NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

CHARLIE FOSTER,
Petitioner,
v.
UNITED STATES OF AMERICA,
Respondent

PETITION FOR A WRIT OF CERTIORARI

APPENDIX

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one of seven class representatives has himself gone to great lengths to make this a "lawyer-driven lawsuit." We hope district courts in this circuit will bear this in mind should Oetting seek to be appointed a lead plaintiff in future class actions subject to the PSLRA.

III. Conclusion

For the forgoing reasons, we affirm the Order of the district court dated November 12, 2019. We grant Appellee David Sosne's and Appellant David Oetting's motions to supplement the record. We deny Appellee Chitwood Harley's motion to supplement the record.

UNITED STATES of America, Plaintiff - Appellee

v.

Charlie FOSTER, Defendant - Appellant

No. 20-1241

United States Court of Appeals, Eighth Circuit.

Submitted: January 15, 2021

Filed: October 12, 2021

Rehearing and Rehearing En Banc Denied December 1, 2021

Background: Following denial of his motion to suppress, 2019 WL 4580485, defendant pled guilty in the United States District Court for the Western District of Arkansas, Timothy L. Brooks, J., to being felon in possession of firearm, and he appealed.

Holdings: The Court of Appeals, Erickson, Circuit Judge, held that:

(1) district court did not abuse its discretion when it decided to rule on defendant's motion to suppress without hearing;

(2) defendant was not unreasonably seized when officer conducted traffic stop; and

(3) officer did not unlawfully expand scope or extend traffic stop.

Affirmed.

1. Criminal Law ⚿1139, 1158.12

Court of Appeals reviews denial of motion to suppress applying de novo review to questions of law and clear error review to questions of fact.

2. Criminal Law ⚿392.50

District court is required to hold evidentiary hearing on motion to suppress whenever moving papers are sufficiently definite, specific, and detailed to establish contested issue of fact.

3. Criminal Law ⚿1153.6

Court of Appeals reviews district court's denial of request for evidentiary hearing on motion to suppress for abuse of discretion.

4. Criminal Law ⚿392.50

District court did not abuse its discretion when it decided to rule on defendant's motion to suppress without hearing, where court assumed as true facts as set forth in defendant's moving papers and supporting documents.

5. Automobiles ⚿349(2.1, 10)

Traffic stop constitutes seizure under Fourth Amendment and must be supported by either reasonable suspicion or probable cause. U.S. Const. Amend. 4.

6. Automobiles ⚿349(2.1)

Any traffic violation, no matter how minor, is sufficient to provide officer with probable cause for traffic stop, but officer

must have reasonable basis for believing that driver has breached traffic law. U.S. Const. Amend. 4.

7. Automobiles ⇐349(2.1)

Officer's mistake of law or fact may justify traffic stop so long as that mistake is objectively reasonable. U.S. Const. Amend. 4.

8. Automobiles ⇐349(2.1)

Officer's incomplete initial observations may give reasonable suspicion for traffic stop, even if subsequent examination reveals no traffic law violation. U.S. Const. Amend. 4.

9. Automobiles ⇐349(5)

Reasonable officer could have believed on initial observation that defendant's vehicle's cracked windshield constituted safety defect, and thus defendant was not unreasonably seized when officer conducted traffic stop, even though officer's initial observation turned out to be mistaken because crack did not obstruct driver's view; Arkansas law allowed officers who had "reason to believe that a vehicle may have safety defects" to stop vehicle and inspect for safety defects, and crack was observable. U.S. Const. Amend. 4; Ark. Code Ann. § 27-32-101(a)(2)(A).

10. Automobiles ⇐349(17, 18)

Police officer did not unlawfully expand scope or extend traffic stop he had made based on his observation of cracked windshield when he asked for identification from vehicle's occupants after seeing that crack did not, in fact, obstruct driver's view. 4.

Appeal from United States District Court for the Western District of Arkansas - Fayetteville

David A. Harris, Assistant U.S. Attorney, U.S. Attorney's Office, Western District of Arkansas, Fort Smith, AR, for Plaintiff-Appellee.

Jose Alfaro, Assistant Federal Public Defender, Christopher Aaron Holt, Federal Public Defender's Office, Fayetteville, AR, for Defendant-Appellant.

