NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

NICHOLAS JAMES IMHOFF,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for Writ of Certiorari
to the Court of Appeals
for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a person driving a rental car is sufficient factual basis during a routine traffic stop to create reasonable suspicion to perform a vehicle search.

LIST OF PARTIES

All parties appear in the caption of the case above.

RELATED CASES

United States v. Nicholas James Imhoff
United States Court of Appeals
for the Ninth Circuit
21-30077

United States v. Nicholas James Imhoff
United States District Court
for the District of Montana
Billings Division
1:20-cr-00024-DLC 2020

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a Writ of Certiorari issue to review the judgment of the court below.

OPINIONS BELOW

The Memorandum confirming Petitioner's conviction and the District Court's denial of Petitioner's motion to suppress evidence issued by the Court of Appeals for the Ninth Circuit on February 28, 2022 is not reported but can be located at *United States v. Imhoff*, 2022 U.S. App. LEXIS 5232. (App. A, *infra*). The Order issued April 7, 2022 denying a timely filed Petition for Rehearing issued by the Court of Appeals for the Ninth Circuit is not reported but can be located at *United States v. Imhoff*, 2022 U.S. App. LEXIS 9353 (App D, *infra*). The Order denying Petitioner's Motion to Suppress Evidence issued by the United States District Court for the District of Montana on July 7, 2020 was not reported and not available online (App. B, *infra*). The Order denying Petitioner's Supplemental Motion to Suppress Evidence issued by the United States District Court for the District of Montana, Billings Division on July 29, 2020 was not reported but can be located at *United States v. Imhoff*, 2020 U.S. Dist. LEXIS 134707. (App. C, *infra*).

STATEMENT OF JURISDICTION

The date on which the Court of Appeal for the Ninth Circuit decided the case was February 28, 2022. A timely filed Petition for Rehearing was denied by the Court of Appeals for the Ninth Circuit on April 7, 2022 and a copy of the order denying the rehearing appears at Appendix C. The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS AT ISSUE
CONSTITUTIONAL PROVISIONS

Petitioner asserts a violation of his Fourth Amendment right to be free from unreasonable search and seizure. The Fourth Amendment reads as follows:

> [T]he 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.

STATEMENT OF THE CASE

On February 11, 2020 at approximately 10:26 AM Montana State Highway Patrol Trooper Erick

Fetterhoff ("Trooper Fetterhoff") pulled over Petitioner Nicholas James Imhoff near Columbus, Montana, for driving six miles over the speed limit. Trooper Fetterhoff asked Petitioner a series of questions unrelated to traffic safety or public safety about Petitioner's work history and travel. Trooper Fetterhoff, requested dispatch perform a non-routine criminal drug history on Imhoff. After issuing a warning citation to Petitioner thirteen minutes into the stop, Trooper Fetterhoff called dispatch for a drug-sniffing dog after Petitioner declined to grant consent to search. In doing so, Trooper Fetterhoff transformed a routine traffic stop into a 26-minute drug investigation. The Trooper testified his normal traffic stops last ten to fifteen minutes. The traffic stop was extended for another thirteen minutes after the warning was issued.

When Trooper Fetterhoff initiated his investigation of suspected drug activity, Trooper Fetterhoff knew little more than Petitioner had rented a car from Las Vegas, the car was due back in three days, and that Imhoff was en route to North Dakota where he worked. There were also fast food wrappers and cigarettes on the floor of the rented minivan.

> That said, the [District] Court notes that it finds it somewhat concerning that a police officer would be confident—rather than merely reasonably suspicious—that an individual like Imhoff was violating anything other than the traffic code. Trooper Fetterhoff testified at the

> suppression hearing that he knew he was dealing with a drug distributer when he saw a white minivan traveling six miles over the speed limit with the back windows vented. He repeatedly testified to the immediacy and strength of his conviction that Imhoff was transporting drugs—when he initially saw the van, when he noticed that it was rented, and again when he noticed gas station detritus.

Trooper Fetterhoff placed Petitioner in the front seat of his patrol vehicle despite not having searched for weapons or contraband. The trooper requested a driver's license check and a drug investigation check on Petitioner after the Trooper ran the driver's license on his vehicle's computer showing Petitioner had a valid driver's license.

During the suppression hearing on June 22, 2020, Trooper Fetterhoff testified that once placed in Petitioner in the front of the patrol car, Petitioner was extremely nervous. "Having viewed and listened to the recordings available, the Court has seen nothing to confirm the officers' perceptions of [Petitioner's] nervousness. Although nervous, evasive behavior is a pertinent factor in determining reasonable suspicion, the Court is unconvinced that [Petitioner] actually displayed such behavior."

The Trooper noted only a day bag in the passenger seat, but it was later confirmed the Trooper had missed the suitcase in plain view in the back cargo

area of the minivan. The Trooper disbelieved Petitioner's answer about working in the Bakken oil fields and found his answers about housing inconsistent as Petitioner initially said he had a house then said he was staying with a friend. At the time of the suppression hearing, it was confirmed that Petitioner was truthful in his answers about where he worked and lived. Petitioner was living in company housing and had recently been hired at a new company working the oil fields.

At the suppression hearing, the court found that "the other factors available to Trooper Fetterhoff "would likely not give rise to reasonable suspicion without the rental contract." In its order denying the supplemental motion to suppress the district court found the trooper was not credible stating "[t]his Court did not rely on [Trooper] Fetterhoff's credibility or [Petitioner]'s appearance in its prior order" denying Appellant's motion to suppress.

Trooper Fetterhoff advised Petitioner that he was receiving a warning and was "completely free to leave on that". Although having just told Petitioner he was completely free to leave, Trooper Fetterhoff then told Petitioner that he was extending the traffic stop beyond the initial reason for the stop. Despite stating Petitioner was completely free to leave, Trooper Fetterhoff read Petitioner his *Miranda* rights and asked to search the vehicle. When Petitioner declined, Trooper Fetterhoff walked around the vehicle with a drug sniffing dog. On the second pass, the dog alerted. Trooper Fetterhoff called for a tow truck and sealed the vehicle with

evidence tape, while Petitioner was driven to a gas station in Columbus, MT where he was released. Trooper Fetterhoff applied for a search warrant and eventually located approximately 78 pounds of what was later confirmed to be methamphetamine.

The court issued its order denying Petitioner's motion to suppress on July 7, 2020. Petitioner was given leave to seek additional evidence. Petitioner filed a supplemental motion to suppress based on additional evidence pertaining to Montana Highway Patrol policies and procedures regarding traffic stops and recording equipment. The court denied that motion on July 29, 2020.

Petitioner entered his change of plea on September 9, 2020 where he changed his plea to guilty to 21 U.S.C. § 841(a)(1) Possession With Intent To Distribute Methamphetamine and 18 U.S.C. § 2 Aiding and Abetting, but he reserved the right to appeal the denial of his suppression motion. On March 16, 2021, Petitioner was sentenced to 132 months in federal prison. Petitioner filed a timely notice of appeal to the Court of Appeals for the Ninth Circuit on March 18, 2021. On February 28, 2022, following oral arguments, the Court of Appeals issued a Memorandum affirming the denial of Petitioner's motion to suppress.

