blandford get out of the
18 Lincoln, enter the store, estimate of time in the store,
19 maybe five minutes, and then exit the store, and return
20 in the area of his vehicle. There was several people
21 outside, at least one individual he approached and made
22 physical contact with, whether it was a hand shake, type
23 hug thing, and then returned to the driver's side of his
24 vehicle and enter the car. Around the same time,
25 another unidentified male subject who was later

1 identified by Trooper Shive entered the passenger's side
2 of the vehicle. The vehicle backed out of the parking
3 spot and exited the parking lot of On the Way, onto
4 Chemung Street.

5 Q. Okay. Now, what significance, if any, you
6 said Mr. Blandford and some other individual kind of
7 shook hands, did the man hug thing?

8 A. Yeah, that's how I would describe.

9 Q. Does that have any significance in your line
10 of work?

11 A. In our line of work, in my experience seeing
12 drug transactions on a regular basis and actually doing
13 undercover purchases on a regular basis, that is a very
14 common way in an open air market to exchange currency
15 and drugs. Now, whether that happened, I can't testify
16 to that, because I didn't see money exchanged or drugs
17 exchanged. But, in my line of work, that is a very
18 common open air technique, to hug somebody, tap them up,
19 and make an exchange. That location is notorious for
20 that. And for that reason, that's why these actions
21 piqued my interest.

22 Q. Now, from your vantage point, you were not
23 able to see whether either of the individuals had
24 anything in their hands; is that correct?

25 A. No, no.

1 Q. All right. So, Mr. Blandford got back into
2 his vehicle?

3 A. Correct.

4 Q. All right. Accompanied by somebody else?

5 A. I believe his last name was Singh. I don't
6 know his first name. That gentleman was identified by
7 Trooper Shive. But, yes, he entered the passenger side,
8 Mr. Blandford entered the driver's side. Vehicle backed
9 out of his parking stall and exited the parking lot onto
10 Chemung Street.

11 Q. Okay. So, once it's on Chemung Street, where
12 is it going, what direction is it going?

13 A. It was headed in a westerly direction. At
14 that time, I lost sight of the vehicle and Trooper Shive
15 at that point had an eye on the vehicle.

16 Q. Okay. Do you know where he was?

17 A. Trooper Shive, I believe, was a block north of
18 me, back down a -- not an alleyway but like a dead end
19 street, and I don't recall the street name or if it even
20 has a name, but it goes out behind like Firestone which
21 is right there.

22 Q. Got you. All right. So did Trooper Shive
23 then follow that white Lincoln?

24 A. Correct.

25 Q. Did you remain in place conducting further

1 surveillance, or did you tag along with Trooper Shive?

2 A. I remained in place until he had the vehicle
3 stopped, and then we took up a surveillance position at
4 a distance to over watch the traffic stop.

5 Q. Gotcha. Okay.

6 MR. THWEATT: That is all the questions I
7 have for Mr. Backer.

8 THE COURT: Cross-examination?

9 MR. SALTON: Yes.

10 CROSS-EXAMINATION

11 BY MR. SALTON:

12 Q. Officer Backer, Investigator Backer, Officer
13 Backer?

14 A. Either one is fine.

15 Q. Now, you indicated that you first saw the
16 defendant at around 5:00. Can you be a little more
17 precise?

18 A. I would have to look at the time of the report
19 to make --

20 Q. Is there something that would refresh your
21 recollection in that matter?

22 A. Probably the incident report that I prepared.

23 Q. Okay. And that incident report, you have a
24 copy of your incident report, or can we --

25 MR. THWEATT: It will be this one, the

1 five-page.

2 MR. SALTON: Okay. I'm just seeing Page
3 1 of 1, incident report. I apologize for my
4 clumsiness with paper, but I'm pretty good at that.

5 THE WITNESS: The first page itself would
6 probably be the most --

7 MR. SALTON: Here, I could show this to
8 you.

9 THE COURT: Can we have that marked? You
10 need to get that marked first.

11 MR. SALTON: Yes, I'd like to mark that
12 incident report.

13 THE COURT: Defendant's A.

14 MR. SALTON: Defendant's A.

15 (Whereupon, Defendant's Exhibit A was
16 marked for identification.)

17 BY MR. SALTON:

18 Q. Okay. Officer, I'm showing you what's been
19 marked as Defendant's A. Now, if you could take a look
20 at it and --

21 A. So approximately 5:10 PM.

22 Q. Okay. So your testimony is at 5:10 PM you saw
23 the defendant in the parking lot of the store?

24 A. If it's -- 5:10 would be the time Trooper
25 Shive would have stopped him. So the time prior to that

1 would -- I would say give it between five and
2 ten minutes, so around 5:00 o'clock.

3 Q. Okay. But I was asking, I mean, you just sort
4 of brought in another thing here, that Trooper Shive
5 said 5:10. That's not your --

6 A. That initial time on that report is the time
7 of the traffic stop. The time I observed him, which I
8 testified to with Mr. Thweatt, was around 5:00 o'clock.

9 Q. Okay. So we'll try to work with that right
10 now. Now, so you saw him in the parking lot, it was
11 before you saw him shaking hands with anyone, is that
12 right, you just saw him? Was he in the car, or was he
13 out of the car when you first saw him?

14 A. When I first observed him park, out of the
15 car, go into the store, in the store for, I want to --
16 I'd estimate maybe five minutes, came out of the store.
17 Before he returned to the car is when he was interacting
18 with someone.

19 Q. So, wait a minute. You saw him, and then he
20 was in the store for five minutes?

21 A. Correct.

22 Q. And then -- okay. So did you see him before
23 5:00 maybe? Is it possible you saw him before 5:00 in
24 the parking lot in his car, before he got out of the
25 car, before he went into the store?

1 A. I'm confused as to what you're saying.

2 Q. Well, so am I. I'm confused about time here.
3 We have a ticket here that was written at 5:10, do we
4 not?

5 A. The traffic, correct.

6 Q. The traffic ticket that's 5:10?

7 A. Okay.

8 Q. And that's for an inadequate license plate
9 light; isn't that correct?

10 A. Yep.

11 Q. Well, it's an inadequate license plate light.
12 That's the ticket that we have in front of us here in
13 this court?

14 A. Okay.

15 Q. We don't have a seatbelt ticket?

16 A. Okay.

17 Q. So I'm getting back to, again, I'm trying to
18 figure out when you first saw the man?

19 A. I saw him.

20 Q. And I'm having trouble with it.

21 A. I saw him on his way to the store around 5:00
22 o'clock. If he was in the store for five minutes, if he
23 made it out of the parking lot and Trooper Shive
24 observed him at 5:10, that would put him right around
25 5:10.

1 Q. Well --

2 A. I'm not exact on the time I saw him. When he
3 observed him, he was west on Hudson Street without a
4 seatbelt.

5 Q. Okay. And that is your testimony, and it was
6 around 5:00 o'clock?

7 A. Correct.

8 Q. Give or take. And so your testimony is that
9 he was in the store for five minutes?

10 A. Approximately.

11 Q. Okay. So after he got out of the store, is
12 that when you observed the hand shaking?

13 A. Yes.

14 Q. Okay. Now, have you, prior to this incident,
15 had you had any other interaction with the defendant
16 ever in a law enforcement capacity?

17 A. Not -- physically, or -- because in my
18 business, there is occasions where we surveil and not
19 make contact with individuals.

20 Q. Okay.

21 A. So, in that case, yes.

22 Q. So I guess I'll ask -- you've given me some
23 more questions to ask. So physically, you had never
24 interacted with him prior to that?

25 A. I don't believe so, not that I can remember

1 anyway.

2 Q. Okay. Now, are you saying that you have
3 surveilled this man before?

4 A. In an undercover capacity.

5 Q. In an undercover capacity as a police officer?

6 A. Yes.

7 Q. Okay. And how many times and when?

8 A. I couldn't tell you when, and I couldn't tell
9 you exact many times, but, yes, I have surveilled him
10 before.

11 Q. Okay. Could I ask you whether you had
12 surveilled him within a week before?

13 A. I would say no.

14 Q. Within two weeks?

15 A. I couldn't tell you.

16 Q. Within a month?

17 A. Probably.

18 Q. But you're not sure?

19 A. Not a hundred percent sure.

20 Q. Not a hundred percent sure?

21 A. Correct.

22 Q. So you could possibly commit to saying that
23 you've dealt with him in a surveillance capacity about a
24 month earlier than the events?

25 A. I would say it's possible, correct.

1 Q. It's possible but you're not sure?

2 A. Correct.

3 Q. Is there anything that you could introduce
4 that would show -- did you ever take any notes about
5 other surveillances of him?

6 A. No.

7 Q. So it's possible that you have him mixed up
8 with somebody else?

9 A. No.

10 Q. Okay. You didn't see any contraband or cash
11 being exchanged?

12 A. No, nope.

13 Q. Now, it's equally possible, if not more
14 possible, is it not, in the absence of contraband or
15 cash, that a hand shake is just a hand shake?

16 A. Absolutely it could be.

17 Q. Now, let me look at something else here, I'm
18 sorry. Now, you've said that you saw the defendant --
19 strike that question, I'm sorry. I'm trying to find
20 something here.

21 Now, were you involved in the -- you were not
22 involved in the traffic stop itself for the V&T
23 violation; is that correct?

24 A. Correct.

25 Q. Not one bit?

1 A. In what sense?

2 Q. Did you observe a violation at all of the
3 inadequate license plate light?

4 A. I didn't observe that.

5 Q. You didn't observe that at all, okay. So the
6 only activities you observed, personally, are the ones
7 that were in the parking lot of the convenient store,
8 and of the gentleman coming into the car after that?

9 A. Correct.

10 Q. Now, when you stopped the defendant, did you
11 stop the defendant, or did Trooper Shive?

12 A. Trooper Shive.

13 Q. So you're not involved in the stop either?

14 A. No.

15 Q. So where are you sitting when Trooper Shive
16 is --

17 A. I'm still in the Happy Family parking lot.

18 Q. You're still in the Happy Family parking lot?

19 A. Correct.

20 Q. And that is within eye shot of where the
21 alleged traffic incident occurred, isn't that right,
22 with the -- involving the inadequate taillight?

23 A. It's in proximity, yes.

24 Q. And you could see it?

25 A. I could see.

1 Q. Could you see the stop happening on the
2 highway on the roadway --

3 A. No.

4 Q. -- from the parking lot?

5 A. I could not see that. That was on another
6 street. So he went down Chemung, took a left, now he's
7 behind -- I can't see past the store anyway on Chemung
8 Street, and the actual traffic stop took place on a
9 further road, so I can't see where that actually took
10 place.

11 Q. So you weren't there when the traffic stop
12 occurred?

13 A. No.

14 Q. After he turned out of the store and went down
15 the other street?

16 A. Correct, no, as soon as he left, got on
17 Chemung and passed the angle there, once they go past
18 the store a certain distance, you lose sight of any
19 vehicles traveling down there. So I couldn't see.

20 Q. Well, I'm not that familiar with Elmira, so
21 what's the street?

22 A. There's North Main Street runs this way, and
23 Chemung Street crosses it. The On the Way is on that --
24 it would be southwest corner of Chemung and South Main.
25 The building, the way it sits, traffic passes down

1 Chemung, you lose sight after they go, I want to say a
2 couple hundred feet down the road.

3 Q. Okay. So is Chemung perpendicular to Hudson?

4 A. It is -- or no, Chemung runs parallel.

5 Q. But Chemung is perpendicular to Main?

6 A. Correct.

7 Q. So the activities you observed were on Main?

8 A. Were on, yes, the corner of Main and Chemung,
9 yes.

10 Q. Okay. But the building is in the way, so you
11 couldn't observe the traffic stop?

12 A. I couldn't see the traffic stop.

13 Q. Okay. Thanks a lot, sorry to be so --

14 A. No, that's okay.

15 Q. Now, when did you -- after the stop, I guess
16 let's -- we'll hold off on talking about the stop.

17 A. Sure.

18 Q. Since you didn't do it --

19 A. Correct.

20 Q. -- apparently. When did you initiate further
21 law enforcement activities regarding this offense after
22 he had disappeared down Chemung from your view?