Charlie Foster, El Reno, OK, Pro Se.

Before SMITH, Chief Judge, KELLY and ERICKSON, Circuit Judges.

ERICKSON, Circuit Judge.

Springdale, Arkansas, Police Officer Stanley Johnson stopped a vehicle driven by Charlie Foster for having an unsafe windshield. During the course of the traffic stop, Officer Johnson directed Foster to get out of the vehicle and conducted a pat down search, in the course of which he discovered a handgun. Foster moved to suppress the discovery of the handgun, claiming the traffic stop lacked probable cause and was unreasonably extended when Officer Johnson asked for the occupants' identification. The district court [1] denied the motion without holding an evidentiary hearing. Foster entered a conditional guilty plea to being a felon in possession of a firearm, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). The written plea agreement reserved Foster's right to appeal the denial of his suppression motion. We have jurisdiction under 18 U.S.C. § 3731, and we affirm.

1. The Honorable Timothy L. Brooks, United States District Judge for the Western District of Arkansas.

I. BACKGROUND

On March 5, 2019, Officer Johnson stopped Foster's black Toyota Avalon for "having an unsafe windshield (several cracks)."[2] After informing Foster of the reason for the stop, Officer Johnson asked Foster and his female companion for identification. Foster produced a driver's license but his companion denied having any identification and provided an identification that ultimately proved to be false. Officer Johnson observed that both occupants of the vehicle seemed nervous, reporting that Foster's hands were visibly shaking as he retrieved his driver's license. When Officer Johnson called in the information, dispatch informed him that Foster was on parole and an active arrest warrant existed for the passenger.

As Officer Johnson was walking back to Foster's vehicle, he observed the occupants moving around the inside of the vehicle. Officer Johnson commanded Foster to step out of the vehicle. Foster complied, but as he was exiting the vehicle he tugged his jacket down. When Officer Johnson conducted a safety pat down of Foster, he found a handgun in Foster's waistband. Methamphetamine was also found inside the car.

Foster moved to suppress the discovery of the handgun, asserting two grounds: (1) the initial traffic stop was without probable cause; and (2) the stop was unreasonably extended when Officer Johnson asked Foster and his passenger for identifying information. The district court denied the motion to suppress and this appeal follows.

II. DISCUSSION

[1] We review a denial of a motion to suppress applying *de novo* review to questions of law and clear error review to questions of fact. United States v. Evans, 4 F.4th 633, 636 (8th Cir. 2021) (quoting United States v. Morris, 915 F.3d 552, 555 (8th Cir. 2019)).

At the outset, we address the case's procedural posture. Although Foster requested that the district court hold an evidentiary hearing on his suppression motion, after the issue was fully briefed by both sides, the district court elected to rule, without conducting an evidentiary hearing, by assuming as true the facts as set forth in Foster's moving papers and supporting documents.

[2–4] A district court is required to hold an evidentiary hearing on a motion to suppress whenever the moving papers are "sufficiently definite, specific, and detailed to establish a contested issue of fact." United States v. Stevenson, 727 F.3d 826, 830 (8th Cir. 2013) (citing United States v. Mims, 812 F.2d 1068, 1073–74 (8th Cir. 1987)). We review the district court's denial of a request for an evidentiary hearing for an abuse of discretion. Id. At oral argument, Foster's counsel stated: "I think I would agree with [opposing counsel]'s assessment that essentially what the court did was assume the facts that we stated to be true and so I think that it makes sense to treat those facts as if the court had a hearing and those facts have been proven." Since neither party has actually disputed a fact at issue here on appeal, under these particular circumstances, we find no abuse of discretion in the district court's decision to rule on the motion to suppress without a hearing.

