

Case No. _____

SUPREME COURT OF THE UNITED STATES

Shaun Farrington,

Petitioner,

Vs.

The United States,

Respondent.

On Petition for a Writ of Certiorari to
the United States Courts of Appeals
for the Eighth Circuit

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

Elizabeth Araguas
NIDEY ERDAHL MEIER & ARAGUÁS, PLC
425 2nd Street SE, Suite 1000
Cedar Rapids, IA 52401
Tel.: (319) 369-0000
Fax: (319) 369-6972
E-mail: earaguas@eiowalaw.com
ATTORNEY FOR PETITIONER

APPENDIX TABLE OF CONTENTS

Opinions and Orders

8th Circuit Court of Appeals Judgment,.....	1a
<i>United States of America v. Shaun Michael Farrington</i> , (August 01, 2022)	
No. 21-2974	
8th Circuit Court of Appeals Opinion,	3a
<i>United States of America v. Shaun Michael Farrington</i> , (August 01, 2022)	
No. 21-2974	
The United States District Court of the S.D. of Iowa Judgement,.....	11a
<i>United States of America v. Shaun Michael Farrington</i> , (August 18, 2021)	
No. 3:20-cr-00006-001	
United States District Court Opinion on Defendants Motion to Suppress,.....	18a
<i>United States of America v. Shaun Michael Farrington</i> , (January 28, 2021)	
No. 3:20-cr-00006-JAJ-SBJ	
Magistrate Recommendation to Defendant’s Motion to Suppress,	30a
<i>United States of America v. Shaun Michael Farrington</i> , (August 18, 2021)	
No. 3:20-cr-00006-001	

Trial and Hearing Excerpts

Transcript of Motion to Suppress Hearing	46a
<i>United States of America v. Shaun Michael Farrington</i> , (November 9, 2020)	
No. 3:20-cr-00006-001	
Transcript Excerpt of Juror Selection	108a
<i>United States of America v. Shaun Michael Farrington</i> , (February 10, 2021)	
No. 3:20-cr-00006-001	

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

No: 21-2974

United States of America

Plaintiff - Appellee

v.

Shaun Michael Farrington

Defendant - Appellant

Appeal from U.S. District Court for the Southern District of Iowa - Eastern
(3:20-cr-00006-JAJ-1)

JUDGMENT

Before COLLOTON, MELLOY and GRUENDER, Circuit Judges.

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

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

August 01, 2022

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

/s/ Michael E. Gans

Adopted April 15, 2015
Effective August 1, 2015

Revision of Part V of the Eighth Circuit Plan to Implement the Criminal Justice Act of 1964.

V. Duty of Counsel as to Panel Rehearing, Rehearing En Banc, and Certiorari

Where the decision of the court of appeals is adverse to the defendant in whole or in part, the duty of counsel on appeal extends to (1) advising the defendant of the right to file a petition for panel rehearing and a petition for rehearing en banc in the court of appeals and a petition for writ of certiorari in the Supreme Court of the United States, and (2) informing the defendant of counsel's opinion as to the merit and likelihood of the success of those petitions. If the defendant requests that counsel file any of those petitions, counsel must file the petition if counsel determines that there are reasonable grounds to believe that the petition would satisfy the standards of Federal Rule of Appellate Procedure 40, Federal Rule of Appellate Procedure 35(a) or Supreme Court Rule 10, as applicable. *See Austin v. United States*, 513 U.S. 5 (1994) (*per curiam*); 8th Cir. R. 35A.

If counsel declines to file a petition for panel rehearing or rehearing en banc requested by the defendant based upon counsel's determination that there are not reasonable grounds to do so, counsel must so inform the court and must file a written motion to withdraw. The motion to withdraw must be filed on or before the due date for a petition for rehearing, must certify that counsel has advised the defendant of the procedures for filing *pro se* a timely petition for rehearing, and must request an extension of time of 28 days within which to file *pro se* a petition for rehearing. The motion also must certify that counsel has advised the defendant of the procedures for filing *pro se* a timely petition for writ of certiorari.