Petitioner filed a timely Petition for Rehearing and Rehearing En Banc on March 14, 2022. That Petition was denied on April 7, 2022 with the mandate issuing on April 15, 2022.

REASONS FOR GRANTING THE PETITION

The Ninth Circuit has entered a decision in this case that is in conflict with this Court's decision in *Rodriguez v. United States*, 575 U.S. 348, 354, 135 S. Ct. 1609, 1614 (2015), the First Circuit in *United States v. Ramdihall*, 859 F.3d 80, 89 (1st Cir. 2017), and its own prior decision in *United States v. Evans*, 786 F.3d 779 (9th Cir. 2015). This is an issue of great national importance. Fourth Amendment protections are not waived simply because a driver chooses to drive a rental car. Allowing searches on such an overwhelmingly broad basis would undermine all prior Fourth Amendment jurisprudence and render the requirement of reasonable suspicion moot.

Jurists of reason would find it debatable whether Petitioner's Fourth Amendment rights were violated when the District Court heavily relied on Petitioner driving a rental car to determine whether the Trooper had reasonable suspicion to prolong the traffic stop after issuing Petitioner a written warning. This case is a suitable vehicle for resolving this issue. Unencumbered by claims of ineffective assistance of counsel, or the obligation to follow the highly deferential standard of the Antiterrorism and Death Penalty Act (AEDPA), this case offers an opportunity to clarify the standard of reasonable suspicion in the context of prolonged automobile detentions where use of a rental car is the stated basis of officer's reasonable suspicion.

At least four other Circuits have held that a long-distance, short-term journey in a rental car is insufficient to justify prolonging a routine traffic stop.

This Court currently holds that, as a general rule, someone in otherwise lawful possession and control of a rental car has a reasonable expectation of privacy in it even if the rental agreement does not list him or her as an authorized driver. *Byrd v. United States*, 138 S. Ct. 1518, 1524 (2018). Much as a driver does not give up their reasonable expectation of privacy when driving a rental car, the use of a rental car itself cannot be the basis for reasonable suspicion.

This argument follows naturally from the logic of *Rodriguez*, where this Court declined to approve of a *de minimis* detention after the issuance of a warning ticket, reasoning that the "[a]uthority for the seizure . . . ends when tasks tied to the traffic infraction are--or reasonably should have been--completed." *Rodriguez v. United States*, 575 U.S. 348, 354, 135 S. Ct. 1609, 1614 (2015). In *Rodriguez,* a K-9 officer, stopped petitioner Rodriguez for driving on a highway shoulder, a violation of Nebraska law. After the officer attended to everything relating to the stop, including checking the driver's licenses of Rodriguez and his passenger and issuing a warning for the traffic offense, he asked Rodriguez for permission to walk his dog around the vehicle. When Rodriguez refused, the officer detained him until a second officer arrived. The officer then retrieved his dog, who alerted to the presence of drugs in the

vehicle. The ensuing search revealed methamphetamine. Seven or eight minutes elapsed from the time the officer issued the written warning until the dog alerted. *Rodriguez v. United States*, 575 U.S. 348, 135 S. Ct. 1609 (2015). This Court held Authority for the seizure ends when tasks tied to the traffic infraction are--or reasonably should have been--completed. *Id.*

Under the bright line drawn in *Rodriguez*, an officer's choice is binary: either he has reasonable suspicion the moment he hands the driver the warning ticket, in which case he may prolong the stop for a reasonable period to investigate; or he does not have reasonable suspicion, in which case the motorist is free to leave. But an officer who lacks reasonable suspicion may not continue to detain a motorist simply because, in the words of Trooper Fetterhoff, "[w]e'll talk about other things and see if any other indicators pop up of criminal activity."

The Fourth Amendment to the United States Constitution guarantees "[t]he right of the people to be secure in their persons, house, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. The Fourth Amendment requires suppression of evidence that is the fruit of unlawful police conduct. *Wong Sun v. United States*, 371 U.S. 471, 484, 83 S. Ct. 407, 9 L. Ed. 2d 441 (1963).

The Ninth Circuit in *United States v. Evans* reached a completely contradictory holding to the case at bar when it held that not allowing the defendant to leave after completing the tasks necessary for a traffic stop

was a violation of the driver's Fourth Amendment rights. *United States v. Evans*, 786 F.3d 779 (9th Cir. 2015) a law enforcement officer saw a defendant commit a minor traffic violation and pulled him over. *Evans*, 786 F.3d 782. The officer informed the defendant that he was not going to write a ticket but needed to run a check for outstanding warrants before letting him go. *Id.* The officer ran a "records check" on the vehicle, the defendant and a passenger, all of which returned "clean." *Id.* at 783. The officer then issued a warning ticket. *Id.* at 785.

Instead of allowing the defendant to leave, however, the officer requested an ex-felon registration check and learned that the defendant had a prior felony arrest record. *Evans* at 783. After learning of the felony convictions, the officer walked a drug dog around the vehicle and discovered contraband. *Evans* at 785. The district court granted a motion to suppress, and the Government appealed the ruling.

The Ninth Circuit affirmed. Applying *Rodriguez* the Ninth Circuit held that "by conducting an ex-felon registration check and a dog sniff, both of which were unrelated to the traffic violation," the officer violated the Fourth Amendment, "unless there was independent reasonable suspicion justifying each prolongation." *Evans* at 787. The Ninth Circuit remanded the case to the district court to determine whether the officer had reasonable suspicion that could justify the "dual delay" imposed by the ex-felon registration check and the dog sniff. *Evans* at 789.

In this case, the trooper finished filling out Petitioner's warning card, returned his documents, then told him he was free to leave since the trooper determined Petitioner had a valid license, the rental car was not stolen. Also, although he impermissibly extended the traffic stop, the trooper learned the Petitioner had no prior criminal history and no history of drug offenses from the extensive, non-routine criminal background check. The stop had lasted thirteen minutes at that point when the Trooper told Petitioner he was completely free to leave, but the Trooper was keeping his rental car. The Trooper decided he was keeping the vehicle *before* the drug dog had even arrived on scene. All objectively reasonable facts went in Petitioner's favor. There was no reasonable suspicion to hold Petitioner another 13 minutes while the Trooper waited for a drug dog and to conduct a search using the drug dog. Trooper Fetterhoff made up his mind and held the vehicle long before the dog arrived.

The standard applied, that of reasonable suspicion, requires an officer to have "'a particularized and objective basis for suspecting the particular person stopped' of breaking the law." *Heien v. North Carolina*, 574 U.S. 54, 60, 135 S. Ct. 530 (2014) (quoting *Navarette v. California*, 572 U.S. 393 (2013)).