[5–7] Foster argues the traffic stop was invalid because Officer Johnson could not have reasonably believed the cracked

2. As there was no evidentiary hearing, the facts were taken by the district court from Foster's moving papers. We do the same.

windshield violated Arkansas law. A traffic stop constitutes a seizure under the Fourth Amendment and must be supported by either reasonable suspicion or probable cause. United States v. Hollins, 685 F.3d 703, 706 (8th Cir. 2012) (quoting United States v. Houston, 548 F.3d 1151, 1153 (8th Cir. 2008)). We have noted that any traffic violation, no matter how minor, is sufficient to provide an officer with probable cause. United States v. Hanel, 993 F.3d 540, 543 (8th Cir. 2021) (quoting United States v. Bloomfield, 40 F.3d 910, 915 (8th Cir. 1994)). But, the officer must have "a reasonable basis for believing that the driver has breached a traffic law." United States v. Gordon, 741 F.3d 872, 876 (8th Cir. 2013) (internal quotations and citations omitted). An officer's mistake of law or fact may justify a stop so long as that mistake is objectively reasonable. Hanel, 993 F.3d at 543.

Officer Johnson saw a crack near the bottom of Foster's windshield, which the district court found, to a preponderance of the evidence, was observable in the photographs Foster submitted. The crack, however, did not go all the way across the windshield nor did it obstruct the driver's view. Arkansas law allows officers who have "reason to believe that a vehicle may have safety defects" to "stop the vehicle and inspect for safety defects." Ark. Code Ann. § 27-32-101(a)(2)(A). The Arkansas Supreme Court has held that "a windshield with a crack running from roof post to roof post across the driver's field of vision is the type of 'safety defect' contemplated by section 27-32-101(a)(2)(A)." Villanueva v. State, 2013 Ark. 70, 426 S.W.3d 399, 402 (2013).

Foster asserted below, as he does here, that Officer Johnson had no objective basis to believe that a violation was present because, unlike in Villanueva, the crack in the windshield did not obstruct the driver's view. The district court rejected this assertion, determining that Officer Johnson's actions were objectively reasonable because he reasonably suspected that the windshield was a traffic violation and even if the officer was mistaken in believing the crack violated Arkansas law, the officer's mistake would be a reasonable one.

As we read the facts as found by the district court and adopted as uncontested by the parties here on appeal, the district court did not, and could not have, found that the crack in Foster's windshield violated Arkansas law. While the parties have framed the issue as a mistake of law claim, we believe that it is more appropriately analyzed as a mistake of fact claim.

[8] The traffic stop was initiated because Officer Johnson saw Foster's windshield was cracked and believed it may have constituted a safety defect under Arkansas law. An officer's "incomplete initial observations may give reasonable suspicion for a traffic stop," even if subsequent examination reveals no traffic law violation. Hollins, 685 F.3d at 706. In Hollins, officers stopped a vehicle because they believed it did not have license plates but as they approached the vehicle they observed the presence of an in transit sticker such that there was no traffic violation. The Court in Hollins concluded that "although the officers were mistaken" about the vehicle's "registration status, their actions were objectively reasonable because they could not then see the In Transit sticker." Id. at 707; see United States v. Callarman, 273 F.3d 1284, 1287 (10th Cir. 2001) (finding traffic stop was supported by reasonable articulable suspicion because the size of the crack was large enough for the officer to believe that the crack obstructed the driver's view).

[9] In light of Villanueva and the undisputed facts here, a reasonable officer could have believed on initial observation

that the cracked windshield constituted a safety defect. While his initial observation turned out to be mistaken, Officer Johnson's mistake of fact was an objectively reasonable one, and thus Foster was not unreasonably seized when Officer Johnson conducted the traffic stop.

[10] Foster next contends Officer Johnson was obligated to terminate the stop and leave as soon as he observed the crack in the windshield did not, in fact, obstruct the driver's view. According to Foster, Officer Johnson's failure to do so unreasonably extended the stop. Foster's argument is foreclosed by our precedent, which binds the panel. See Hollins, 685 F.3d at 706–707 (noting that "reasonable investigation following a justifiable traffic stop may include asking for the driver's license and registration"); United States v Collier, 419 F. App'x 682, 684 (8th Cir. 2011) (stating that although traffic stop was initiated because registered owner had an outstanding warrant and when officer discovered she was not present, officer continued to have the authority to check the driver's license and registration); United States v. Allegree, 175 F.3d 648 (8th Cir. 1999) (determining the traffic stop based on mistaken belief that a car was unlawfully displaying emergency blue lights was sufficient to allow license and registration check).

Officer Johnson did not unlawfully expand the scope or extend the stop when he asked for identification from the occupants of the vehicle.