23 A. So after -- again, after Trooper Shive made
24 the traffic stop, I left my surveillance position and
25 parked north of the traffic stop on -- I can't even

1 remember what street they are. I'd have to recollect --

2 Q. Was it near his car?

3 A. Near his car, behind -- north on the same
4 street, behind his car.

5 Q. So it would be fair to say it was behind his
6 car, behind the rear license plate, behind the trunk,
7 all that, of his car?

8 A. I'm behind Trooper Shive's car.

9 Q. Oh, you're behind Trooper Shive's car?

10 A. So I'm north on the road a ways.

11 Q. Okay.

12 A. And at some point during the traffic stop,
13 Trooper Shive secured him, and I walked up to the
14 vehicle.

15 Q. Okay. Now, one other thing, though, what
16 about -- I believe you said there was another officer in
17 your unit with you?

18 A. Yes.

19 Q. Did she just stay there, sitting in there?

20 A. She stayed in the vehicle.

21 Q. And what was her name again?

22 A. Investigator Amanda Giles.

23 Q. Okay. And did she offer any kind of written
24 or verbal reports about this incident at all?

25 A. No, none.

1 Q. Okay. So that wouldn't be part of your case
2 record at all at this point?

3 A. Nope, nope.

4 Q. Or investigation record?

5 A. Nope.

6 MR. SALTON: Okay. So, would it be
7 possible, Judge, for me to reserve further cross
8 after we hear from Trooper Shive?

9 THE COURT: Do you have anywhere to go,
10 Investigator Backer?

11 THE WITNESS: No.

12 THE COURT: Okay. Stick around if you
13 can, please.

14 MR. SALTON: I appreciate it. I think it
15 would flow better.

16 THE COURT: Okay.

17 MR. THWEATT: Okay.

18 THE COURT: Any redirect?

19 MR. THWEATT: Not at this point, no.

20 Thank you.

21 THE COURT: Okay. Thank you. You may be
22 subject to be recalled, Investigator Backer.

23 MR. SALTON: They're not supposed to be
24 talking with each other out there either, are they?

25 MR. THWEATT: Let me go get them. He is

3 MR. SALTON: That happens.

4 BRUCE SHIVE, having been first duly sworn
5 to speak the truth, testified as follows:

DIRECT EXAMINATION

7 BY MR. THWEATT:

8 Q. And can you state your name and employment for
9 the Court, please?

10 A. My name is Bruce, B-R-U-C-E, Shive, S-H-I-V-E.
11 I'm employed as a State Trooper with New York State
12 Police.

13 Q. Okay. How long have you been with the
14 Division of State Police now?

15 A. In two weeks, it will be 16 years.

16 Q. Okay. And so what is your current capacity
17 with the State Police?

18 A. Currently, I -- multiple. But I'm a canine
19 handler within the State Police, and been that canine
20 handler for just over ten years. And my current
21 assignment for approximately three and a half years is
22 working exclusively with the Community Narcotics
23 Enforcement Team, which is State Police CNET narcotics
24 unit.

25 Q. So are you an investigator with that unit or.

1 as a canine, you just work with them a lot?

2 A. My rank is a trooper.

3 Q. Okay.

4 A. As being I am a canine handler, and again, I
5 am full-time with the narcotics unit.

6 Q. Gotcha. All right. And you said it's about
7 three and a half years now?

8 A. With them, yes, sir.

9 Q. Okay. Who is your canine partner?

10 A. That's K9 Clark, C-L-A-R-K.

11 Q. And what kind of a canine is he?

12 A. He is a Belgian Malinois. He is certified in
13 narcotics patrol and tracking, work with cadavers. K9
14 Clark and I were certified in March of 2016, and we have
15 been continuously certified since that date.

16 Q. Okay. Is there some kind of a -- well, tell
17 us about that certification process for your canine?

18 A. So K9 Clark, he is my second partner. So, as
19 I had mentioned, I've been with the K9 Unit for over ten
20 years. He's my second dog. I did full eight years with
21 my first partner, which he also was certified in
22 narcotics patrol and cadaver. So with that being said,
23 the first time that you are accepted into the K9 corps,
24 you attend a five and a half month residential academy
25 at New York State Police K9 Training Center, where, upon

1 completion of that time, you are certified in your
2 various disciplines. Having now then partnered with a
3 second canine, we're only there for three months. So
4 it's the certification of the animal versus you, already
5 being trained as the human. So with that being said,
6 upon completion of that three-month residential academy
7 with my new partner, we then are certified again in your
8 various disciplines, and we specifically are certified
9 then in narcotics tracking, protection, and a leader
10 school I attended for cadaver.

11 Q. Okay. As far as the narcotics interdiction,
12 what is your dog, Clark, able to detect?

13 A. Indeed. So, with that being said, we train
14 our dog -- our narcotics detection canines, in six odor
15 sources, methamphetamine, marijuana, cocaine, heroin,
16 Ecstasy, and LSD. With that being said, furthering, we
17 then, through training, we teach them what we term as
18 aggressive alert. So when that animal, through training
19 and certification, detects marijuana, meth, cocaine,
20 heroin, Ecstasy, or LSD, they then alert aggressively,
21 meaning they scratch, they're going to scratch at the
22 odor source, and that is what we call the full final
23 response of the animal conclusively, in their mind, that
24 they make that connection between what they're trained
25 to find, to alert to it, and they then are rewarded by

1 us as the handler.

2 Q. All right. Let's talk about November 16,
3 2017. Were you assisting with a detail that was going
4 on here in Elmira?

5 A. That is correct, yes, sir.

6 Q. And what was that?

7 A. We term it as a quality of life patrol. It's
8 -- in essence, simply stated, it's proactive policing
9 for a host of violations of law from minor things to
10 more elevated levels of crime. But it's also for being
11 out there in the public, and being seen. We want the
12 community to see us out there actively policing. So
13 again, we term it as a quality of life patrol.

14 Q. Okay.

15 A. And we do that in a host of areas throughout
16 my coverage area of ten counties.

17 Q. Okay. On November the 16th, in the late
18 afternoon, can you describe for the Court where you
19 would have been within the City of Elmira?

20 A. Sure. On that given day and approximate time,
21 later to be articulated as 5:10 PM, but so just
22 preceding that, I would have been on the south side of
23 the river here on the southern part of Elmira. And at a
24 given point, Investigator Kevin Backer had brought some
25 information to light to me through communication over

1 the in-car radio system, bringing me to a specific
2 location to assist in observation, and that that would
3 be locally at one of our local mini marts, Way to Go
4 (sic) mini-mart, on South Main Street, West Chemung area
5 of the City of Elmira.

6 Q. Okay. What information was it, do you recall,
7 that Investigator Backer passed along to you?

8 A. He conveyed to me that he had seen a white
9 Lincoln passenger car with Reginald Blandford in it, who
10 had pulled into the mini-mart, wasn't wearing his
11 seatbelt, and further expanded that there may be some
12 criminal activity afoot. And what we term as the
13 defining that within our narcotics unit, is potentially
14 there could be the observation of hand-to-hand dealing
15 going on, or could be just as simple as loitering in
16 that facility, et cetera. But that's, again, part of
17 our enforcement of quality of life patrols. We're going
18 to address certain things that we observe.

19 Q. When you initially came to receive that
20 information from Backer, did you take a position
21 somewhere near the convenience store?

22 A. I did. I would have been just east of the
23 location on one of the side streets there. And I was
24 within viewable angle of the open parking lot there.

25 Q. Okay. When you first came into that position,

1 was the vehicle Backer was reporting already in the
2 parking lot, or did you actually see it pull into the
3 parking lot?

4 A. I did not see it pull in. But I was delayed
5 in getting there, at which point the vehicle was
6 unoccupied when I arrived.

7 Q. Okay. Did you see -- as you were sitting
8 there, did you see any activity regarding that vehicle?

9 A. Later, identified then as Reginald Blandford,
10 he was external of the store, not in his vehicle, and he
11 was communicating with folks in that immediate area.

12 Q. Okay. Is this at the front of the store?

13 A. Correct.

14 Q. All right?

15 A. Like up on the sidewalk area.

16 Q. At any point did he go in the store?

17 A. At that point, he -- he was coming out of the
18 store. So, when I'm pulling in for surveillance
19 purposes, he was coming out of the store.

20 Q. Did he have anything with him, like --

21 A. No.

22 Q. -- a shopping bag or merchandise, or anything
23 coming out of the store?

24 A. Nothing that was viewed from where I was at.

25 Q. Okay. So then you got into position?

1 A. Yep.

2 Q. And then you saw certain activities taking
3 place at the front of the store?

4 A. Yep.

5 Q. What kind of activity? What did you see going
6 on?

7 A. As I said, there was conversing amongst
8 Mr. Blandford and others, again, external of the store.
9 And at which point, you know, they're giving hand
10 shakes, high fives, hugs, whatever. They're
11 exchanging -- their exchanging of verbiage, I can't
12 obviously detect that. But visually, you know,
13 that's -- again, in our line of business, that's what we
14 see often, what we term as exchanges of narcotics and
15 money, that's, you know, simply put, in and of itself,
16 not necessarily means anything, but coupled with further
17 investigation, it could prove to be what our suspicion
18 may be. So, again, it's an observation made by us, yes.

19 Q. So seeing that activity, did Mr. Blandford at
20 any point get back in the car?

21 A. He did. He returned to his vehicle, and then,
22 within a short order, another male emerged from the
23 store and entered his vehicle as a front seat passenger.

24 Q. Okay. Did the vehicle leave?

25 A. It did. Almost -- again, once that male

1 passenger emerged from the store, became a passenger in
2 the vehicle, the vehicle pulled away from the store.
3 Correct.

4 Q. Where did it go?

5 A. It headed in a westerly direction, and at
6 which point I had followed it, making the observation,
7 then, of a vehicle and traffic violation, inadequate
8 plate lamp. It's a statute amongst Vehicle and Traffic
9 Law that indicates that plate needs to be illuminated
10 about by a white light visible for 50 feet.

11 Q. Okay. Where was this vehicle, where were you
12 when this was observed?

13 A. I would have pulled from my parked position
14 heading on a westerly direction across South Main
15 Street. And in fact then, when we are on Fulton Street,
16 is when I initiated my emergency lighting, making that
17 observation of the plate lamp violation, and effected a
18 traffic stop on Fulton.

19 Q. Okay. So had the vehicle turned onto Fulton?

20 A. Correct, affirmative, yes, sir.

21 Q. All right. So, once on Fulton Street, that's
22 when you observed the violation?

23 A. It was within that proximity leading to
24 Fulton.

25 Q. Gotcha.

1 A. But physically activating my emergency lights
2 was physically on Fulton, yes.

3 Q. All right. What, if anything, did you notice
4 about the vehicle once you hit the lights?

5 A. So upon activation of the emergency lighting,
6 as I term it, it was a slow roll response, so the
7 vehicle didn't immediately come to a stop, acknowledging
8 my overhead lighting, and at which point, simultaneous
9 as the slow roll was going on, the driver then, again,
10 later identified as Reginald Blandford, he's making
11 furtive movements within the vehicle. He's ducking down
12 in his seat, moving about within his seat, and at a
13 point reaching over the passenger's seat, doing
14 something, appearing to be down in the floorboard area
15 and/or the backseat. I can't see physically where his
16 final reach is, however, again, he's making movements
17 that are not typical when folks are stopped by law
18 enforcement. Most folks try, you know, sit easy within
19 the seat and abide by the emergency lights, instantly
20 pulling over and coming to a stop.