Without independent reasonable suspicion, the officer may only engage in tasks related to the traffic stop such as "checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the

automobile's registration and proof of insurance." *Rodriguez v. United States*, 575 U.S. 348, 349, 135 S. Ct. 1609 (2015).

Prior to even stopping the vehicle for speeding a minor amount over the posted speed limit, the Trooper had decided the driver was engaged in drug trafficking. A reasonable person would not believe that a minivan traveling six miles over the speed limit during the mid-morning hours on an interstate is involved in drug trafficking making the trooper's search unreasonable under the Fourth Amendment.

CIRCUITS ARE SPLIT ON WHETHER USE OF A RENTAL CAR CREATES REASONABLE SUSPICION TO SEARCH A VEHICLE DURING A ROUTINE TRAFFIC STOP

Several other Courts of Appeal have ruled on the question and reached conflicting decisions resulting in a nationwide Circuit split requiring this Court to step in to resolve the split.

FIRST CIRCUIT

The First Circuit has taken a different route and found that the rental car and state of cleanliness of vehicle was relevant to the reasonable suspicion determination. In *United States v. Ramdihall*, an Ohio State Highway Patrol Trooper pulled over Ramdihall for speeding 20 miles an hour over the posted speed limit. *United States v. Ramdihall*, 859 F.3d 80, 89 (1st Cir. 2017). The defendant did not challenge the reason for the stop, but rather the

search that came later. When the trooper asked to see Ramdihall's license and registration, Ramdihall opened the center console and then shut it "very quickly," during which time the trooper saw "a plastic baggie" inside. Ramdihall told him that the bag contained tobacco. The trooper learned that the car was a rental that had been leased by an absent third party. Ramdihall was listed on the rental agreement as an alternate driver. Martin also learned that Ramdihall and Hillaire were driving to Columbus from New York. Martin observed that there was no visible luggage and that the car had "a very clean compartment for people on the road for an extensive period of time." *Ramdihall*, 859 F.3d at 89.

Although the district court did not use the clean compartment and lack of luggage as a ground for denying the motion to suppress, it did rely on it as part of its finding the defendant's explanation as "thin or dubious". *Id.* at 93. The district did rely on the car being a rental as a grounds for reasonable suspicion and the First Circuit agreed. *Id.* at 93.

THIRD CIRCUIT

In *United States v. Hurtt*, 31 F.4th 152 (3d Cir. 2022), while officer one conducted the on-mission field sobriety test, officer two entered the truck and kneeled on the front seat, and then officer one stopped the sobriety test to ensure officer two's safety. Because officer two created a safety concern by going off-mission, officers could not rely on that concern to justify detouring from original purpose of the stop. Because this off-mission conduct was

without reasonable suspicion and extended the traffic stop, the court held it was unlawful and the subsequent search violated defendant's Fourth Amendment rights. -Whether or not officer one's off-mission activity caused only *de minimis* delay of the stop was irrelevant to the court's holding that pausing the sobriety inquiry to ensure officer two's safety after he climbed into the truck violated defendant's Fourth Amendment rights. *United States v. Hurtt*, 31 F.4th 152, 155 (3d Cir. 2022).

The Third Circuit noted “fast food wrappers" have become ubiquitous in modern interstate travel and do not serve to separate the suspicious from the innocent traveler.

> But the Fourth Amendment does not allow random searches of persons travelling the nation's highways. The factors the district court listed, like those to which the police testified, are simply too ordinary--too much like the factors in *Reid* . [*Reid v. Georgia*, 448 U.S. 438 (1980) (per curiam)] and not enough like those in *Sokolow.* [*United States v. Sokolow*, 490 U.S. 1, 9, 104 L. Ed. 2d 1, 109 S. Ct. 1581 (1989)]. As we noted above, reasonable suspicion cannot include "circumstances [which] describe a very large category of presumably innocent travelers, who would [then] be subject to virtually random seizures." *Reid*, 448 U.S. at 441.

Karnes v. Skrutski, 62 F.3d 485, 495-6 (3d Cir. 1995).

FOURTH CIRCUIT

In *United States v. Williams*, an officer stopped a couple in North Carolina en route to Charlotte on day three of a three-day car rental that originated and ended in New Jersey—over 600 miles away. *United States v. Williams*, 808 F.3d 238 (4th Cir. 2015). When asked about their travel plans, the couple stated they planned to renew the rental car upon arriving in Charlotte. *Id.* at 242-43. The district court held that the short-duration, long-distance trip in a rental car coupled with the defendants' travel through a "known drug corridor," and the driver's dual residency in New York and New Jersey provided reasonable suspicion for a dog sniff. *Id.* at 243.

The Fourth Circuit reversed holding the district court's four factors, including (1) appellant was traveling in a rental car, (2) appellant was traveling on a known drug corridor at 12:37 a.m., (3) appellant's stated travel plans were inconsistent with, and would likely exceed, the due date for return of the rental car, and (4) appellant was unable to provide a permanent home address in New York even though he claimed to live there at least part-time and had a New York driver's license, failed to eliminate a substantial portion of innocent travelers and thus failed to establish reasonable suspicion under the Fourth Amendment.

United States v. Williams, 808 F.3d 238, 240 (4th Cir. 2015).

FIFTH CIRCUIT

In *United States v. Jenson*, 462 F.3d 399 (5th Cir. 2006), the court asked whether the officer's actions after the license check came back clean were reasonably related to the circumstances justifying the stop for speeding. _The court held that (1) the inconsistent answers could not be considered because they were given after the purpose of the stop was completed; (2) although it took defendant 30 to 60 seconds to pull over, such did not amount to reasonable suspicion so as to justify the prolonged detention, as such delay could be attributed to a driver trying to identify whether he was being pulled over. The court here noted that the government did not present adequate evidence of a nexus between Jenson's allegedly suspicious behavior and any criminal activity. The officer also testified at the district court suppression hearing that, while pulling over the car, he thought the passengers were acting suspicious. The Fifth Circuit held this did not amount to "articulable suspicion that a person has or is about to commit a crime" as opposed to a mere hunch. *Jenson*, 426 F.3d at 405 (quoting *Florida v. Royer*, 460 U.S. 491, 498. 103 S. Ct. 1319 (1983)).

In *United States v. Macias*, 658 F.3d 509 (5th Cir. 2011), the Fifth Circuit Court of Appeals reversed and vacated the judgment of conviction after finding the highway trooper unconstitutionally prolonged the defendant's detention for a traffic violation of

failing to wear a seatbelt by asking irrelevant and unrelated questions without reasonable suspicion of criminal activity. The court rejected the government's claim that the officer had reasonable suspicion to prolong the detention based on Macias's "extreme signs of nervousness" that were manifested through his avoidance of eye contact and failure to place his truck in park. *Id.* at 519. The court suppressed all evidence of the subsequent search that turned up a firearm. *United States v. Macias*, 658 F.3d 509, 512 (5th Cir. 2011).