III. CONCLUSION

For the foregoing reasons, we affirm the district court's denial of Foster's suppression motion.

UNITED STATES of America,
Plaintiff - Appellee

v.

Christopher Ronald MARTIN,
Defendant - Appellant

No. 20-1511

United States Court of Appeals,
Eighth Circuit.

Submitted: August 3, 2021

Filed: October 18, 2021

Rehearing and Rehearing En Banc
Denied December 1, 2021

Background: Defendant was convicted, on conditional guilty plea entered in the United States District Court for the Southern District of Iowa, John A. Jarvey, Chief Judge, of using and carrying a firearm during and in relation to crime of violence, interference with commerce by robbery, and being a felon in possession of firearm, and he appealed from denial of his pretrial motion to suppress evidence, as well as from sentence imposed.

Holdings: On rehearing, the Court of Appeals, Kobes, Circuit Judge, held that:

(1) police officers had at least a reasonable suspicion of criminal activity, of kind required to stop a vehicle which was at the same intersection as cell phone taken during recent robbery based on global positioning satellite (GPS) data

(2) any error in district court's denial as moot of a motion to suppress the use of the show-up lineup identification was harmless; and

(3) defendant's prior convictions of Illinois offense of armed robbery were crimes of violence, of kind required in order to permit application of the "career offender" enhancement at sentencing.

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

UNITED STATES OF AMERICA **PLAINTIFF**

V. **CASE NO. 5:19-CR-50037-1**

CHARLIE FOSTER **DEFENDANT**

MEMORANDUM OPINION AND ORDER

Currently before the Court is Defendant Charlie Foster's Motion to Suppress (Doc. 20) and the Government's Response (Doc. 22). On May 8, 2019, Mr. Foster was charged by Indictment (Doc. 1) with knowingly possessing a firearm after having been convicted of a crime punishable by imprisonment for a term exceeding one year, in violation of 18 U.S.C §§ 922(g)(1) and 924(a)(2). Mr. Foster seeks to suppress evidence related to a firearm found on his person and which led to his indictment. For the reasons given below, Mr. Foster's Motion is **DENIED**.

I. BACKGROUND

The following facts are taken from Mr. Foster's Motion to Suppress. (Doc. 20). On March 5, 2019, Officer Johnson with the Springdale Police Department stopped a black Toyota Avalon for "having an unsafe windshield (several cracks)." *Id.* at 1. Officer Johnson made contact with the driver of the vehicle, Mr. Foster, and explained, "the reason I pulled you over is you got this cracked windshield." *Id.* at 5. Officer Johnson then asked Mr. Foster and his female passenger for identification. Mr. Foster provided his driver's license, and the passenger, who did not have a form of identification, provided a name that was later determined to be fictitious. At that time, Officer Johnson noted that Mr. Foster and

the passenger appeared to be "very nervous." *Id.* at 1. Specifically, Officer Johnson observed Mr. Foster's hands shaking.

After returning to his police cruiser to check Mr. Foster and his passenger for outstanding warrants, Officer Johnson observed Mr. Foster and the passenger "moving around inside the vehicle." *Id.* at 1–2. Additionally, Officer Johnson learned from dispatch that Mr. Foster was on parole with a search waiver on file and that the passenger had an active warrant for her arrest. At that time, Officer Johnson returned to the vehicle and ordered Mr. Foster to step outside. Complying with that order, Mr. Foster exited the vehicle and "tugged his jacket down with his hand." *Id.* at 2. Officer Johnson then explained to Mr. Foster that he had observed Mr. Foster and his passenger moving around in the vehicle, to which Mr. Foster replied that the two were "putting the paperwork back in the glove compartment." *Id.* Officer Johnson then conducted a pat down of Mr. Foster for weapons, which revealed a handgun.

In his Motion to suppress, Mr. Foster asks this Court to suppress the handgun found on his person. Mr. Foster advances two arguments in support of this request: (1) that Officer Johnson did not have probable cause to make the initial traffic stop; and (2) that Officer Johnson unreasonably extended the initial stop by asking Mr. Foster and his passenger for identification. Notably, Mr. Foster does not argue that the search of his person was unconstitutional. The Motion has been fully briefed, and the matter is now ripe for decision.