21 Q. Okay. Eventually the vehicle did stop for
22 you?

23 A. It did.

24 Q. Describe what you did?

25 A. So, at that point, once we did come to a

1 complete stop, I had exited my patrol car and conducted
2 a driver's side approach and made face-to-face contact
3 with that driver, who, again -- I shouldn't say again,
4 excuse me, he had presented a New York State driver's
5 license, identifying him as Reginald Blandford. The
6 passenger was ID'd as Gerdeep Singh through a New York
7 State identification card. And, in short order, I had
8 asked the driver, Mr. Blandford, from the vehicle
9 conducting a roadside interview, having wanted to
10 discuss some of the particulars associated with the
11 observations at the mini-mart, as well as then address
12 the issue of the slow rolled stop, and any action that
13 he was doing within the vehicle upon initiation of the
14 stop itself.

15 Q. Okay. So let's break it down here a little
16 bit. While Mr. Blandford is still in the vehicle, did
17 you have any exchange with him there?

18 A. Just routine conversation -- or routine
19 inquiry as far as comings and goings, identification
20 information, license, registration, insurance card,
21 produce registration, that it was registered to him.
22 And more questioning then about the convenience store
23 that was conducted external of the car.

24 Q. Okay. So you had him out of the car. Where
25 did you go with him?

1 A. We -- as I say, we retreated to in between the
2 patrol car and Mr. Blandford's car, so we'd be at the
3 rear or the trunk area of his vehicle.

4 Q. Okay. Are you parked behind him?

5 A. Correct.

6 Q. All right. So tell us what kind of an
7 exchange, if any, takes place behind the car?

8 A. It was identified that Gerdeep Singh was
9 obviously his passenger and he was just giving him a
10 ride home. There was some affiliation with Mr. Singh's
11 family, I believe, owning the store, so he was giving
12 him a ride home from that location. Obviously, I
13 started asking him about if he was in the store, and I
14 saw him coming from the store, and he didn't have any
15 effects on him, such as purchasing items, what was his
16 purpose doing in the parking lot and his actions there,
17 and then asking him about the movements within the
18 vehicle, what was he doing that he's reaching over the
19 seat, et cetera. And that's when we engaged in a
20 conversation. He was talking about his wallet and
21 money, et cetera. But then again, it's coming back to
22 I'm seeing him coming out of the store with no items.
23 So what was his purpose at the store. So we kind of
24 talked in a circle. At which point, from the law
25 enforcement perspective, having achieved -- reached a

1 level two encounter, had founded suspicion that criminal
2 activity may be afoot, I asked Reginald to -- for
3 consent to search his vehicle.

4 Q. Okay. Well, what was your founded suspicion
5 at that time?

6 A. The initial observations by Investigator Kevin
7 Backer and the information that he conveyed to me, my
8 observations of Reginald Blandford in and of itself that
9 I observed, him meeting with the folks outside the
10 grocery store, him not having any items of grocery
11 purchased from the store, the slow rolling stop, the
12 furtive movements within the vehicle itself. And again,
13 some of the inconsistencies that I would say, as far as
14 the roadside interview of his reasoning for being where
15 he was, doing what he was doing, is not consistent with
16 what I'm observing. So, with that said --

17 Q. Well, what --

18 MR. SALTON: I'm going to object to that,
19 that's pretty speculative here.

20 THE COURT: Okay. Can you rephrase the
21 question, please?

22 BY MR. THWEATT:

23 Q. What information, if any, did Mr. Blandford
24 give you, as far as his activities at the store?

25 A. Again, we just kind of talked in a circle. I

1 mean, substantiation that he was there, you know, to
2 give Gerdeep a ride home, and then he was in the store
3 to buy items. But I didn't observe anything that he
4 bought.

5 Q. Okay. So, as a result of everything up to
6 that point in time, you asked Mr. Blandford for consent
7 to look in the car?

8 A. Correct. Consent -- I asked him if I could
9 search his vehicle, correct.

10 Q. Okay. How did he respond to that?

11 A. It was a mixed answer. He verbally allowed me
12 consent to search the area that I questioned him about,
13 so, like the backseat area, his seat area. He gave me
14 consent to search that part of the passenger
15 compartment. But he denied consent to further search
16 the remaining parts of the vehicle. So I had a mixed
17 consent.

18 Q. Okay.

19 A. I had a yes and a no, basically.

20 Q. So pursuant to the consent that you can look
21 in the rear seat area, did you look in the rear seat, or
22 did you search the rear seat area?

23 A. At a later point, yes.

24 Q. Okay. Why did you not get into the car right
25 then?

1 A. I had my canine on-scene, and we use the
2 canine then, so at a level two encounter, founded
3 suspicion, you can ask for consent to search, and/or use
4 a canine external of the vehicle. So there was a
5 combination, then, you know, again, of the mixed
6 consent, and the dog did an external search of the
7 vehicle, at which point then the canine does alert to
8 the trunk of the vehicle.

9 Q. Okay. Let's back up a little bit. When you
10 deployed your canine, how does that process commence?

11 A. Starting at the front bumper of the car, we
12 operate in a counterclockwise manner, so coming down the
13 driver's side, again, we operate in a counter-clockwise
14 position, the dog had then, upon coming to the rear area
15 of the vehicle, to the trunk area, I observed mannerism
16 change with the animal.

17 Q. Such as?

18 A. Such as breathing patterns and attention to
19 detail. So he focuses in, mannerism-wise to a specific
20 part of the vehicle, at which point then he does go into
21 a final response, a final alert, scratching to the trunk
22 of the car --

23 Q. Okay.

24 A. -- on the driver's side.

25 Q. On the driver's side of the trunk?

1 A. Of the trunk lid, correct.

2 Q. Okay. Now, prior to that, had you entered any
3 portion of the vehicle?

4 A. We -- the door was open, we looked in, there
5 was nothing in plain sight of, you know, his seat, and
6 you know, the floorboard. There was personal effects,
7 ultimately, there was a wallet, you know, in the back
8 part of the car there.

9 Q. Okay.

10 A. Nothing tangible.

11 Q. All right. Now, was that at the time that you
12 have your dog with you, or had you looked first and then
13 deployed the dog?

14 A. Looked first, looked first, correct. And then
15 the dog was retrieved, the dog, again, to do an external
16 search. The dog alerts to the trunk.

17 Q. All right. So what happened after the dog
18 gave the final alert -- or final response to the trunk
19 area?

20 A. So at this point, he scratches to the trunk,
21 and then we open the trunk to allow the dog then to
22 search the contents, if any, within the trunk. And
23 almost instantly, the canine then alerts to a multi-
24 colored bag on the driver's side of the vehicle within
25 the trunk.

1 Q. Okay. Did the dog, like, physically get in
2 the trunk to do that, or --

3 A. I -- I don't remember if he was physically in
4 the trunk, or just stepped up and pawed at the bag. I
5 don't recall.

6 Q. Okay. So what, based on your training working
7 with the canine, when he exhibited that response to the
8 bag, what does that indicate to you?

9 A. That's stating, then, that the odor source
10 that the animal is detecting is coming from that item.

11 Q. Okay?

12 A. So at which point the dog is put up back in
13 the patrol car, and at which point there is a -- there
14 is an additional bag on the passenger's side.

15 Q. Did the dog hit on that at all?

16 A. He did not. At which point Mr. Singh and
17 Mr. Blandford, obviously still remaining at the rear of
18 the vehicle, I had held up the first bag that was on the
19 passenger's side, asking if it was theirs.

20 Mr. Blandford ID'd that it was his bag. When I held up
21 the bag that the dog alerted to, both denied consent of
22 ownership to that bag.

23 Q. Okay. So the bag that the dog did not hit on,
24 Mr. Blandford reported was his bag?

25 A. Correct.

1 Q. Denied ownership of the bag that the dog hit
2 on?

3 A. Correct.

4 Q. All right. So, having that bag in hand, what
5 did you wind up doing with it?

6 A. We opened it up, obviously, to effect the
7 warrantless search on the bag. The external pocket of
8 the bag had a small quantity of visible loose marijuana
9 in that compartment, and then, opening the larger
10 zippers on the bookbag style bag, there was multiple
11 bags containing loose marijuana, and we observed some
12 scales, packaging material and a plastic bowl,
13 presumably used for measuring and weighing.

14 Q. Did you leave the stuff in the bag for the
15 time being?

16 A. For the time being, yes.

17 Q. Okay. What was done with the bag?

18 A. At a point then, that was secured within the
19 -- my patrol car, and then later turned over to
20 Investigator Kevin Backer.

21 Q. Okay.

22 A. For processing.

23 Q. All right. What was done with these two
24 people that you had from within the car?

25 A. It was concluded then the passenger,

1 Mr. Gerdeep Singh, he was free to go from the scene. He
2 just lived a short distance away. He walked away.

3 Q. Uh-huh?

4 A. And Reginald was detained with me and secured
5 with handcuffs. And then it was a relative of his that
6 was at the stop on foot, and he drove the car away.

7 Q. Okay.

8 A. So we then -- I should say, then ultimately
9 Reginald was transported to State Police Horseheads
10 where then later he was read Miranda, processed for the
11 suspected marijuana, which was field tested and weighed,
12 and given an approximate weight.

13 Q. Okay. Was Investigator Backer dealing with
14 that aspect of it, as far as dealing with the suspected
15 marijuana?

16 A. Correct.

17 Q. Okay. Did you have any contact with
18 Mr. Blandford at the barracks?

19 A. I did, yes. So I --

20 Q. What kind of contact?

21 A. So I had processed Reginald for the charge at
22 hand, the criminal possession of marijuana. At 7:09 PM,
23 he was read Miranda rights. In the course of contact,
24 we didn't have any discussions about anything pertaining
25 to the traffic stop or criminality thereto. So anything

1 that was asked of him was just for administrative
2 documentation.

3 Q. Such as pedigree information?

4 A. Yes.

5 Q. For the reports, things like that?

6 A. Yes.

7 Q. Okay. So you were not actively questioning
8 him regarding what had happened out at the stop?

9 A. No.

10 Q. All right. You said at 7:09 you administered
11 Miranda warnings?

12 A. That is correct.

13 Q. How did you do that?

14 A. Reading from our State-issued Miranda warning
15 card. Again, he was read his Miranda rights in the --
16 in the squad room of the station.

17 Q. Okay.

18 A. It's an open room, little bit smaller,
19 probably half the size of this, couple of desks.
20 There's a bench where the defendant would be secured,
21 handcuffed to, again, open-style room.

22 Q. Okay. I'm going to show you People's Exhibit
23 Number 1 for this hearing. Can you take ahold of that
24 and describe what that is, please?

25 A. This, as stated, is the New York State Police

1 Miranda warning card. It's listed as a General FR5R2.

2 Q. Is that the card that you used to administer
3 Miranda warnings to Mr. Blandford?

4 A. Correct.

5 Q. Was there any question he was in your custody,
6 or in State Police custody at that time?

7 A. I'm sorry, say that again?

8 Q. Is there any question that he was in State
9 Police custody at that time?

10 A. No, he was under arrest.

11 Q. Okay. Did you read those warnings to
12 Mr. Blandford, or did you just give him the card and
13 have him read them?

14 A. Nope, it's read by myself verbatim from the
15 card.

16 Q. Okay. After you administered those Miranda
17 warnings, did you make any attempt to try to interrogate
18 or otherwise question Mr. Blandford?

19 A. No.

20 MR. THWEATT: Your Honor, I'm showing
21 this to counsel. And I would move, just for the
22 purposes of this hearing, People's 1 into evidence.