SEVENTH CIRCUIT

In *United States v. Rodriguez-Escalera*, 884 F.3d 661 (7th Cir. 2018), the officer testified to the factors that triggered his suspicion: 1) when he first approached the defendant's front passenger window, he smelled a "very pungent" scent of air fresheners and noticed "several" air vent clip-in air fresheners which he had been trained to associate with narcotics traffickers, 2) the couple's origin city was Los Angeles which, he explained is known as a major distribution center for narcotics trafficking, 3) the co-defendant did not initially look up at him but was distracted by a video game on his phone, 4) the co-defendant seemed nervous when he asked her questions in his squad car, 5) their conflicting travel plans made him think they were not making "just an ordinary trip." *Id.* at 666.

The Seventh Circuit agreed with the district court's conclusion that the officer's stated reasons did not

provide reasonable suspicion sufficient to prolong the detention in that case.

EIGHTH CIRCUIT

In *United States v. Beck*, after observing a driver following another too closely, the officer approached the automobile's passenger side and asked the defendant Beck, for his license and rental car agreement. It was not explained how the officer knew it was a rental car during the suppression hearing. *United States v. Beck*, 140 F.3d 1129 (8th Cir. 1998)

The officer explained to Beck the reason for his being stopped. While talking to Beck, the officer observed that Beck appeared nervous since his hands were shaking and he was looking around. He also saw fast food trash on the front passenger floorboard and briefcase in the backseat. It did not appear the driver was under the influence of any illegal substance.

The officer ran a check on Beck's driver's license and criminal history. These inquiries revealed that Beck's driver's license was valid, and that he had no criminal history. The officer told the defendant he was free to leave, then turned back and asked if there were any guns or drugs in the car. The driver responded "no" and the officer decided to search anyway.

The government argued reasonable suspicion for Beck's renewed detention arose from the following

seven circumstances: (1) Beck was driving a rental car which had been rented by an absent third party; (2) the Buick was licensed in California; (3) there was fast food trash on the passenger side floorboard; (4) no visible luggage in the passenger compartment of the automobile; (5) Beck's nervous demeanor; (6) Beck's trip from a drug source state to a drug demand state; and (7) the officer's disbelief of Beck's explanation for the trip.

"We need not tarry long with the government's first factor. We hold that there was nothing inherently suspicious in Beck's use of a rental vehicle, even though rented by a third person, to travel. *See Wood*, 106 F.3d at 947 (finding that the defendant's use of a rental car was not inherently suspicious)." *United States v. Beck*, 140 F.3d 1129, 1137 (8th Cir. 1998)

TENTH CIRCUIT

"[T]he mere presence of fast-food wrappers in the Buick is entirely consistent with innocent travel[.]"); *United States v. Wood*, 106 F.3d 942, 947 (10th Cir. 1997) (holding that the suspicion associated with the possession of fast food trash "is virtually nonexistent"). Some items motorists might possess must be "outrightly dismissed as so innocent or susceptible to varying interpretations as to be innocuous," *Wood*, 106 F.3d at 946, *United States v. Bradford*, 423 F.3d 1149, 1157 (10th Cir. 2005).

Further, rental car contracts can be easily extended or modified. *United States v. Santos*, 403 F.3d 1120,

1129 (10th Cir. 2005). *Santos* held that "[c]ommon experience suggests that it is not unusual for a driver to rent a car for a certain period, and then to extend the rental without incurring a penalty or paying a higher rate."

Similarly, in *United States v. Lopez*, an officer stopped a pair of women near Wichita, Kansas who were en route to "Kansas City or Nebraska" from California. *United States v. Lopez*, 849 F.3d 921, 923-24 (10th Cir. 1997).. The women had only a day left on their two-day car rental that originated and ended in El Monte, California, 1,500 miles away. *Id.* at 924. The district court held that the defendants' uncertainty about their destination, quick roundtrip route, and apprehension when the officer glanced at their backseat provided reasonable suspicion for a dog sniff. *Id.* at 924-25.

The Tenth Circuit reversed by rejecting reliance on short-duration, long-distance car rentals without more holding that "we have generally been reluctant to give weight in the reasonable-suspicion analysis to unusual travel purposes, at least absent lies, inconsistencies, or the like." *Id.* at 927.

ELEVENTH CIRCUIT

In *United States v. Boyce*, an officer in Georgia pulled over a driver for driving ten miles per hour under the speed limit and weaving on the highway. *United States v. Boyce,* 351 F.3d 1102, 1104 (11th Cir. 2003). The driver's rental car contract stated that the rental contract originated in New Jersey

and the driver indicated that he planned to drive to Fort Lauderdale to visit an ex-girlfriend before returning to New Jersey, over 1,000 miles away, the following Wednesday. *Id.* The driver's stated travel plans were inconsistent with the rental car contract; he planned to return the car two days late. Id. The district court found that the driver's route through a known drug corridor, short duration long-distance journey, and inconsistent rental car contract created reasonable suspicion. *Id.* at 1107-09. The Eleventh Circuit reversed, holding that those facts would apply to "a considerable number of those traveling for perfectly legitimate purposes" and thus could not provide reasonable suspicion. *Id.* at 1109.

The Eleventh Circuit reaffirmed *Boyce* by concluding that driving rental car on known drug corridor and planning to return car two days late was insufficient for reasonable suspicion. *United States v. Hernandez*, 418 F.3d 1206, 1211 (11th Cir. 2005) (cert. denied 549 U.S. 889) citing *United States v. Boyce*, 351 F.3d 1102 (11th Cir. 2003).

CONCLUSION

On nearly identical facts, the Third, Fourth, Fifth, Seventh, Eighth, Tenth, and Eleventh Circuits have all held that car rental contracts indicating short-duration, long-distance travel were not sufficiently probative of drug couriering to justify prolonging a traffic stop. However, the First held it is indicative of drug trafficking. The Ninth Circuit, in *Evans*, reached an opposite holding to the one issued in this case.

"Because the question is close, we conclude the court did not commit clear error." *United States v. Jenson*, 462 F.3d 399, 407 (5th Cir. 2006). "And though the question may be close, Ramdihall does not offer a persuasive account of why, in combination, the facts available in the record render such a conclusion mistaken." *United States v. Ramdihall*, 859 F.3d 80, 92 (1st Cir. 2017). As with the district court in this case, other courts have found the issue to be a close call. *Jenson* and *Ramdihall* reached opposite decisions on the same issue. The issue of rental cars creating reasonable suspicion requires guidance from this Court.

The district court in this case erred by placing outsized emphasis on the rental contract in its reasonable suspicion analysis. The district court found that the rental contract was "[f]ar and away, the most significant factor." In particular, the district court held that the five-day rental car contract showed a short trip that was "consistent" with drug couriering. The district court determined that "other facts available to [Trooper Fetterhoff] . . . would likely not give rise to reasonable suspicion without the rental contract."