II. LEGAL STANDARD

The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated,

> and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend. IV. Simply put, the basic purpose of the Fourth Amendment "is to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials." *United States v. Carpenter*, 138 S. Ct. 2206, 2213 (2018) (internal quotation marks omitted).

For Fourth Amendment purposes, "[i]t is well established that a roadside traffic stop is a 'seizure' within the meaning of the Fourth Amendment." *United States v. Jones*, 269 F.3d 919, 924 (8th Cir. 2001). To be a reasonable seizure, "a traffic stop must be supported by, at a minimum, 'a reasonable, articulable suspicion that criminal activity' is occurring." *United States v. Frasher*, 632 F.3d 450, 453 (8th Cir. 2011) (quoting *Jones*, 289 F.3d at 924.). A traffic violation, even for a minor infraction, provides the necessary quantum of suspicion to stop a vehicle and its occupants. *See Frasher*, 632 F.3d at 453. Thus, a police officer may lawfully conduct a traffic stop of a vehicle when the officer is "aware of particularized, objective facts which, taken together with rational inferences from those facts, reasonably warrant suspicion" that a traffic violation is being committed. *United States v. Martin*, 706 F.2d 263, 265 (8th Cir. 1983).

To determine whether a police officer had the requisite level of suspicion to conduct a valid traffic stop, a court must look at whether "the facts available to the officer at the moment of the seizure or the search [would] warrant a man of reasonable caution in the belief that the action taken was appropriate[.]" *Terry v. Ohio*, 392 U.S. 1, 21–22 (1968) (internal quotation marks omitted). Although "something more than a 'hunch' of wrongdoing is necessary, the level of suspicion required to support a traffic stop is

'considerably less' than proof of wrongdoing by a preponderance of the evidence. *United States v. Edgerton*, 438 F.3d 1043, 1047 (10th Cir. 2006) (internal quotation marks omitted). Furthermore, "mistakes of law or fact, if objectively reasonable, may still justify a valid stop." *United States v. Hollins*, 685 F.3d 703, 706 (8th Cir. 2012). "[I]n mistake cases the question is simply whether the mistake, whether of law or of fact, was an objectively reasonable one." *United States v. Smart*, 393 F.3d 767, 770 (8th Cir. 2005). In sum, the determination of whether reasonable suspicion existed "is not to be made with the vision of hindsight, but instead by looking to what the officer reasonably knew at the time." *Hollins*, 685 F.3d at 706 (quoting *United States v. Sanders*, 196 F.3d 910, 913 (8th Cir. 1999)).

Following a valid traffic stop, a police officer may conduct "routine tasks related to the traffic violation . . . ." *United States v. Chartier*, 772 F.3d 539, 543 (8th Cir. 2014). In addition to determining whether to issue a traffic citation, such tasks include "checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance." *Rodriguez v. United States*, 135 S. Ct. 1609, 1615 (2015). "If, during the course of completing these routine tasks, 'the officer develops reasonable suspicion that other criminal activity is afoot, the officer may expand the scope of the encounter to address that suspicion.'" *Chartier*, 772 F.3d at 543 (quoting *United States v. Peralez*, 526 F.3d 1115, 1120 (8th Cir. 2008)). Absent suspicion of other criminal activity, a traffic stop "remains lawful only 'so long as [the] unrelated inquiries do not measurably extend the duration of the stop.'" *Rodriguez*, 135 S. Ct. at 1615 (quoting *Arizona v. Johnson*, 555 U.S. 323, 333 (2009)).

In a criminal case, a defendant may move to suppress the use of evidence at trial that the defendant believes was obtained in violation of the Fourth Amendment, including any "fruit" deriving from that evidence. *See Wong Sun v. United States*, 371 U.S. 471, 484–86 (1963). Such evidence is suppressed only when two separate determinations are made: (1) that "the Fourth Amendment rights of the party seeking to invoke the rule were violated by police conduct," and (2) that "the exclusionary sanction is appropriately imposed in a particular case." *United States v. Leon*, 468 U.S. 897, 906–07 (1984).