23 THE COURT: Any objection?

24 MR. SALTON: Oh, none, none at all.

25 THE COURT: 1 is received for the

1 purposes of this hearing.

2 BY MR. THWEATT:

3 Q. So, after 7:09 PM when you administered the
4 warnings, was there any conversation at all between
5 yourself and Mr. Blandford?

6 A. There was. At a point just -- so after the
7 fact of 7:09, after administrative information is
8 received from Reginald, he's processed with fingerprints
9 for the charge of criminal possession of marijuana, in
10 preparation then to go into court for arraignment
11 purposes, Reginald utters spontaneously is there any
12 chance he's going to get his bag back, and I responded
13 with something along the lines that it would be up to
14 the District Attorney's office to return personal
15 property. Significant for our purpose is that the only
16 bag brought into the station was the bag that contained
17 the evidence, the marijuana, scales, cash.

18 Q. You didn't take the other bag that the dog did
19 not hit on?

20 A. Correct, did not.

21 Q. Okay. So where did this happen when he posed
22 that question to you?

23 A. Right there in that same room, in that spot.

24 Q. Is he still shackled up at that point in time?

25 A. Yes.

1 Q. And this is after you had Mirandized him?

2 A. Correct.

3 Q. Had you asked him anything to prompt that
4 question about the bag?

5 A. Nope.

6 Q. Okay. And this was just while you're waiting
7 for transport to --

8 A. Just prior.

9 Q. -- to court?

10 A. To us departing the station, yeah. (Nods
11 head.)

12 Q. Okay. After making note of that spontaneous
13 utterance, was he subsequently taken to court and
14 arraigned?

15 A. Correct.

16 Q. Did you do that? Did you transport him, if
17 you remember?

18 A. I don't remember.

19 Q. Okay.

20 A. To be honest, I don't remember if I left.

21 Q. Okay. That's fine. That's fine. Now, back
22 up. You mentioned early on in your testimony a
23 particular time, which I think you referred to as the
24 time of the stop of the vehicle?

25 A. That is correct. I'll clarify that. So 5:10,

1 approximate 5:10 PM is when I effected the traffic stop,
2 yes.

3 Q. Okay. So it would have been a few minutes
4 before that that you would have been in place making the
5 observations at the store; correct?

6 A. Correct.

7 MR. THWEATT: All right. That's all I
8 have. Thank you.

9 THE COURT: Cross-examination?

10 MR. SALTON: Yes, sir.

11 CROSS-EXAMINATION

12 BY MR. SALTON:

13 Q. I'd like to show you what's been marked as
14 Defendant's Exhibit A. And I'm just trying to determine
15 if you -- I would direct your attention to Page 3 of 5,
16 where it says "Narrative"?

17 A. Okay.

18 Q. I'm just trying to determine who made the
19 entries into the narrative?

20 A. Myself.

21 Q. Is that all your writing, all the entire
22 narrative?

23 A. No. On that page, yes.

24 Q. On that page. So these are your impressions
25 of what went on on that day and time?

1 A. Yep.

2 Q. Okay. Thanks.

3 A. Only on Page 3. So on Page 4, part of the
4 narrative is myself, and then, as reflected, the
5 remainder of it all is Investigator Kevin Backer.

6 Q. Okay. So, after say the first -- there's some
7 underlined texts there, those are yours?

8 A. I didn't make the underlines, but, yes, I made
9 the narrative.

10 Q. Right, no, that's fine. Just trying to help
11 you see what I'm trying to figure out here.

12 A. Understood.

13 Q. So it's customary and usual for more than one
14 officer to participate in producing one of these
15 incident reports?

16 A. Yes.

17 MR. SALTON: And, Judge, I would like to
18 make sure this gets admitted as Defendant's Exhibit
19 A at the conclusion of this hearing.

20 THE COURT: Any objection?

21 MR. THWEATT: I don't have an objection.

22 THE COURT: Okay.

23 MR. SALTON: Okay. Thank you.

24 BY MR. SALTON:

25 Q. Now, you testified that you were delayed in

1 getting to the store?

2 A. (Nods head.)

3 Q. Somehow. And what was causing the delay for
4 you?

5 A. I wasn't -- just geographically. I wasn't
6 parallel to the investigator in his separate car, I'm
7 doing my own patrolling of the city. So when --

8 Q. Were you doing -- oh, I'm sorry?

9 A. I'm just saying, so when he says this is what
10 he's observing, when I say a delay, if it was minutes at
11 most, that's the time frame.

12 Q. Understood. Understood. Were you involved in
13 a different investigation at that -- right before the
14 delay?

15 A. I don't think so.

16 Q. You weren't deploying the canine elsewhere,
17 none of that?

18 A. Huh-uh, no.

19 Q. You weren't participating in another crime
20 scene?

21 A. No.

22 Q. Okay. Now, you said you saw Mr. Blandford get
23 out of the -- leave the store, I'm sorry, leave the
24 store?

25 A. Yes.

1 Q. Now, was that before 5:00?

2 A. Cutting hairs here with whose ever watch
3 you're going by. The whole observation between the
4 investigator and myself would be more than 5 minutes,
5 less than 15. We're probably around the 10-minute
6 overall encounter of observation, yes.

7 Q. Okay.

8 A. So you're specifically asking, is it before
9 5:00 o'clock? I'm going to say probably not.

10 Q. Okay. Now, you indicated that the time of
11 arrest was 5:10; is that correct?

12 A. No. 5:10 was the time of traffic stop.

13 Q. Now, it's -- you wrote a uniform traffic
14 ticket, was that you, Officer?

15 A. Yes, sir.

16 Q. And on that traffic ticket, it says 5:10?

17 A. And that's what I'm verbalizing, I did the
18 traffic stop at approximately 5:10.

19 Q. So you observed the deficiency in the license
20 plate light at about 5:10?

21 A. Yeah, affirmative. And then we effected the
22 traffic stop almost instantly, within a half a block.

23 Q. Okay. No, that's fine. Now, how often do you
24 write traffic tickets?

25 A. I'm a police officer, we write them all the

1 time.

2 Q. Do you write them everyday when you're out
3 there, you write a couple?

4 A. Not everyday, because in the capacity that I
5 work now, I don't write traffic tickets everyday. I'm
6 not here everyday. So, I'm saying, your question is, do
7 I write them everyday, and my answer is no.

8 Q. You don't, okay.

9 A. Used to.

10 Q. Okay. Now, are you aware that under 375 --
11 the relevant section of 375, of 2A(4), now, it's correct
12 you observed the inadequate plate lamp at 5:10, you've
13 testified to that; correct?

14 A. Uh-huh. (Nods head.)

15 Q. And under 375 2A(4), isn't it also correct
16 that in order to be in violation of that statute, it has
17 to be more than 30 minutes after sunset?

18 A. No.

19 Q. So you didn't know that?

20 A. And that's incorrect, as it has to do with
21 headlights, it doesn't have to do with plate light.

22 Q. I don't want to get into statutory
23 interpretation with you.

24 A. Well, I'm not either. But again, what I'm
25 saying is, the 30-minute rule applies to headlights, it

1 doesn't apply to license plates.

2 Q. It applies to all lights under 375, sir.

3 THE COURT: We're not going to get into a
4 debate.

5 MR. SALTON: And we don't need to. I
6 don't want. I don't want to, Judge.

7 THE WITNESS: So do you have the time
8 table for sunset and sunrise that date?

9 THE COURT: Trooper Shive, we're not
10 going to get into that right now.

11 MR. SALTON: We're not getting into
12 sunset and sunrise?

13 THE COURT: Not right now.

14 MR. SALTON: Okay. That's fine.

15 BY MR. SALTON:

16 Q. Now, I know that you came to know that Gerdeep
17 Singh was connected with the store; right?

18 A. Correct.

19 Q. He works there; right?

20 A. (Nods head.) I found out.

21 Q. You did find that out, because that was in
22 your Grand Jury testimony?

23 A. Yep.

24 Q. Now, again, you're getting to the store, you
25 said you were delayed, is it possible that you missed

1 the fact that Mr. Blandford had a six pack of beer
2 coming out of the store?

3 A. Could be possible, sure.

4 Q. Okay. So he could have actually gone in there
5 to buy something; correct?

6 A. Could have.

7 Q. You didn't see it, you testified you didn't
8 see it?

9 A. Correct.

10 Q. Now, you testified also to sort of typical
11 things that someone with your knowledge and training
12 looks at, you know, you see people shaking hands,
13 hugging, and this and that. Did you see anything in
14 particular from Mr. Blandford --

15 A. No.

16 Q. -- that was of any suspicion at all?

17 A. No. Again, in common observation of our line
18 of work, this is an action that we see in an open trade
19 drug market. We don't see somebody pulling money out of
20 their wallet and exchanging it with somebody. It's done
21 in a manner in that --

22 Q. Right. With respect, though, I didn't ask you
23 that.

24 A. And I answered the question, I said no.

25 THE COURT: You can't speak over each

1 other. Trooper, let him finish the question before
2 you answer.

3 BY MR. SALTON:

4 Q. Yeah, I'm trying to ask you whether you saw
5 Mr. Blandford doing anything particularly, in a
6 particularized way, in a particular manner that was
7 particularly suspicious?

8 A. Sure. And, indeed, and I already answered
9 that, and I said no.

10 Q. Okay. Thank you.

11 A. Again, other than the observation --

12 THE COURT: There's no question. There's
13 no question.

14 BY MR. SALTON:

15 Q. Now, you eventually made your traffic stop, I
16 think we can determine that you did that, and how that
17 happened, that was done on direct. When did you -- how
18 soon after the stop did you get out of your car and
19 approach the defendant?

20 A. Immediately.

21 Q. You didn't have the dog then; right?

22 A. He's in the truck.

23 Q. He's in the truck; is that right?

24 A. Yes.

25 Q. So how is the dog -- how does that work with

1 the dog in the truck? Is he in the back of the truck?

2 A. (Nods head.)

3 Q. You're driving an SUV; right?

4 A. Yes, sir.

5 Q. And that's kind of got a cage with a dog in
6 it?

7 A. (Nods head.)

8 Q. And you have to open the tailgate to get the
9 dog out; right?

10 A. A side door.

11 Q. Side door, I'm sorry.

12 A. That's okay.

13 Q. So, you come up to the window, was the -- did
14 Mr. Blandford roll the window down? Was the window down
15 when you got there?

16 A. I don't recall.

17 Q. What did you -- what was your first thing you
18 asked Mr. Blandford when you got up to him?

19 A. I would ask him for credentials, license,
20 registration, insurance card, as I do on all traffic
21 stops.

22 Q. Pretty much how that went? Now, was the
23 license, registration, and insurance card immediately
24 given to you?

25 A. I don't recall if there was delay. I don't

1 have it noted anywhere, so I'm safe to say it was
2 produced, obviously.

3 Q. Okay. Did you see him reach in the backseat
4 to get anything such as his license or his wallet, which
5 you did say that was found on the floor?

6 A. Yeah, I don't recall where everything was
7 retrieved from. You're asking me if it's pulled from
8 his wallet or pulled from the glove box?

9 Q. Right. I'm just trying to figure out if you
10 recall where he got his credentials and gave them to
11 you, whether you observed any of that?

12 A. I observed it, obviously, but I don't recall
13 it.

14 Q. Was he fumbling around to try to get them?

15 A. I don't recall.

16 Q. Did you smell anything in the car?

17 A. No.

18 Q. Did you see anything in the car --

19 A. No.

20 Q. -- that was illegal?

21 A. No.

22 Q. So your independent knowledge of this
23 situation is essentially you made a traffic stop; isn't
24 that right?

25 A. Correct.

1 Q. Do you have any idea when Backer called you or
2 contacted you?

3 A. Again, I'm just going off of the estimation
4 that it was 5:10 PM that I effected the traffic stop.
5 So again, in totality of time, you know, I'm saying the
6 encounter was ten minutes.