Using the rental contract as the crux of the decision allows cars to be stopped and searched simply because they are rental cars in conflict with the Fourth Amendment. The Ninth Circuit continued the conflict by affirming the denial of the motion to suppress.

Given the number of travelers on the nation's highway and interstates who travel by rental car, this is an important matter that has created a Circuit split requiring this Court's determination on whether the use of a rental car is sufficient for reasonable suspicion.

WHEREFORE, Petitioner respectfully requests this Court grant a petition for certiorari.

Respectfully submitted,

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APPENDIX

APPENDIX A

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT – No. 21-30077
12381291

[DATE STAMP]
FILED
FEBUARY 28, 2022
Molly C. Dwyer, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff and Appellee,

v.

NICHOLAS JAMES IMHOFF,

Defendant-Appellant.

Nos. 21-30077 D.C.
Nos. 1:20-cr-00024-DLC-1
1:20-cr-00024-DLC

MEMORANDUM*

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Appeals from the United States District Court
for the District of Montana,
Dana L. Christensen, District Judge, Presiding

Argued and Submitted February 15, 2022
San Francisco, California

Before: GOULD and RAWLINSON, Circuit Judges, and ADELMAN,** District Judge

Nicholas James Imhoff (Imhoff) appeals his conviction for possession of fifty grams or more of methamphetamine with intent to distribute. Imhoff contends that the district Court erred in denying his motion to suppress methamphetamine discovered in his rental vehicle after a canine sniff conducted during a traffic stop in Montana. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm the district court's denial of Imhoff's motion to suppress.

During the suppression hearing, the trooper testified that Imhoff provided a rental contract indicating that the vehicle was rented in Las Vegas, Nevada, two days prior to the traffic stop, for a five-day period. Imhoff informed the trooper that he was traveling to the oil fields in North Dakota for work, which the trooper found inconsistent with the five-day rental agreement.

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* * The Honorable Lynn S. Adelman, United States District Judge for the Eastern District of Wisconsin, sitting by designation.

Imhoff informed the trooper that he was traveling to the oil fields in North Dakota for work, which the trooper found inconsistent with the five-day rental agreement. The trooper also observed that the vehicle contained "a trash bag," "a small day pack," "cigarettes, coffee drinks, [and] fast-food wrappers," but "no visible luggage." These observations generated a reasonable suspicion that Imhoff was engaged in narcotics trafficking rather than traveling for work.

The trooper further testified that, due to indications of "possible criminal drug activity," he asked dispatch for a criminal history check "while [he was] filling out the [traffic] warning card," and "[a]t no point did any detention last longer than it took to fill out the warning card." The trooper also related that Imhoff "could never specifically say where he was going," and Imhoff "changed his story three different times" concerning his residence in North Dakota.

Based on the totality of circumstances, the trooper had reasonable suspicion to further investigate Imhoff's potential involvement in drug trafficking and did not impermissibly prolong the traffic stop. See *United States v. Raygoza-Garcia*, 902 F.3d 994, 1000 (9th Cir. 2018) (explaining that "we must look at the totality of the circumstances," and that reasonable suspicion "is not a particularly high threshold to reach") (citations and internal quotation marks omitted). The trooper requested a criminal history check and posed questions to Imhoff about his destination and background based on his

suspicions that Imhoff was engaged in narcotics trafficking due to the items in the van, and discrepancies between the work schedules in the North Dakota oil fields and the rental agreement, viewed in light of the trooper's extensive experience and training in drug interdiction. See *United States v. Gorman*, 859 F.3d 706, 715 (9th Cir. 2017) (articulating that "[t]he Supreme Court has indicated that within the time reasonably required to complete the stop's mission, the Fourth Amendment may tolerate investigations that are unrelated to the purpose of the stop and that fall outside the scope of that mission")(citation and internal quotation marks omitted) (emphasis in the original); *see also Raygoza-Garcia*, 902 F.3d at 999 (recognizing the deference given to "inferences drawn by . . . officers on the scene"); *United States v. Arvizu*, 534 U.S. 266, 273 (2002) ("allow[ing] officers to draw on their own experience and specialized training").

The district court properly concluded that, under the totality of circumstances, the trooper had independent reasonable suspicion to conduct a canine sniff of the vehicle based on the discrepancies observed by the trooper indicating that Imhoff "was making a quick drug run," including Imhoff's inconsistent statements concerning his residence, and his inability to provide a specific address or zip code in North Dakota. *See United States v. Valdes-Vega*, 738 F.3d 1074, 1078-79 (9th Cir. 2013) (en banc) (stating that "[a] determination that reasonable suspicion exists need not rule out the

possibility of innocent conduct") (citation and alterations omitted).

Relying on *United States v. Evans*, 786 F.3d 779 (9th Cir. 2015), Imhoff maintains that remand to the district court is warranted for the district court to more fully address the reasonable suspicion supporting the trooper's questions and records check. However, after conducting an extensive hearing on Imhoff's motion to suppress, the district court sufficiently developed "the findings of historical fact and the inferences drawn from those facts critical to resolving the parties' dispute concerning reasonable suspicion." *Id.* at 788 (internal quotation marks omitted). No remand is required. *See Id.* at 789.

AFFIRMED.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

UNITED STATES OF AMERICA, Plaintiff,

vs.

NICHOLAS JAMES IMHOFF, Defendant.

CR 20-24-BLG-DLC

ORDER

Before the Court is Defendant Nicholas James Imhoff's Supplemental Motion to Suppress. (Doc. 41.) The Court previously denied Imhoff's first motion to suppress (Doc. 38) following an evidentiary hearing, but it granted Imhoff leave to file a supplemental motion provided that the motion raised novel and relevant issues (39). Assuming that the supplemental motion meets these criteria, the Court nonetheless denies the motion. Imhoff's constitutional rights were not violated when Trooper Erick Fetterhoff extended a traffic stop to conduct a dog sniff of Imhoff's rental vehicle.

To avoid unnecessarily duplicating efforts, the Court incorporates the factual findings, legal standards, and analysis set forth in its Order of July 9, 2020. (Doc. 41.) Now, as then, the Court finds that

Trooper Fetterhoff "ha[d] a 'particularized and objective basis' for suspecting legal wrongdoing" such that Imhoff's continued detention did not violate his constitutional rights. *United States v. Arvizu*, 534 U.S. 266, 273 (2002) (quoting *United States v. Cortez*, 449 U.S. 411, 417–418 (1981)).

Imhoff submits, and the Court considers, three additional pieces of evidence: (1) Trooper Fetterhoff's police report, which the parties failed to provide prior to the hearing (Doc. 41-1); (2) the Montana Highway Patrol's policy regarding video and audio recordings; and (3) the Montana Highway Patrol's general code of conduct. These documents do not alter the analysis set forth in the order denying Imhoff's first suppression motion.