Applying the foregoing to the facts at hand, the Government bears the burden of proving by a preponderance of the evidence that Mr. Foster's Fourth Amendment rights were not violated during the March 5, 2019 traffic stop, or alternatively, that suppressing the handgun found on Mr. Foster's person is not an appropriate remedy in this case. *See, e.g.*, *Carter v. United States*, 729 F.2d 935, 940 (8th Cir. 1984) ("As a general rule, the burden of proof is on the defendant who seeks to suppress evidence, but on the government to justify a warrantless search.") (internal citations omitted); *cf. United States v. Matlock*, 415 U.S. 164, 178 n.14 (1974) ("In any event, the controlling burden of proof at suppression hearings should impose no greater burden than proof by a preponderance of the evidence.").

III. DISCUSSION

Respecting Mr. Foster's first argument, the Court begins by noting that Mr. Foster does not contest that he had a crack in his windshield. He simply argues that the crack, which he describes as being "towards the dashboard" (Doc. 20, p. 4), does not amount to a traffic violation under Arkansas law. Mr. Foster attached four still photographs of his windshield that were taken from police body cameras during the traffic stop. (Docs. 20-

1—20-4). The Court has reviewed these photographs and finds by a preponderance of the evidence that there was an observable crack in Mr. Foster's windshield. The Court further finds that the crack was of the size and nature described by Mr. Foster in his Motion to Suppress.

Although Arkansas does not have a statute *explicitly* outlawing cracked windshields, Mr. Foster correctly acknowledges that both the Eighth Circuit and Arkansas Supreme Court have held that driving with a cracked windshield violates Ark. Code Ann. § 27-32-101(a)(2)(A).[1] *United States v. Davis*, 598 F. App'x 472, 473 (8th Cir. 2015) (unpublished opinion) ("Driving a vehicle with a windshield cracked across the driver's field of vision . . . is a 'safety defect' under Ark. Code Ann. § 27–32–101(a)(2)(A)."); *Villanueva v. State*, 2013 Ark. 70, at *5 (2013) (holding that "a windshield with a crack running from roof post to roof post across the driver's field of vision is the type of 'safety defect' contemplated by section 27–32–101(a)(2)(A))"). Mr. Foster seeks to distinguish his cracked windshield from those in *Davis* and *Villanueva* because the crack in his windshield did not obstruct his field of vision. Accordingly, Mr. Foster argues that Officer Johnson did not have probable cause to conduct the March 5, 2019 traffic stop because no traffic violation occurred.

As previously explained, the validity of the March 5, 2019 traffic stop does not depend on whether Mr. Foster's windshield actually violated Ark. Code Ann. § 27-32-101(a)(2)(A). The Eighth Circuit has held, "[m]istakes of law or fact, if objectively

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[1] Ark. Code Ann. § 27-32-101(a)(2)(A) provides in relevant part, "[a]ny law enforcement officer having reason to believe that a vehicle may have safety defects shall have cause to stop the vehicle . . . ."

reasonable, may still justify a valid stop." *Hollins*, 685 F.3d at 706; *see also Smart*, 393 F.3d at 770 ("[T]he validity of a stop depends on whether the officer's actions were objectively reasonable in the circumstances, and in mistake cases the question is simply whether the mistake, whether of law or of fact, was an objectively reasonable one."); *United States v. Williams*, 929 F.3d 539, 544 (8th Cir. 2019) (explaining that all determinations of reasonable suspicion or probable cause, including those in mistake cases, are made by looking at what the police officer knew at the time the search or the seizure was conducted).

A police officer, therefore, does not need to be certain that a traffic violation has occurred in order to conduct a lawful traffic stop; the officer needs only a reason to suspect that such a violation has occurred. *See New Jersey v. T.L.O.*, 469 U.S. 325, 346 (1985) ("But the requirement of reasonable suspicion is not a requirement of absolute certainty: 'sufficient probability, not certainty, is the touchstone of reasonableness under the Fourth Amendment.'" (quoting *Hill v. California*, 401, U.S. 797, 804 (1971))); *see also United States v. Edgerton*, 438 F.3d 1043, 1047 (10th Cir. 2006) ("While something more than a hunch of wrongdoing is necessary, the level of suspicion required to support a traffic stop is considerably less than proof of wrongdoing by a preponderance of the evidence.") (internal quotation marks omitted).