7 Q. Okay.

8 A. I'm just estimating. So, again, it was in
9 that proximity of time that the investigator conveys
10 over the radio where he's at.

11 Q. Did you -- how did Backer get in touch with
12 you?

13 A. As I stated before, it was through in-car
14 radio.

15 Q. Okay.

16 A. I don't remember if there was a cellphone in
17 there. I don't know. But it was definitely over the
18 radio.

19 Q. Now, you indicated you were east of the
20 location, within view of the open parking lot?

21 A. Correct.

22 Q. And not to repeat myself, but I will, why were
23 you delayed in getting to the store?

24 A. Again, geographically, I was just in a
25 different part of the city at the time that Investigator

1 Backer was making these observations.

2 Q. Now, is it possible you showed up after
3 Mr. Blandford had climbed into his car at the store?

4 A. I saw him get in the car.

5 Q. You saw him get in the car?

6 A. Is that what you're asking?

7 Q. Well, I guess -- so he wasn't in the car yet
8 when you first observed him?

9 A. No.

10 Q. Okay. Now, you sound like you're quite
11 experienced with canine units, and I congratulate you
12 for that, I know you perform a valuable public service
13 with that. Now, how long does it take, in your
14 experience, to -- after you've done your inquiries, to
15 get the dog out and to have the dog do its work around
16 your -- around the vehicle that you're asking it to
17 respond to?

18 A. I mean, it could be as short as a couple of
19 seconds to less than a minute. A minute. You're saying
20 how long does it take a dog to search a vehicle?

21 Q. Right.

22 A. Again, it can be something instantaneous, if
23 the dog should come into odor. If he doesn't come into
24 odor, I'm going to, as we say, detail him a little bit
25 further, checking the remainder of the vehicle.

1 Q. And so you said you do it counterclockwise
2 from the driver's side headlight?

3 A. From the front bumper, we come down the
4 driver's side, correct.

5 Q. Okay. And does the dog run around, or does it
6 go very slowly? Do you have it on a leash?

7 A. Uh-huh. He's leashed, harnessed, and he goes
8 slow.

9 Q. Okay. Five minutes, ten minutes?

10 A. No. I just said, it could be a couple seconds
11 to a minute.

12 Q. So, I mean, basically, it sounds like the dog
13 got about halfway around the car and responded and
14 alerted?

15 A. Right. When he got to the trunk area, was
16 when he -- at that point, when he first encountered the
17 trunk area, he instantly showed mannerism change and
18 went into his full frontal response. So again, once we
19 get to that area of the trunk, it was instantaneous.

20 Q. Sure. The other -- I want to go back a little
21 bit prior to when you took the dog out. Now, can you
22 describe the chain of events that had Mr. Blandford and
23 his passenger getting out of the car? Did you ask
24 questions to tell them to get out of car?

25 A. I would ask the driver out of the car.

1 Q. And after that stop, how long did that take
2 for you to ask that question?

3 A. I think it's reflected in my notes. It was at
4 five -- I wrote down at 5:19 was the canine. So, you
5 know, obviously, traffic stop is effected at 5:10,
6 there's a couple of minutes here that transpire of
7 confirming credentials, confirming the identities of
8 folks in the vehicle, et cetera.

9 Q. Now, did there come a time when you contacted,
10 or whatever you do to check someone's credentials, how
11 did that happen and when did that happen?

12 A. It would have been done at some point, I don't
13 recall now if I did it instantly, or, you know, a couple
14 of minutes transpiring as the stop is going. I don't --

15 Q. Did it happen before or after Clark came out
16 and went around the car?

17 A. You're asking if I checked his credentials?

18 Q. Yes?

19 A. Before the dog -- I don't remember. I don't
20 know.

21 Q. You don't know?

22 A. I don't remember.

23 Q. What do you usually do when you write a
24 traffic ticket, or don't you write that many?

25 A. I write quite a few. Every situation is

1 different. I mean, at a point that I determine that I'm
2 going to check their information is when I do it.

3 Q. But isn't there a standard routine for
4 checking one's information when one obtains the
5 documents to be checked?

6 A. Yes and no. So --

7 THE COURT: I want to know what happened
8 at this stop. Tell me what happened at this stop.

9 BY MR. SALTON:

10 Q. Yeah?

11 A. Yeah, again --

12 Q. Yeah, what did happen here?

13 A. At a point his information is checked, but
14 again, I'm not going to give you a time.

15 Q. You don't know?

16 A. Correct.

17 Q. Do you know when you checked his credentials
18 at this incident? Was it before or after the dog?

19 A. Probably before. But I don't know.

20 Q. So can I --

21 A. There's instances --

22 Q. Right, but this case, we're talking about this
23 case?

24 A. Okay. And again, I --

25 THE COURT: If you're unable to answer,

1 say you're unable to answer.

2 A. I mean, it was within the confines of the
3 traffic stop, is when his information is run. If we're
4 cutting that line of before I used the dog or after the
5 dog, I don't know.

6 Q. Well, it's important to me.

7 A. And I'm saying, I don't know.

8 THE COURT: That's your answer.

9 BY MR. SALTON:

10 Q. Okay. That's fine. Now --

11 A. That information --

12 THE COURT: There's no question.

13 THE WITNESS: Okay.

14 BY MR. SALTON:

15 Q. Now, the purpose of checking inside the car is
16 to check for weapons, isn't that right, when you stop a
17 vehicle?

18 A. It can be done for a host of things, sure.

19 Q. But usually it's weapons, that's a safety
20 matter, is it not?

21 A. Could be looking for stolen credit cards,
22 stolen property, guns, drugs, criminality.

23 Q. Any form of contraband, is that a fair --

24 A. Yes.

25 Q. Was it dark?

1 A. It was dark, because his license plate light
2 didn't illuminate the plate. Yes, it was dark.

3 Q. Was it full dark?

4 A. Yes.

5 Q. Now, would it be fair to say it would take
6 five or ten minutes to have dealt with the defendant
7 outside the car and his passenger before the dog came
8 along?

9 A. Yes. I reflected nine minutes.

10 Q. Nine minutes, okay. Now, had you only checked
11 for the license plate light that business would have
12 been concluded quite quickly; isn't that correct?

13 A. Ask that again? I didn't understand what
14 you're asking.

15 Q. Okay. It does not take ten minutes of police
16 work to run a license registration and insurance card
17 for a bad license plate light, does it?

18 A. In totality of a stop, by the time you check
19 somebody's credentials and write a ticket, you're
20 approximately under 15 minutes, yes.

21 Q. Now, the business of your traffic stop at the
22 time, under your understanding, was what?

23 A. I'm conducting a pretext stop. So I have a
24 viable violation of law, which gives me the right to
25 stop the motorist, and it was my interpretation of

1 events that I had reached a level two of founded
2 suspicion that criminality may be afoot. Whereby now,
3 again, I'm asking for consent to search, I receive a
4 mixed answer of consent to search, and I deploy my
5 canine, which gives me a positive alert to the vehicle,
6 thus, I execute a warrantless search. So by the
7 canine's alert to the car, extends my stop. Yes, sir.

8 Q. Right. But before that, let's assume for the
9 sake of this question, and you know, you're an expert in
10 law enforcement, that all you're doing is making a stop
11 for a 375 2A(4) violation?

12 A. But there's more to it.

13 Q. I'm just -- just bear with me. So you're
14 making that stop on that basis alone. Would it be fair
15 to say that is not a level two, by itself?

16 A. Correct. However, in this instance, there was
17 other factors in the situation.

18 Q. Right. I understand. And I -- Judge Baker
19 has to decide that.

20 A. Correct.

21 Q. But --

22 A. So what's the question?

23 Q. So the question is, basically, 375 2A(4) stop
24 does not give rise to a level two inquiry; isn't that
25 correct?

1 A. That is correct.

2 Q. Okay.

3 A. Any other violation of law doesn't give you a
4 level two.

5 Q. Right. I mean, this was a simple traffic
6 ticket that was written?

7 THE COURT: Okay. We're getting into
8 matters of law that are my concern at this point in
9 time. The witness has answered the question. I
10 understand the purpose of your question. I'm
11 understanding his answer, too.

12 MR. SALTON: I have nothing further.

13 THE COURT: Any redirect?

14 MR. THWEATT: Just to clarify a few
15 things.

16 REDIRECT EXAMINATION

17 BY MR. THWEATT:

18 Q. Counsel was asking you about the activities at
19 the store and if you had seen Mr. Blandford, in
20 particular, do anything particularly unlawful. I'm
21 botching his question, of course, but I think you get
22 what I'm saying. Can you say whether or not
23 Mr. Blandford handed drugs to any particular person?

24 A. I cannot say that, no.

25 Q. Okay. Did you see behaviors that were

1 consistent that you have seen in the past that are at
2 least suggestive of that?

3 A. Yes.

4 Q. What behaviors did you see happening that
5 suggest that?

6 A. Again, as we say, the contact amongst two
7 folks of their interactive, physical interactions of
8 hand shaking, hand slapping, hugging, gesturing and
9 posturing, that is, again, that is contact that we see
10 routinely when folks are selling and buying marijuana
11 and/or narcotics.

12 Q. In your experience, have you seen that
13 behavior before?

14 A. Yes.

15 Q. In situations where drugs have actually been
16 recovered?

17 A. Yes.

18 Q. Okay. And this is kind of the behavior that
19 you were seeing outside --

20 MR. SALTON: Judge, I want to object to
21 this line of questioning at this point.

22 THE COURT: Overruled. You may answer.

23 BY MR. THWEATT:

24 Q. -- outside the store?

25 A. I'm sorry?

1 Q. Was that the kind of behaviors you were seeing
2 outside that store?

4 Q. All right. Now, time-wise, you effected the
5 stop at 5:10. What time was it, or how many minutes
6 later is maybe a better question, did you deploy the
7 dog?

8 A. In my notes, I have reflected, I believe, time
9 was 5:19, so nine minutes later.

10 Q. Okay. During that nine-minute time frame, you
11 had requested Mr. Blandford's credentials, had him step
12 out of the car, had engaged in some conversation at the
13 rear of the car; correct?

14 A. Correct.

15 Q. All right. At that time of day, did you
16 notice, if you remember, were any other traffic on the
17 roadway, were people using their headlights?

18 A. Correct, yes.

19 Q. Do you recall, did this vehicle that you
20 pulled over, whether it had its headlights on or not?

21 A. Yes.

22 Q. Did you have your headlights on?

23 A. Yes.

24 MR. THWEATT: Okay. That's all I have.

25 Thank you.

RECROSS-EXAMINATION

4 BY MR. SALTON:

5 Q. Just on the issue of whether you have --

6 A. Go ahead, I'm sorry, I just recalled
7 something. Am I allowed to address it, or no?

10 MR. SALTON: Sure.

11 BY MR. SALTON:

12 Q. Now, you said you were investigating
13 Mr. Blandford. Is it possible you didn't have your
14 headlights on and you didn't turn anything on until you
15 had your emergency lights on?

16 A. No. Because this is what I was going to ask,
17 and I had recalled, I physically turned my lights off to
18 allow me better view of his license plate to see if his
19 license plate light was illuminating or not, or it was
20 my reflection of my headlights coming off of his license
21 plate, which is a common thing that we do to make that
22 conclusion. So I physically turned my lights off,
23 cutting off my headlights, to observe his then license
24 plate light itself.

25 Q. Right. But they were off because it wasn't

1 dark; right?