I. Trooper Fetterhoff's Police Report

Imhoff argues that the police report describing the incident proves that Trooper Fetterhoff did not extend the stop on the basis of the five-day, round-trip rental contract, which the Court previously described as "[f]ar and away, the most significant factor" in its reasonable suspicion determination. (Doc. 28 at 10.) The Court disagrees for two reasons.

First, the report demonstrates that Trooper Fetterhoff did, in fact, rely on the rental contract. He wrote:

> I was provided a rental contract for the vehicle. The vehicle was a 5 day rental from Las Vegas, from which Imhoff stated he was

> coming . . . . Imhoff stated he was 'going back to work in North Dakota, working in the oilfield.' From my experience, previous traffic stops of oilfield workers, and knowledge of the oilfield, a five day rental is not consistent with normal shift operation in the oilfield.

(Doc. 41-1 at 2.) Although Fetterhoff did not explicitly mention that the vehicle was due back in Las Vegas at the end of the rental term, he certainly suggested as much, as Fetterhoff noted the inconsistency between the contract and Imhoff's stated intention to stay in North Dakota for work. The Court therefore rejects Imhoff's contention that "the rental contract return date factor was created by counsel for the Government in the briefing." (Doc. 41 at 3.)

Second, the reasonable suspicion test is not overly concerned with Trooper Fetterhoff's subjective thought process. "The principal components of a determination of reasonable suspicion . . . will be the events which occurred leading up to the stop . . . , and then the decision whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to reasonable suspicion . . . ." *Ornelas v. United States*, 517 U.S. 690, 696 (1996). Here, the five-day, round-trip rental contract is a "historical fact[]," which, coupled with the other facts known to Fetterhoff at the time of the stop, would suggest to an "objectively reasonable police officer" that the driver of the vehicle was acting as a courier. *Id.*

II. Video/Audio Recording Policy

Imhoff next argues that Trooper Fetterhoff was not in compliance with the Montana Highway Patrol's video/audio recording policy because his interior camera was not functional. Although the Court agrees that police officers should record their official interactions with members of the public, the policy does not affect its reasonable suspicion determination. The Court did not rely on Fetterhoff's credibility or Imhoff's appearance in its prior order. Thus, even assuming that Fetterhoff was out of compliance with the policy, noncompliance would not translate to a finding that the stop was extended in violation of Imhoff's Fourth Amendment rights.

III. Code of Conduct

Finally, Imhoff argues that Trooper Fetterhoff violated the Montana Highway Patrol's code of conduct by failing to keep his interior camera "serviceable." (Doc. 41 at 5 (quoting Doc. 41-3 at 5). Again, even assuming that Fetterhoff violated policy, any such violation would not bear on the sole relevant question of whether reasonable suspicion supported Imhoff's extended detention.

Having considered the argument and evidence supporting Imhoff's supplemental motion to suppress, the Court finds again that no Fourth Amendment violation occurred.

Accordingly, IT IS ORDERED that the Defendant's Supplemental Motion to Suppress (Doc. 41) is DENIED.

DATED this 29th day of July, 2020.

Dana L. Christensen, District Judge
United States District Court

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

vs.

NICHOLAS JAMES IMHOFF,
Defendant.

CR20-24-BLG-DLC

ORDER

Before the Court is Defendant Nicholas James Imhoff's Motion to Suppress. (Doc. 24.) Imhoff contends that his constitutional rights were violated when Montana Highway Patrol Trooper Erick Fetterhoff extended a traffic stop for the purpose of conducting a dog sniff. Following the sniff, Fetterhoff applied for and received a search warrant, the execution of which yielded 78 pounds of methamphetamine. Imhoff asks the Court to suppress the fruits of the search on the grounds that the warrant application depended upon a dog sniff conducted in violation of Imhoff's Fourth Amendment right to freedom from unreasonable seizures.

The Court held a hearing on the motion on June 22,2020, after which it ordered the issuance of a subpoena for more evidence and allowed Imhoff to supplement his argument for suppression. (Doc. 36.) Imhoff did not file a notice of intent to supplement, and the matter has been fully briefed and submitted. Although this is a fairly close case, the Court now denies the motion, finding that Trooper Fetterhoff "ha[d] a 'particularized and objective basis' for suspecting legal wrongdoing" such that Imhoff's continued detention did not violate his constitutional rights. *United States v. Arvizu*, 534 U.S. 266, 273 (2002) (quoting *United States v. Cortez*, 449 U.S. 411, 417-A18 (1981)).

Background[1]

Trooper Erick Fetterhoff is a member of the Montana Highway Patrol's drug interdiction team, which has as its mission finding individuals involved in drug distribution. Fetterhoff has been a police officer for 16 years, during which time he has received hundreds of hours of drug interdiction training. He, along with other members of the team, monitors 1-90 and 1-94, which run east to west through Montana. These interstates are far and away the fastest routes through a vast state. and they are heavily used by long-haul truck drivers, tourists, Montanans, and drug traffickers. It is, of

[1] The Court's recitation of the facts derives from the testimony at the suppression hearing and the Court's own review of the audio- and video recordings of the traffic stop.

course, the lattermost category with which Fetterhoff and his colleagues are concerned.

On February 11, 2020, Trooper Fetterhoff's interest was piqued by a white minivan heading east across 1-90 at 86 miles per hour, six miles over the speed limit. Especially suspicious, he thought, were the back windows of the van, which were vented despite near-freezing temperatures; Fetterhoff surmised that the driver of the vehicle may be attempting to air out a load of marijuana. Fetterhoff, who had been traveling west, turned around and caught up to the Dodge Grand Caravan. Whistling to himself, Fetterhoff followed the vehicle for several miles-- presumably to allow the driver an opportunity to make a graver driving error-- before flipping on his lights and siren to effect a traffic stop.

Driving the white minivan was Defendant Nicholas James Imhoff, a Floridian with years of experience working in North Dakota's Bakken oil fields. Imhoff had rented the minivan in Las Vegas on February 9th, and the vehicle was due back in Vegas on the 14th. The interior of the minivan bore evidence of a hard-driving, solitary road trip—the floor was littered with cigarettes, empty coffee and energy drink containers, and junk food wrappers. When Imhoff pulled over. Fetterhoff saw a day pack on the front passenger seat and a trash bag in the third row but no other luggage. Because he did not detect an odor from the vehicle. Trooper Fetterhoff no longer believed that the van was carrying marijuana. But Fetterhoff continued to think that Imhoff was involved in drug trafficking. Noticing that the

vehicle was rented, Fetterhoff asked Imhoff for the vehicle's rental contract, which showed that Imhoff was on day two of a five-day round-trip rental out of Las Vegas. If the white minivan with vented windows had piqued Fetterhoff's interest, he found the rental contract and appearance of the vehicle to reinforce his instincts.