If counsel declines to file a petition for writ of certiorari requested by the defendant based on counsel's determination that there are not reasonable grounds to do so, counsel must so inform the court and must file a written motion to withdraw. The motion must certify that counsel has advised the defendant of the procedures for filing *pro se* a timely petition for writ of certiorari.

A motion to withdraw must be accompanied by counsel's certification that a copy of the motion was furnished to the defendant and to the United States.

Where counsel is granted leave to withdraw pursuant to the procedures of *Anders v. California*, 386 U.S. 738 (1967), and *Penson v. Ohio*, 488 U.S. 75 (1988), counsel's duty of representation is completed, and the clerk's letter transmitting the decision of the court will notify the defendant of the procedures for filing *pro se* a timely petition for panel rehearing, a timely petition for rehearing en banc, and a timely petition for writ of certiorari.

United States Court of Appeals
For the Eighth Circuit

No. 21-2974

United States of America

Plaintiff - Appellee

v.

Shaun Michael Farrington

Defendant - Appellant

Appeal from United States District Court
for the Southern District of Iowa - Eastern

Submitted: April 12, 2022
Filed: August 1, 2022

Before COLLOTON, MELLOY, and GRUENDER, Circuit Judges.

GRUENDER, Circuit Judge.

A jury convicted Shaun Michael Farrington of possession with intent to distribute methamphetamine and conspiracy to distribute methamphetamine in violation of 21 U.S.C. §§ 841(a)(1) and 846. He appeals the district court's¹ denials

¹The Honorable John A. Jarvey, then Chief Judge, United States District Court for the Southern District of Iowa, now retired, adopting the Report and Recommendation of the Honorable Stephen B. Jackson, Jr., United States Magistrate Judge for the Southern District of Iowa, with respect to the motion to suppress.

of his motion to suppress evidence, his motion to strike a juror for cause, and his motion to admit a portion of a video recording. We affirm.

I.

In October 2019, Henry County Sheriff's Office Investigator Jesse Bell was surveilling a vehicle as part of a drug investigation. He watched Farrington and Stefani Goodwin leave a motel, approach the vehicle, and place several bags into the car. They entered the vehicle, and Farrington drove away. Because Farrington's driver's license was suspended, Investigator Bell asked Sergeant David Wall to conduct a traffic stop. Sergeant Wall stopped the vehicle at approximately 6:46 p.m., and his drug-detection dog, Uno, signaled that he had detected drugs. Sergeant Wall then searched the vehicle and discovered drug paraphernalia and four lockboxes. Farrington was arrested, the lockboxes were seized and transported to an evidence shed at the sheriff's office, and the vehicle was separately towed to the sheriff's office. Prior to 10:00 p.m., Sergeant Wall had Uno conduct a sniff test around the lockboxes, and Uno signaled that he detected drugs. The officers then obtained a search warrant for the lockboxes, and the search revealed methamphetamine. Sergeant Wall testified that the time between the sniff test at the sheriff's office and the issuance of the search warrant was about two hours.

Farrington was indicted for possession with intent to distribute methamphetamine and conspiracy to distribute methamphetamine in violation of 21 U.S.C. §§ 841(a)(1) and 846. He moved to suppress the evidence derived from the traffic stop, the seizure of the lockboxes, and the sniff test of the lockboxes. The district court denied the motion.

Farrington also brought a motion *in limine* to exclude a twelve-second excerpt of a jail video-call recording between Farrington and Goodwin that was recorded two months after Farrington's arrest. In the call, Farrington states: "I'm the fucking lawyer, you just remember that. . . . There's a reason why the lockboxes were lockboxes." Farrington requested in the alternative that the district court admit a longer portion of the video call, about one and a half minutes in length, to provide

context for the recorded statements under Federal Rule of Evidence 106. The district court admitted the twelve-second recording but denied Farrington’s motion to admit the additional portion.