2 A. No, incorrect. I physically turned them off
3 and turned them back on, because it was dark.

4 Q. So your testimony is that they were on and
5 then you shut them off and then you turned them on?

6 A. Correct.

7 Q. Is that what you're going to testify to today?

8 A. Yeah, because that's a common thing I do.

9 Q. Did you do it this time, though, or were they
10 off because it wasn't dark?

11 A. No, they were on. I turned them off.

12 Q. Now, were there any light bulbs on in the back
13 of the car where Mr. Blandford's license plate was?

14 A. I believe one of the two.

15 Q. One of the two was out? One of them was not
16 out; isn't that right?

17 A. Uh-huh. (Nods head.)

18 THE COURT: Is that a yes? You have to
19 answer yes or no, you can't --

20 THE WITNESS: I'm sorry, it's a yes, one
21 was out. Or you asked was one on?

22 BY MR. SALTON:

23 Q. I mean, so he has two license plate bulbs,
24 correct, and one of them was out?

25 A. Correct.

1 MR. SALTON: Okay. That's all.

11 MR. THWEATT: Nothing.

12 THE COURT: You're excused.

13 THE WITNESS: Yes.

14 THE COURT: Any further evidence from the
15 People?

16 MR. THWEATT: The People would rest, your
17 Honor.

18 THE COURT: Attorney Salton?

19 MR. SALTON: Let me just double check and
20 see if I really need Backer, is that okay?

21 THE COURT: Yes, please.

22 (Brief Pause in Proceedings.)

23 MR. SALTON: Yeah, we'll need him. Judge.

24 THE COURT: You will need Investigator
25 Backer?

MR. SALTON: Yes, yep.

2 THE COURT: Please call the investigator
3 back up, please.

10 MR. SALTON: Oh, that's -- I would
11 certainly -- I agree.

12 THE COURT: Granted.

13 MR. SALTON: In that type of matter, as
14 housekeeping, would I be getting a copy of this,
15 since it's now been marked?

16 THE COURT: Yes.

17 MR. SALTON: Thanks.

18 (Kevin Backer Retakes the Witness Stand.)

19 THE COURT: Investigator Backer, you're
20 still under oath.

21 THE WITNESS: Okay.

22 THE COURT: Further cross-examination.

23 Go ahead, Mr. Salton.

24 CROSS-EXAMINATION

25 BY MR. SALTON:

1 Q. Okay. Officer Backer, there has been a bunch
2 of testimony here, and I'm just trying to clean up some
3 of my timeline issues. Did you search the defendant
4 after he was taken out of the car?

5 A. I don't believe I did.

6 Q. Do you remember if you did?

7 A. I don't think I did, no.

8 Q. You don't think you did?

9 A. No.

10 Q. Okay. Did you interview the defendant in any
11 way when he was out of the car?

12 A. Not that I can remember.

13 Q. Who pulled the wallet out of his pocket?

14 A. I don't -- it could have been me. I don't --
15 I don't recall searching him. But sure, it could have
16 been me.

17 Q. Okay. So you don't really know?

18 A. I don't.

19 Q. I mean, so do you always pull wallets out of
20 pockets when you stop him for a traffic ticket?

21 A. I don't know if I did pull his wallet out. So
22 I -- I don't know. I could have. I may not have.

23 Q. I mean, is that just how it's done?

24 A. What's that?

25 Q. Pulling wallets out of people's --

3 MR. SALTON: I understand, I apologize.

4 Q. Did you -- you have no independent
5 recollection of what you did at the crime scene here?

6 A. I don't remember if I pulled his wallet out.

7 If I pulled his wallet out, it would have been at such a
8 time when I was legally able to pull his wallet out.

9 Q. Okay. Did you participate in looking inside
10 Mr. Blandford's car?

11 A. I remember looking in the car with Trooper
12 Shive at the back. I did not look at the interior of
13 the car.

14 Q. You didn't look at the interior of the car?

15 A. Correct.

16 MR. SALTON: I don't have anything
17 further.

18 THE COURT: Anything, Mr. Thweatt?

19 MR. THWEATT: No, sir.

20 THE COURT: You're excused. Thank you.

21 Any evidence being presented by the
22 defense, other than Exhibit A that's been received
23 into evidence?

24 MR. SALTON: No, sir.

25 THE COURT: Defense rests?

1 MR. SALTON: Defense rests.

2 THE COURT: Do the parties want an
3 opportunity to submit any post hearing memorandums
4 of law? Otherwise the Court is prepared to issue a
5 ruling today. Mr. Salton?

6 MR. SALTON: I believe the relevant
7 sections of case law were referenced in my
8 affidavit, Judge, and I would rest on that.

9 THE COURT: Okay. Mr. Thweatt, anything
10 you would like to rely on before the Court makes a
11 ruling?

12 MR. THWEATT: No, sir.

13 THE COURT: Okay. The evidence is
14 closed. The record is closed.

15 The Court has received into evidence
16 People's 1, Defendant's A, and based upon the
17 credible evidence that has been presented today at
18 this hearing, on or about November 16th, 2017,
19 Investigator Backer, along with other state
20 troopers, were conducting quality of life patrol
21 within the City of Elmira in the area of Hudson and
22 Sly Street, approximately that vicinity. Sometime
23 around 5:00 PM, Investigator Backer observed the
24 defendant driving in a white Lincoln vehicle. He
25 was not wearing his seatbelt. He knew defendant

from prior surveillance opportunities through his work as a CNET investigator. Again, he had observed him not wearing his seatbelt.

1 that these types of gestures or activities are
2 indicative of hand-to-hand drug transactions in an
3 open market drug area.

4 Also, Trooper Shive had testified as a
5 canine handler, both he had certified, along with
6 his K9 Clark, again was in the general vicinity of
7 the area of the -- where the traffic stop -- or,
8 excuse me, where the defendant stopped his vehicle
9 at the convenience store. Investigator Backer had
10 relayed information to Trooper Shive that he had
11 seen him in a white Lincoln, that the defendant was
12 not wearing a seatbelt, and that there may be some
13 criminal activity afoot, based upon hand-to-hand
14 hugging, et cetera, although he did testify that he
15 did see no such exchange of either money or drugs.

16 Investigator Shive indicated that when he
17 arrived, he saw the defendant coming outside of the
18 store, again, talking with others, hand shakes, and
19 hugging, which he indicated he did not observe any
20 exchange of money or drugs, but also indicated that
21 such actions are indicative of narcotics
22 trafficking.

23 Following the defendant leaving the gas
24 station with another individual in the passenger's
25 seat, he had observed a vehicle and traffic

1 violation, inadequate plate lamp. He effected a
2 traffic stop on Fulton Street. He indicated that
3 the defendant did not come to an immediate stop
4 when he had activated his emergency lights, but
5 instead conducted -- or was involved in a slow roll
6 stop. He did notice furtive movements from the
7 defendant, including but not limited to ducking
8 down, reaching over the passenger's seat, and
9 otherwise moving about the vehicle.

10 In a subsequent search of the car, based
11 upon Trooper Shive's conclusion that there was
12 found -- had suspicion to search the vehicle, or at
13 least conduct a warrantless exterior search of the
14 vehicle through means of a canine, he indicated
15 that he had exited the canine from the vehicle, he
16 had the car searched from the outside. The dog
17 alerted to a bag on the driver's side of the
18 vehicle, which apparently contained marijuana,
19 scales, and packaging material.

20 The defendant denied ownership of that.
21 He also did claim -- or he denied ownership of the
22 bag which contained the marijuana. Subsequent
23 thereto, the defendant was handcuffed. He was in
24 custody. He was transported to the Horseheads
25 State Police barracks.

1 At approximately 7:09 PM, the defendant
2 was Mirandized, although no interrogation was
3 conducted by Trooper Shive, pedigree information
4 was given to Trooper Shive from the defendant. And
5 as reflected in People's Number 1, the Miranda card
6 used, has been received into evidence.

1 defendant's vehicle, Trooper Shive had turned off
2 his headlights in order to observe the lack of one
3 bulb in his plate. Therefore, Trooper Shive had
4 issued him that vehicle and traffic ticket.

5 It is well settled that at a Mapp
6 hearing, the People have the initial burden of
7 demonstrating the legality of the police conduct.
8 Once this burden has been met, the burden then
9 shifts to the defendant to establish the illegality
10 of the police conduct by a preponderance of
11 evidence.

12 It's important to note that in evaluating
13 whether the People have met their initial burden,
14 the police conduct and the attendant circumstances
15 must be viewed under a reasonableness standard,
16 which contemplates and permits a flexible set of
17 escalating police responses, provided only that
18 they remain reasonably related in scope and
19 intensity to the information that the officer
20 initially has, and to the information that he
21 subsequently gathers during his encounter with a
22 defendant.

23 Here, it's also important to note that
24 police may stop a vehicle upon a reasonable
25 suspicion that a violation of a Vehicle and Traffic

1 Law has occurred. And also, it's important to note
2 that, according to People versus Robinson, 97 New
3 York 2d, 341, the police may initiate a traffic
4 stop upon seeing a vehicle and traffic violation in
5 their presence, regardless of the underlying
6 motive, or to investigate a matter unrelated to a
7 traffic stop.

8 Here, the credible evidence that was
9 offered at trial -- excuse me, offered at the
10 hearing, reflects that two vehicle and traffic
11 stops -- two vehicle and traffic infractions were
12 observed. Number one, by Investigator Backer, not
13 wearing a seatbelt. And number two, the no plate
14 light, as testified to by Investigator Shive.

15 Based upon all that information, the
16 Court hereby finds that there was a lawful traffic
17 stop of the vehicle, because there was probable
18 cause to believe that Mr. Blandford had committed a
19 vehicle and traffic infraction, even if their
20 underlying reason for stopping him was related to a
21 quality of life patrol.

22 Moving on, in determining the levels of
23 street encounter, according to the case of DeBoer,
24 and the warrantless search of the vehicle through
25 the canine, initially the Court must address that

1 the police in this case lawfully exercised their
2 discretion to require the defendant to exit the
3 vehicle after a lawful vehicle and traffic
4 infraction was observed in their presence.
5 Following the defendant's -- or should be noted
6 that during the course of the stop between Trooper
7 Shive and the defendant, it's also important to
8 note that there was furtive movements that were
9 observed, including but not limited to ducking
10 down, reaching over the passenger's seat, moving
11 about, these movements, coupled with the fact that
12 although the troopers did not see any exchange of
13 drugs or money between the defendant and other
14 individuals, or individual in the parking lot, it
15 is clear that these actions clearly, as testified
16 to by both troopers, in their experience as working
17 as CNET or drug investigators, these actions are
18 indicative of hand-to-hand drug transactions.

25 These observations, coupled with the

1 furtive movements of the defendant during the
2 course of the vehicle and traffic stop, coupled
3 with the numerous -- or the two vehicle and traffic
4 infractions that were issued, clearly rises to a --
5 not only a level one DeBoer stop, but a level two
6 vehicle -- level two DeBoer stop, in the sense
7 that, although the defendant does have a reasonable
8 expectation of privacy in his vehicle, it should be
9 noted that the expectation of privacy that the
10 defendant has in his vehicle is diminished in the
11 fact that it is a traveling vehicle and he does not
12 enjoy the same level of expectation of privacy as
13 he does in his home.

14 According to People versus DeBoer, it is
15 clear that, in order for the canine search to
16 occur, or the canine sniff to occur outside of a
17 lawfully stopped vehicle, there must be the level
18 two DeBoer founded suspicion that criminality is
19 afoot. Here the Court finds that, based upon all
20 of the factors as previously recited, including but
21 not limited to the fact that Investigator Backer
22 was aware of the defendant being involved in prior
23 sales of narcotics in the city or the county,
24 coupled with the fact that he was in an area of
25 known trafficking area of narcotics, coupled with

1 the fact that Investigator Backer had observed on
2 prior occasions the defendant being under
3 surveillance for narcotics activity, all of these
4 factors and the totality of the circumstances
5 provided law enforcement in this case the necessary
6 founded suspicion that criminal activity was afoot
7 to justify a canine sniff of the exterior search of
8 the vehicle in this case.