Trooper Fetterhoff brought Imhoff back to his patrol car with him, which according to his testimony, is consistent with his regular practice. As he checked the validity of Imhoff's license, Fetterhoff asked a series of questions regarding Imhoff's travel plans and history. Imhoff explained that he was returning to the Bakken for work after a quick trip to Caesar's Palace with a friend. Imhoff initially said that he had few personal items with him because he had a house in North Dakota, but he later stated that he had only a room in a friend's house. Fetterhoff found this inconsistency was not only suspicious but deceitful. Further, Imhoff either could not or refused to provide his friend's name or an address er even a valid zip code—of the place he'd be living.

Trooper Fetterhoff recognized that Imhoff had not been speeding by any significant measure, and he told Imhoff that he would not be ticketed but would only receive a warning. In Fetterhoff's eyes, Imhoff did not sufficiently demonstrate the appropriate reaction of relief. Rather, Imhoff remained nervous so nervous, according to Fetterhoff, that his heart could be seen beating through his camouflage shirt as the officer asked further questions about Imhoff's plans in North Dakota.

After giving Imhoff a written warning, Trooper Fetterhoff recognized that the traffic stop itself was complete. However, he believed that he now had sufficiently compelling reasons to, as he put it, "deploy his K9 partner," Shakie. At this time, Fetterhoff Mirandized Imhoff and informed him that he was free to leave (just not in the rental van). Another officer. Trooper John Metcalfe, had already arrived on the scene, and Metcalfe and Imhoff sat together in Metcalfe's vehicle while Fetterhoff and Shakie circled the van, approximately 25 minutes into the traffic stop. Like his colleague, Metcalfe testified that Imhoff was visibly nervous and that his heartbeat was visible through his shirt.

Shakie is trained to detect the odors of marijuana, methamphetamine, cocaine, and heroin, and he displayed behavior that signaled to Fetterhoff that he had, in fact, detected one of these substances. Twenty-six minutes after he was pulled over, Imhoff was asked whether he would like to wait in police custody while Fetterhoff applied for a warrant to search the vehicle. He declined. Trooper Metcalfe brought Imhoff into a nearby truck stop just off the interstate in Columbus, Montana. As he dropped Imhoff off, Metcalfe thanked him for his patience and calm.

While Imhoff waited in Columbus, Fetterhoff applied for and received a search warrant. Inside the vehicle, vacuum sealed, wrapped in garbage bags, and secreted under the stowable second-row seats, was approximately 78 pounds of methamphetamine.

DISCUSSION

"A routine traffic stop ... is a relatively brief encounter and 'is more analogous to a so-called "*Terry* stop" than to a formal arrest. *Knowles v. Iowa*, 999 525 U.S. 113, 117 (1998) {quoting *Berkemer v, McCarty*, 468 U.S. 420, 439 (1984) (ellipses removed)). But "[t]he scope of the detention must be carefully tailored to its underlying justification." *Florida v. Royer*, 460 U.S. 491, 500 (1983). Thus, [a] seizure that is lawful at its inception can violate the Fourth Amendment if its manner of execution unreasonably infringes interests protected by the Constitution." *Illinois v. Caballes*, 543 U.S. 405, 407 (2005).

If there had been a question regarding whether a dog sniff falls within the scope of a traffic stop as a matter of law, it was definitively resolved in *Rodriguez*. [T]he Fourth Amendment tolerate[s] certain unrelated investigations that [do] not lengthen the roadside detention," but "[a] dog sniff… is not an ordinary incident of a traffic stop," and it "is not fairly characterized as part of the officer's traffic mission. *Rodriguez*, 575 U.S. at 354, 356. Where an investigation is no longer part of the stop's 'mission. 999 *United States v. Landeros*, 913 F.3d 862, 868 (9th Cir. 2019), the stop may not be prolonged without "a particularized and objective basis for suspecting the particular person stopped of criminal activity," *Cortez*, 449 U.S. at 417-18.

Here, Imhoff does not dispute the legitimacy of the initial stop but only the dog sniff. "[T]he tolerable duration of police inquiries in the traffic-stop context is cabined by that context; officers may, without further grounds for suspicion, only address the traffic violation that warranted the stop[ ] and attend to related safety concerns." *Rodriguez*, 575 U.S. at 354. "Authority for the seizure thus ends when tasks tied to the traffic infraction are—or reasonably should have been completed." *Id.* While an officer "may conduct certain unrelated checks during an otherwise lawful traffic stop ... he may not do so in a way that prolongs the stop. absent the reasonable suspicion ordinarily demanded to justify detaining an individual. *Id.* at 355. The question the Court must answer is whether the extension of the traffic stop was justified under the circumstances known to Trooper Fetterhoff at the time.

The standard applied, that of reasonable suspicion, requires an officer to have "'a particularized and objective basis for suspecting the particular person stopped' of breaking the law." *Heien v. North Carolina*, 574 U.S. 54, 60 (2014) (quoting *Prado Navarette v. California*, 572 U.S. 393, 396 (2013)). It "is not a particularly high threshold to reach," *United States v. Valdes-Vega*, 738 F.3d 1074, 1078 (9th Cir. 2013), but rather a "commonsense, nontechnical conception[] that deal[s] with 'the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act. *Ornelas v. United States, 517 U.S. 690, 695 (1996)* (quoting *Illinois v. Gates*, 462 U.S. 213, 231 (1983)). The test is one of the "totality of the

circumstances," and, while an officer may not rely on a "mere hunch," she may "draw on [her] own experience and specialized training to make inferences from and deductions about the cumulative information available . . . that 'might well elude an untrained person. *Arvizu*, 534 U.S. at 273 74 (quoting *Cortez*, 449 U.S. at 418).

"A determination that reasonable suspicion exists . .. need not rule out the possibility of innocent conduct. *Arvizu*, 534 U.S. at 111-, *see also United States v. Evans*, 786 F.3d 779, 788 (9th Cir. 2015). Even where all considerations are susceptible of innocent explanation," they may nonetheless add up to reasonable suspicion. *Arvizu*, 534 U.S. at 111. However, those potentially innocent facts must, taken together, point to the specific individual's involvement in a specific criminal activity. See *United States v. Montero-Camargo*, 208 F.3d 1122, 1129 (9th Cir. 2000) (en banc) ("[Reasonable suspicion] exists when an officer is aware of specific, articulable facts which, when considered with objective and reasonable inferences, form a basis for particularized suspicion.").

At the suppression hearing, Trooper Fetterhoff articulated several facts which, taken together, led him to believe that Imhoff was transporting drugs: (1) the rented minivan; (2) the vented back windows; (3) Imhoff s route from a high-supply area, Las Vegas, to a high-demand area, the Bakken; (4) cigarettes and food packaging littering the front seat; (5) the lack of luggage; (6) Imhoff s inability to give an address in North Dakota; (7) the 5-day,

round-trip rental contract; and (8) Imhoff s visible nervousness.