The Court has no trouble finding by a preponderance of the evidence that Officer Johnson had, at a minimum, a reason to suspect that Mr. Foster's cracked windshield was a traffic violation under Arkansas law. As Mr. Foster explains in his Motion, Officer Johnson articulated the purpose for the stop: "The reason I pulled you over is you got this cracked windshield." (Doc. 20, p. 5). Even if Officer Johnson was mistaken in believing

that the admittedly cracked windshield violated Ark. Code Ann. § 27–32–101(a)(2)(A), his mistake would be a reasonable one. In sum, Mr. Foster was not unreasonably seized when Officer Johnson stopped his vehicle for having an unsafe windshield.

As for his second argument, Mr. Foster reasons that once Officer Johnson observed that the cracked windshield did not impair his vision, Officer Johnson no longer had a reason to suspect that a traffic violation had been committed. Thus, Mr. Foster concludes that Officer Johnson unlawfully extended the traffic stop by requesting identification from Mr. Foster and his passenger.

The Eighth Circuit has decisively held that an officer may request identification from the occupants of a vehicle following a lawful traffic stop. *United States v. Clayborn*, 339 F.3d 700, 702 (8th Cir. 2003). In *Clayborn*, Missouri Detective Lee Hall stopped a vehicle for driving without license plates. *Id.* at 701. Detective Hall made contact with the vehicle's driver, Roosevelt Clayborn, and informed him of the stop's purpose. *Id.* Clayborn then pointed out that the vehicle did, in fact, have a temporary tag, which Detective Hall had not observed when he stopped and approached the vehicle. *Id.* Despite being made aware that no traffic violation had occurred, Detective Hall asked Clayborn for his registration papers, insurance card, and driver's license. *Id.* A subsequent check revealed that Clayborn's license was suspended. *Id.* Clayborn was subsequently arrested for drug and firearm offenses discovered as the stop transpired. *Id.*

On appeal to the Eighth Circuit, Clayborn argued that once Detective Lee observed that the vehicle had a temporary tag, he unreasonably extended the scope of the traffic stop by asking for Clayborn's registration papers and identification. *Id.* at 702. In rejecting that argument, the Eighth Circuit held that "Detective Hall's actions did not exceed those

justified by the traffic stop and no violation of the Fourth Amendment occurred." *Id.* The court reasoned that a police officer does not unconstitutionally extend a valid traffic stop by requesting proof of license and registration. *Id.*

The Eighth Circuit's decision in *Clayborn* forecloses Mr. Foster's second argument. The Eighth Circuit "has 'consistently held that a reasonable investigation following a justifiable traffic stop may include asking for the driver's license and registration.'" *Hollins*, 685 F.3d at 706–07. Furthermore, even assuming Officer Johnson at some point realized that Mr. Foster's windshield did not violate Arkansas law, Officer Johnson did not unconstitutionally extend the valid traffic stop by requesting Mr. Foster's identification. Accordingly, Mr. Foster was not unreasonably seized as a result of Officer Johnson asking for—and then running a record check of—his and his passenger's identification.

To summarize, Officer Johnson conducted a lawful traffic stop of Mr. Foster's vehicle for having a cracked windshield, and even if Officer Johnson was mistaken in believing that Mr. Foster's windshield violated Arkansas law, he was justified in asking Mr. Foster and his female passenger for identification. Simply put, at no point during the March 5, 2019 traffic stop was Mr. Foster subjected to an unconstitutional seizure within the meaning of the Fourth Amendment.

IV. CONCLUSION

IT IS THEREFORE ORDERED that Mr. Foster's Motion to Suppress Evidence (Doc. 20) is **DENIED**. This case will be set for trial in a separate scheduling order.

IT IS SO ORDERED on this 20th day of September 2019.

TIMOTHY L. BROOKS
UNITED STATES DISTRICT JUDGE

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 20-1241

United States of America

Appellee

v.

Charlie Foster

Appellant

Appeal from U.S. District Court for the Western District of Arkansas - Fayetteville
(5:19-cr-50037-TLB-1)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

December 01, 2021

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

/s/ Michael E. Gans