9 Following the canine's alert of the rear
10 driver's side portion of the vehicle, which
11 testified to by Trooper Shive, there became a
12 change in breathing patterns of the dog, his
13 mannerisms changed, and then he alerted on that
14 side of the trunk by scratching on that vehicle.
15 That clearly, at that point in time, gave the
16 police probable cause to search the vehicle,
17 according to People versus Banks, 148 AD 3d 1359.
18 Therefore, not only was there founded suspicion,
19 but there was subsequently thereto probable cause
20 to search the vehicle. Therefore, the Court
21 declines to suppress any physical evidence that was
22 seized by the police in this case.

23 Regarding the issue of Miranda, it is
24 clear that people temporarily detained pursuant to
25 a typical traffic stop are not in custody for the

1 purposes of Miranda. Here, any of the statements
2 that defendant made prior to being placed in
3 handcuffs, the Court hereby determines that those
4 statements, whatever they may be, are hereby
5 admissible, and because they were attendant to a
6 typical traffic stop.

7 Subsequent thereto, after the defendant
8 was Mirandized, the pedigree information that
9 Trooper Shive obtained from the defendant, that was
10 certainly permissible, although there is adequate
11 case law that indicates that pedigree information,
12 pursuant to questioning by a law enforcement
13 official, does not constitute interrogation, but,
14 nevertheless, given the fact that Investigator
15 Shive -- or Trooper Shive had Mirandized the
16 defendant, that information that he gave to Trooper
17 Shive is hereby deemed to be admissible and not in
18 violation of his constitutional rights. And the
19 People have met their burden in demonstrating that
20 those statements were voluntary beyond a reasonable
21 doubt, and were therefore not obtained in violation
22 of his constitutional rights.

23 Moving on to the issue of the spontaneous
24 statements that the defendant made following his
25 being placed in custody. It is clear that it is

1 without question that the defendant was in custody
2 at the time those statements were made, however,
3 there is information that the spontaneous
4 statements that the defendant made were not the
5 product of questioning or interrogation. Clearly,
6 his statement to Trooper Shive whether he was going
7 to get his bag back was not the result of any
8 inducement, provocation, or the functional
9 equivalent of any interrogation. Rather, it does
10 appear that the credible proof, and as shown beyond
11 a reasonable doubt, that those statements were
12 volunteered, or were self-generated, and therefore,
13 are hereby admissible at trial. So therefore, any
14 statements -- suppression of those statements is
15 hereby denied in its entirety.

16 This shall constitute the decision and
17 order of the Court.

18 In regards to any of the exhibits that
19 were received into evidence, offering parties shall
20 retain those for the purposes of appellate review,
21 and they should be preserved in accordance with
22 that.

23 The matter will hereby be adjourned to
24 the trial calendar. Counsel should be looking for
25 a phone call or an e-mail from my chambers setting

1 this matter down for a trial date likely to occur
2 sometime in December. If we can get it in sooner,
3 we will. But this matter may be placed as the
4 backup trial in October. We will be reaching out
5 to you to advise you. Thank you.

6 MR. SALTON: Thank you. And, Judge, as
7 far as that application that I wanted to make, I
8 can make that still; correct?

9 THE COURT: You sure can.

10 MR. SALTON: Great.

11

12

13 C E R T I F I C A T E

14 I, Kathleen A. Rohan, do hereby certify that the
15 foregoing pages constitute a full, true and accurate
16 transcript, to the best of my ability, utilizing
17 computer-aided transcription, of the proceedings had in
18 the aforesaid action on the 24th day of August, 2018.

19 Dated: March 28, 2019.

20 
21 Kathleen A. Rohan
22 Official Court Reporter

23

24

25

STATE OF NEW YORK : COUNTY OF CHEMUNG
CHEMUNG COUNTY COURT

PEOPLE OF THE STATE OF NEW YORK,
-against-
REGINALD E. BLANDFORD,
Defendant.

NOTICE OF MOTION

Indictment No: 2018-113

Hon. Christopher P. Baker

PLEASE TAKE NOTICE that upon the annexed affirmation of PETER D. SALTON, sworn to the 28th day of June, 2018 the defendant REGINALD E. BLANDFORD will move this Court on the _____ day of _____, 2018 at _____ o'clock in the _____ noon, or as soon thereafter as counsel may be heard, or at such other date and time that the Court may determine to be just and proper, for an order granting the following relief as more particularly set out in the annexed schedules:

I. MOTION TO INSPECT GRAND JURY MINUTES:

Defendant hereby moves to inspect the Grand Jury minutes pursuant to CPL § 210.30 (2); and an Order releasing to the Defendant the Grand Jury testimony of all the Prosecution witnesses, so that the Defendant may assist the Court in determining the legal sufficiency of the evidence before the Grand Jury.

II. DISMISSAL OR REDUCTION OF THE INDICTMENT:

An Order, pursuant to CPL § 210.20 (1)(b) and (h), dismissing or, in the alternative, reducing the Indictment on the grounds that the evidence before the Grand Jury was legally insufficient to establish the Defendant's commission of the offenses charged in the Indictment and that the Prosecution relied on hearsay or incompetent evidence to establish a *prima facie* case.

III. INTEGRITY OF THE GRAND JURY PROCEEDING:

An Order, dismissing the Indictment on the grounds that the Grand Jury proceeding failed to conform to CPL, Article 190 to such a degree that the integrity of the Grand Jury proceeding was impaired;

IV. MOTIONS ADDRESSED TO FACIAL INSUFFICIENCY OF UNIFORM TRAFFIC TICKET:

a) It is respectfully submitted that the traffic tickets charging Defendant of having an inadequate license plate light under § 375(2)(a)(4) is facially insufficient because the ticket alleges something that Defendant did not do. (Uniform Traffic Ticket No. M2147LZP7T, Attached hereto as "Exhibit A").

b) Defendant's car did not have an inadequate license plate light as alleged on the ticket.

c) Since Defendant car did not have an inadequate license plate light as alleged, the charge should be dismissed under CPL §§ 170.30(1)(a), 170.35, and 100.40 read together.

V. REASONABLE SUSPICION/PROBABLE CAUSE HEARING:

An Order, pursuant to *Dunaway v. New York*, 442 U.S. 200 (1979)/*Mapp v. Ohio*, 367 U.S. 643 (1961)/*People v. DeBour*, 40 N.Y.2d 210 (1976)/*Rodriguez v. United States*, 135 S.Ct. 1609 (2015)/*People v. Banks*, 85 N.Y.2d 558 (1995); for a hearing to assess the reasonable suspicion/founded suspicion for the initial stop of defendant's car, detaining the defendant beyond the time it took to run his plate, check his license and registration and check for any other unresolved legal and factual matters connected with said vehicle and traffic stop.

a) The Police did not have the requisite reasonable suspicion to do a "pat down" of defendant.

VI. DIRECTION TO PROVIDE A DISCOVERY DEMAND RESPONSE:

An Order, directing/compelling the People to serve and file with the Court a full and detailed response to Defendant's Discovery Demand (attached hereto as Exhibit "B,") in a point by point fashion as well as in a timely fashion as to those demands to which they have not responded affirmatively. People have failed to produce "body cam" or any other video footage. People have failed to provide *Brady* material including a total lack of police reports or dispatch and/or logs of when the Defendant's encounter with law enforcement began. In fact the only new information provided was concerning the amount of cash and pictures of the backpack and

marihuana that was allegedly found in the backpack.

VII. SANDOVAL/MOLINEAUX/VENTIMIGLIA:

An Order, pursuant to *People v. Sandoval*, 34 N.Y.2d 371 (1974) and *People v.*

Molineaux, 168 N.Y. 264 (1901), prohibiting the Prosecution from questioning the Defendant at trial regarding any alleged, prior or subsequent, criminal, vicious, or immoral acts. In the alternative, an Order, pursuant to *People v. Ventimiglia*, 52 N.Y.2d 350 (1981) and CPL § 240.43 for hearings to determine the admissibility of “other crimes and bad acts” evidence at trial;

VIII. CRIMINAL HISTORIES OF WITNESSES:

An Order, pursuant to CPL §§ 240.44(2) & (3), 240.45 (1)(b), and *People v. Torres*, 201 AD2d 294 (1st Dept 1994), directing the Prosecution to deliver to the Defendant all criminal “rap sheets,” NYSIIS, NYSID, State, County, City, or local police or FBI files, or other criminal histories of all witnesses the Prosecution intends to call at trial;

IX. BRADY MATERIAL:

An Order, pursuant to *Brady v. Maryland*, 373 US 83 (1963), directing the Prosecution to deliver to the Defendant all evidence favorable to the Defendant;

X. ROSARIO MATERIAL:

An Order, pursuant to *People v. Rosario*, 9 NY2d 286 (1961), specifically directing the Prosecution to turn over all Rosario material to the Defendant promptly and without delay;

XI. LEAVE TO MAKE FURTHER MOTIONS:

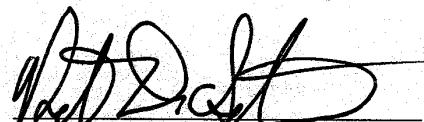
An Order, that further Motions may be made, upon a showing that information not previously known to the Defendant, is the basis for the renewed motions and said information was first learned as a result of the Motions now brought, through hearings, or by other relief granted by these Motions; and

XII. DIRECTING HEARINGS:

An Order, directing a hearing or hearings on the issues set forth herein as deemed appropriate by the Court;

XIII. Any further relief that the Court deems just, proper, and appropriate.

DATED: June 28, 2018
Ithaca, New York



Peter D. Salton, Esq.
Attorney for Defendant
309 N. Tioga Street
Ithaca, NY 14850
(607) 277-5476

TO: John R Thweatt, ADA
Chemung County Court Clerk

Page 4 of 4

STATE OF NEW YORK : COUNTY OF CHEMUNG
CHEMUNG COUNTY COURT

THE PEOPLE OF THE STATE OF NEW YORK,

AFFIRMATION

-v-

REGINALD E. BLANDFORD,
Defendant.

Indictment No: 2018-113
Hon. Christopher P. Baker

STATE OF NEW YORK)
COUNTY OF TOMPKINS) ss.:

PETER D. SALTON, ESQ., subscribes to and affirms the following to be true under
penalty of perjury:

1. I am an attorney licensed to practice law in the State of New York, with offices
located at 309 N. Tioga Street, City of Ithaca, County of Tompkins, State of New York.

2. I am the attorney of record for the Defendant, REGINALD E. BLANDFORD, in
the above-referenced prosecution.

3. I make this Affirmation in support of the Defendant's motion for relief requested
in the Notice of Omnibus Motion and for the relief requested in that Notice and at the end of this
Affirmation.

4. I make this Affirmation upon information and belief, the sources of my
information and the bases for my belief being a review of all the papers and documents in my
files, my consultations with the Defendant and my independent investigation of the facts and
circumstances of this matter.

5. On the 14th day of May, 2018, the Defendant was arraigned with counsel on
Indictment No. 2018-113 in the Chemung County Court on the following charges:

COUNT 1: Criminal Possession of Marihuana in the Second Degree in violation of § 221.25 of the Penal Law;

a) there was also a Uniform Traffic Ticket written for an Inadequate License Plate Light in violation of Vehicle and Traffic Law § 375(2)(a)(4);

6. At Defendant's arraignment with counsel on May 14, 2018, pleas of not guilty to all charges were entered.

7. There has been no prior application to this or to any other court for the relief requested herein.

8. There has been no plea of guilty entered, nor any trial commenced, with respect to the indictment herein.

I. MOTIONS ADDRESSED TO FACIAL INSUFFICIENCY OF UNIFORM TRAFFIC TICKET

9. It is respectfully submitted that the traffic tickets charging Defendant of having an inadequate license plate light under § 375(2)(a)(4) is facially insufficient because the ticket alleges something that Defendant did not do. (Uniform Traffic Ticket No. M2147LZP7T, Attached hereto as "Exhibit A.")