The Court finds that some of these facts cannot contribute to particularized suspicion. First, Trooper Fetterhoff testified that he detected no odor from the van and that his initial suspicion regarding the vented windows was therefore immediately dispelled. Absent any explanation of why vented windows are consistent with trafficking non-odorous drugs, the Court cannot see why this fact matters. Rather, the vented windows were consistent with Imhoff smoking cigarettes in the rental van, which may not be innocent in the eyes of the rental company but is nonetheless not illegal.[2]

Second, while the Court believes that Troopers Fetterhoff and Metcalfe perceived Imhoff as nervous nr, at minimum, honestly believed after the fact that he appeared nervous at the time of the stop—it is not convinced that Imhoff s demeanor would suggest to the reasonable, well-trained officer that he was

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[2] Imhoff also argues that this fact is irrelevant because it does not appear in Trooper Fetterhoff's report. Setting aside the fact that neither party has filed the police report even after the Court asked about it repeatedly during the hearing, particularized suspicion is an objective standard, and the Court is therefore unconcerned with what facts Fetterhoff subjectively relied upon in effecting and prolonging the stop. See, e.g., *Ornelas*, 517 U.S. at 696 ("The principal components of a determination of. . . probable cause will be the events which occurred leading up to the stop . . ., and then the decision whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to reasonable suspicion . . .").

dealing drugs. Having viewed and listened to the recordings available, the Court has seen nothing to confirm the officers' perceptions of Imhoff s nervousness. Although nervous, evasive behavior is a pertinent factor in determining reasonable suspicion," the Court is unconvinced that Imhoff actually displayed such behavior. *Illinois V. Wardlaw*, 528 U.S. 119, 124 (2000). What is more, any number of innocent people would be intimidated (or frightened) if asked to sit in a police vehicle.

However, the remaining facts would lead "an objectively reasonable police officer" to think that Imhoff was involved in drug trafficking at the time of the stop. *Ornelas*, 517 U.S. at 696. Far and away, the most significant factor is the 5- day, round-trip rental contract. Trooper Fetterhoff s request to view the contract was one of the "ordinary inquiries incident to the traffic stop." *Rodriguez*, 575 U.S. at 355 (quoting *Caballes*, 543 U.S. at 408) (brackets omitted). When he saw that Imhoff was on day two of a five-day rental, and still heading away from Las Vegas, Fetterhoff knew that Imhoff would be making a quick turnaround when he reached his destination—behavior consistent, as he testified at the hearing, with drug couriering.

Trooper Fetterhoff reasonably viewed the other facts available to him as increasing the likelihood that Imhoff was transporting drugs, even though the same facts would likely not give rise to reasonable suspicion without the rental contract. The small day pack, lack of luggage, and littered floor were evidence of hard driving, raising the probability that

Imhoff was making a quick drug run. Further supporting Fetterhoff's suspicion was Imhoff's failure to give any information about his purported residence in North Dakota; he either was unable or refused to give more than two digits of the zip code. What is more, while Fetterhoff initially stated he had a house, he later changed his story, saying that in fact he had a friend with whom he could stay. *See United States v. Malik*, __F.3d,__, No. 19-10166, 2020 WL 3636354 (9th Cir. 2020) (per curium) (explaining that officers may disregard or disbelieve a statement when the speaker's claims are inconsistent) (citing of *Columbia v. Wesby*, 138 S. Ct. 577, 592 (2018)). And Fetterhoff logically determined that, whatever Fetterhoff s housing situation might be in North Dakota, it wasn't consistent with the round-trip rental contract. He also recognized that the contract could not be squared with Imhoff s assertion that he had taken a quick trip to Vegas from the Bakken; if so, the rental should have originated and ended in North Dakota.

Imhoff's location—moving east on 1-90—raises no eyebrows on its own, but it was reasonable for Fetterhoff to note that Imhoff s trajectory followed that of a typical drug dealer. Finally, Trooper Fetterhoff testified that drug traffickers often rent minivans because they blend in with traffic, but these rentals are more expensive and larger than necessary for individuals traveling alone and with few personal items. While the Court would not otherwise view a minivan as inherently suspicious, it also finds that Fetterhoff reasonably drew from his training and experience when he found that the type

of vehicle driven by Imhoff supported his determination of particularized suspicion. See *Arvizu*, 534 U.S. at 750 (explaining that the standard of reasonable suspicion "allows officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that might well elude an untrained person") (quotation omitted).

In this case, most of the facts known to Trooper Fetterhoff at the time of the dog sniff were not particularly damning. However, taken together they provided particularized suspicion authorizing a brief continuation of the seizure for purposes of conducting the dog sniff Thus, Imhoff s Fourth Amendment rights were not violated, and no evidence will be suppressed.

That said, the Court notes that it finds it somewhat concerning that a police officer would be confident—rather than merely reasonably suspicious—that an individual like Imhoff was violating anything other than the traffic code. Trooper Fetterhoff testified at the suppression hearing that he knew he was dealing with a drug distributer when he saw a white minivan traveling six miles over the speed limit with the back windows vented. He repeatedly testified to the immediacy and strength of his conviction that Imhoff was transporting drugs—when he initially saw the van, when he noticed that it was rented, and again when he noticed gas station detritus. These facts would be common to any number of drivers tackling the ten-hour stretch of 1-90 that runs

through Montana, and the Court hopes that highway patrol officers do not regularly assume that motorists are drug traffickers. If you have a hammer, the saying goes, everything looks like a nail. Nonetheless, an individual officer's state of mind is irrelevant to the objective inquiry demanded, and the Court's concern therefore does not factor into its analysis.

IT IS ORDERED that the motion to suppress (Doc. 24) is DENIED.

IT IS FURTHER ORDERED that this matter is reset for jury trial on July 27, 2020 at 9:00 a.m. in the James F. Battin Courthouse in Billings, Montana. The plea agreement deadline is July 16, 2020. The JERS deadline is July 20, 2020. Jury instructions and trial briefs are due on or before July 22, 2020.

DATED this 9th day of July, 2020.

Dana L. Christensen, District Judge
United States District Court

APPENDIX D

[DATE STAMP]
FILED
APR 7 2022
By_____
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

NICHOLAS JAMES IMHOFF,
Defendant-Appellant.

No. 21-30077
D.C. Nos.
1:20-cr-00024-DLC-1
1:20-cr-00024-DLC
District of Montana, Billings

ORDER

Before: GOULD and RAWLINSON, Circuit Judges, and ADELMAN,* District Judge.

* The Honorable Lynn S. Adelman, United States District Judge for the Eastern District of Wisconsin, sitting by designation.

The panel voted to deny the Petition for Panel Rehearing.

Judges Gould and Rawlinson voted to deny, and Judge Adelman recommended denying, the Petition for Rehearing En Banc.

The full court has been advised of the Petition for Rehearing En Banc, and no judge of the court has requested a vote.

Defendant-Appellant's Petition for Panel Rehearing and Rehearing En Banc, filed March 14, 2022, is DENIED.

APPENDIX E

United States Constitution

Fourth Amendment of
the Bill of Rights

[T]he 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.