10. Defendant's car did not have an inadequate license plate light as alleged on the ticket.

11. Since Defendant car did not have an inadequate license plate light as alleged, the charge should be dismissed under CPL §§ 170.30(1)(a), 170.35, and 100.40 read together.

II. DISMISSING VTL § 375(2)(a)(4) CHARGE; NO REASONABLE SUSPICION THAT A TRAFFIC VIOLATION HAD OCCURRED, THEREFORE, NO JUSTIFICATION

FOR STOP.

12. In the traffic ticket and supporting deposition, there is nothing indicating that Defendant violated § 375(2)(a)(4) of the Vehicle and Traffic Law other than a bare assertion that the license plate light was “inadequate.” It is respectfully submitted that one of the elements of the offense has not been met.

13. Sections 375(2)(a)(4) of the Vehicle and Traffic Law reads as follows:

2. (a) Every motor vehicle [], driven upon a public highway during the period from one-half hour after sunset to one-half hour before sunrise or at any other time when windshield wipers are in use, as a result of rain, sleet, snow, hail or other unfavorable atmospheric condition, and at such other times as visibility for a distance of one thousand feet ahead of such motor vehicle is not clear, shall display:

4. if required to display a number plate on the rear, a white light which shall illuminate the numerals on such plate in such manner as to render such numerals legible for at least fifty feet from the rear.....[other text omitted].

14. It is respectfully submitted that judicial notice be taken that sunset on November 16, 2017 was at 4:45 PM. See: <https://www.esrl.noaa.gov/gmd/grad/solcalc/> (Printout of report attached hereto as “Exhibit C.”)

15. It is further respectfully submitted that the actual traffic stop, information of what time the police intervention began (i.e.: the initial stop and not the time of arrest as written) has not been provided by the People, and likely happened well before the 5:10 PM listed on the traffic ticket. Even if 5:10 PM were to be accepted as the time of the offense, as opposed to the time of arrest, that time is **less than 30 minutes after sunset**. Therefore, the People’s founded suspicion to believe a violation of the vehicle and traffic law had occurred did not exist.

Therefore, the stop should never have happened.

III. EVEN IF THE TRAFFIC STOP WAS LEGAL, THE DETENTION OF DEFENDANT WAS TOO LONG ON THE FACTS HEREIN

16. The detention of the defendant was too long upon the facts on which your deponent has obtained knowledge or belief. The police mistakenly stopped Defendant for an inadequate licence plate lamp since it was less than 30 minutes after sunset. At best, this gave them a right of inquiry under *People v. DeBour*, 40 N.Y.2d 210 (1976). Under *DeBour*, this at best would be a level one inquiry.

17. Even if the offense under VTL § 375(2)(a)(4) is found to have been validly accused, the Police are constrained, without more, to address the traffic infraction only. A search of the vehicle is not permitted. *People v. Mercado*, 165 A.D.2d 910.

IV. SUPPRESSION OF ALL EVIDENCE OBTAINED AS RESULT OF ILLEGAL STOP and SEARCH OF DEFENDANT'S PERSON – FRUIT OF THE POISONOUS TREE

18. Since the Defendant should not have been stopped, he should not have had to step out of the car. He should not have been patted down. Defendant moves to suppress all items seized and that his \$1,195.00 be returned. *People v. Banks*, 85 N.Y.2d 558, 562 (1995).

19. The defendant at this traffic stop was seized when he exited the vehicle. The scope of this matter should have been to run defendant's license and registration, check for open warrants, inquire where defendant is coming from and going to and stay within the scope of a traffic ticket for an inadequate license plate light. *People v. Hollman*, 79 N.Y.2d 181 (1992).

20. Since the Defendant should not have been stopped, no pat down should have been given. Defendant moves to suppress all evidence seized in the pat down.

V. SUPPRESSION OF EVIDENCE OBTAINED AS RESULT OF INTRUSION INTO DEFENDANT'S POCKETS AFTER PAT DOWN.

21. Your deponent acknowledges that there is authority in New York to order a defendant out of a car under certain circumstances. Defendant is not conceding that in these circumstances the order to exit was valid but since the defendant was ordered out of the car, it is necessary to address the pat down.

22. Upon information or belief the police indicated to defendant that they were asking him to exit the vehicle which he owns to do a "safety pat down." The police also asked defendant where he was coming from and where he was going and who was in the car with him.

23. Upon information or belief, during the pat down it was apparent there were no weapons. There should have been no further intrusion. *People v. DeBour*, 40 N.Y.2d 210, 215. There was no founded suspicion based on an inadequate license plate light to allow the police officer to **reach into defendant's pockets** and pull out the money and wallet. Once there was no weapon apparent at "pat down," the proceedings including search and seizure were legally over. Defendant should have been free to leave.

24. Upon information or belief, only then, after the aforementioned events, did the police officer go back to his unit and run Defendant's license and registration and make the normal traffic infraction inquiries. Unfortunately, the People have not produced any police reports, body cam footage or anything else which defendant respectfully asserts he is entitled to even before *Rosario* is triggered. This is *Brady* material and could well be exculpatory.

VI. DEFENDANT GAVE CONSENT TO SEARCH ONLY PLAIN VIEW AROUND WHERE HE WAS REACHING IN THE BACK SEAT AREA WHERE HE WAS REACHING AROUND – NOT THE REMAINDER OF THE CAR. CONSENT TO SEARCH THE VEHICLE WAS NOT GIVEN.

25. Upon information or belief, after running the defendant's license, the officer

pressed for consent to search the whole car and this consent was not given.

26. Once the consent was not given, the officer, who was driving a K-9 SUV which had been on the scene since the outset, indicated to defendant that he was getting the dog out and going around the car with it.

27. There is no authority in New York or U.S. Supreme Court jurisprudence for the police to get a K-9 out to sniff a car on these facts. *Rodriguez v. United States*, 135 S.Ct. 1609 (2015). *Rodriguez* stands for the proposition that even an eight (8) minute lengthening of the traffic stop beyond the issuance of a traffic ticket and the business of issuing that ticket, such as a routine check of license and registration is impermissible.

28. In *Rodriguez*, a “dog sniff” automobile traffic ticket case, the U.S. Supreme Court held that the police’s extension of the traffic stop in order to conduct a dog sniff was an unconstitutional seizure and any extension of time to effectuate the sniff is outside the scope of a traffic ticket case. *Rodriguez*, 135 S.Ct. 1609, 1616; *People v. Banks*, 85 N.Y.2d 558; compare, *People v. Trevaughn Banks*, 148 A.D.3d 1359 (3d Dept. 2017) (defendant’s parole status and untruthfulness and inconsistent story gave rise to court’s allowance of dog sniff evidence which extended mission of traffic stop).

29. There is no evidence of anything other than a mistaken stop for a simple traffic ticket for an inadequate license plate light in the instant case. The evidence seized as a result of the dog sniff should be suppressed.

VII. DISMISSAL OF MARIHUANA CHARGES UNDER PL § 221.25 – FRUIT OF THE POISONOUS TREE.

30. Because the Defendant should not have been stopped, should not have had his pockets searched, the police had no legal basis for the dog sniff, the drug evidence was illegally

seized, Defendant moves to dismiss the Indictment.

VIII. SUPPRESSING ANY STATEMENTS SET FORTH IN PROSECUTOR'S NOTICE OF INTENT TO USE ADMISSIONS.

31. Defendant moves to suppress admissions enumerated in any notice of intent to use admissions under Criminal Procedure Law § 710.30. Said statements were given without proper advisements.

32. Defendant's statements were also given following the illegal stop, search and dog sniff and should be suppressed for that reason.

IX. SANDOVAL/MOLINEAUX/VENTIMIGLIA

33. Your affirmant does not know of Defendant's prior involvement with the law or of what alleged "bad acts" the Prosecution might want to use to cross-examine the Defendant. It is respectfully submitted that information is comprehensively within the control of the District Attorney, and upon production of this information to the Defendant, this Court should rule as to its admissibility under *People v. Sandoval*, 34 NY 2nd 371 (1974) and CPL §240.43.

X. DISCLOSURE

34. On or about June 12, 2018, Defendant's Demand To Produce was served upon the Tompkins County District Attorney's Office ("Exhibit B.")

35. To this date your affirmant has received little discovery. Prosecution's full response to Defendant's demand has not been made and it is so moved here. There have been no disclosures of the following:

- a) Not one single police report has been produced. Upon information or belief, it is because the Prosecution styles Defendant's demand as being a *Rosario* demand. Defense, for the reasons cited herein, assert that under

Brady; the police reports should be produced promptly;

- b) No response to demand or production of "body cam" and other video/digital video has been given by the Prosecution;
- c) No disclosure of any radio dispatch or other radio communications has been made. Again, it is Defense's position that said demand is a *Brady* demand and should be responded to.

36. It is respectfully submitted therefore that this Court should enter an Order directing the Prosecution to provide the Defendant with the information sought in the Defendant's Demand, all of which is relevant and necessary to the preparation and presentment of the Defendant in this matter.

37. The Defendant further requests that he be allowed a reasonable period of time after the disclosure requested above is received, within which to file any additional Omnibus Motions.

VII. FURTHER MOTIONS.

38. Without the benefit of the discovery material that has not been produced, the affirmant cannot proceed to defend this matter and cannot determine what further motions, if any, will be required to present a defense. Accordingly, your affirmant respectfully requests, that in addition to directing the prosecutor to deliver all demanded material forthwith, that the Court grant your deponent a reasonable time to review said material and to make any further motions which may then deem appropriate.

WHEREFORE, your deponent, on behalf of the Defendant, REGINALD E. BLANDFORD, respectfully requests an order or orders:

- a) Dismissing the simplified traffic information for having an inadequate license plate light under VTL § 375(2)(a)(4) herein pursuant to §170.30(1)(a) of the Criminal Procedure Law, on the ground that the simplified traffic information was defective as defined under CPL § 170.35(1)(a) due to facial insufficiency under CPL § 110.40;
- b) Dismissing the charge under § 375(2)(a)(4) of the Vehicle and Traffic Law because Defendant's actions before the stop were not in violation of any section of VTL §375 or any other section of the Vehicle and Traffic Law;
- c) Suppressing any and all evidence obtained as the result of the illegal stop, search of Defendant's person, dog sniff and search of Defendant's vehicle culminating in the illegal arrest of Defendant;
- d) In the event evidence is not suppressed as moved herein, it is respectfully moved that the court schedule a *Mapp/Dunaway* hearing for further consideration of the evidentiary issues;
- e) Dismissing the Criminal Possession of Marihuana in the Second Degree under PL § 221.25;
- f) Suppressing as evidence at any trial held in this matter the alleged statements set forth in the Prosecution's Notice of Intent to Use Admissions;
- g) Directing the District Attorney to furnish the Defendant with a complete list of all prior crimes, offenses, and bad acts, if any, of the Defendant, and further directing the District Attorney to refrain from referring to such

record, offenses, or bad acts at any trial held herein;

- h) Disclosure. Directing the District Attorney to furnish the discovery that was demanded on June 12, 2018;
- i) That the court grant your deponent a reasonable time to review any materials not yet received and to make any further motions which may then be deemed appropriate;
- j) That the court grant such other and further relief as the court may seem just and proper.

Respecfully submitted,

Dated: June 28, 2018
Ithaca, New York



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