After jury selection but before trial commenced, a juror informed the district court that, upon reflection, she realized that she recognized the name of a Government witness, Detective Traishondus Bunch. Detective Bunch served as a Rule 404(b) witness at Farrington’s trial, testifying that Farrington had engaged in drug-related activity in the past. The district court questioned the juror, and she explained that between three and four years ago, she had corresponded with Detective Bunch by email about drug activity occurring in the parking lot outside of her residence. She had emailed Detective Bunch about once or twice a week during a nine-month period, reporting her observations of drug activity. About three years before Farrington’s trial, she moved away from the residence and had no further contact with Detective Bunch. The district court asked the juror if there was “anything about those experiences that causes you any concern in your own mind about your ability to be fair to both sides in this case?” The juror responded, “No, sir.” The district court then asked, “Are you willing to wait and listen to Officer Bunch’s testimony before deciding whether you believe it?” The juror answered, “Yes.” The defense moved to strike the juror for cause, but the district court denied the motion.

Farrington was convicted on both counts. He appeals the district court’s denials of his motion to suppress, his motion to strike the juror for cause, and his motion to admit an additional portion of the recording under Rule 106.

II.

Farrington argues his motion to suppress should have been granted because the seizure, hours-long detention, and “dog sniff search” of the lockboxes violated the Fourth Amendment. “On appeal from the denial of a motion to suppress, we review the district court’s legal conclusions de novo and its factual findings for clear

error.” *United States v. Slim*, 34 F.4th 642, 646 (8th Cir. 2022) (internal quotation marks and brackets omitted).

“The Fourth Amendment proscribes all unreasonable searches and seizures,” and warrantless searches are *per se* unreasonable unless they fall under an exception to the warrant requirement. *United States v. Castellanos*, 518 F.3d 965, 969 (8th Cir. 2008) (internal quotation marks omitted). The automobile exception permits warrantless searches of an automobile and seizures of contraband where there is “probable cause to believe that an automobile contains contraband.” *United States v. Evans*, 830 F.3d 761, 767 (8th Cir. 2016). Such searches may lawfully reach “places in which there is probable cause to believe that [contraband] may be found,” including containers discovered within the automobile. *California v. Acevedo*, 500 U.S. 565, 579-80 (1991).

United States v. Johns controls this case. *See* 469 U.S. 478 (1985). In *Johns*, customs officers smelled marijuana coming from two trucks and observed suspicious packages through the windows. *Id.* at 480-81. The officers brought the trucks to a Drug Enforcement Administration (“DEA”) facility, “placed the packages in a DEA warehouse rather than immediately opening them,” and then DEA agents conducted a warrantless search of the packages “three days after they were removed” from the trucks. *Id.* at 481, 486. The Court upheld the three-day detention and the search, explaining that “[t]here is no requirement that the warrantless search of a vehicle”—including the containers found within it—“occur contemporaneously with [the vehicle’s] lawful seizure.” *Id.* at 484, 487-88. It rejected the position that “warrantless searches of containers” are permissible “only if the search occurs immediately as part of the vehicle inspection or soon thereafter.” *Id.* at 484 (internal quotation marks omitted). Rather, “[i]nasmuch as the Government was entitled to seize the packages and could have searched them immediately without a warrant . . . the warrantless search three days after the packages were placed in the DEA warehouse was reasonable . . .” *Id.* at 487.

Substantially the same facts are present here, except that the delay was several hours—not three days—and the police obtained a warrant prior to opening and

searching the lockboxes. Even if the second sniff test constituted a search under the Fourth Amendment, *but see United States v. Pulido-Ayala*, 892 F.3d 315, 318 (8th Cir. 2018) (“The use of [a] drug-sniffing dog on the exterior of a vehicle during a valid traffic stop is not a search and does not infringe upon any Fourth Amendment rights.” (internal quotation marks and alteration omitted)); *United States v. Burston*, 806 F.3d 1123, 1128 (8th Cir. 2015) (recognizing that the “use of a drug-sniffing dog did not constitute a search subject to the Fourth Amendment because the sniff occurred in a common hallway and the police officers were lawfully present”), a warrantless search would have been permissible under *Johns*. *See* 469 U.S. at 487-88.

Farrington argues that the seizure and detention of the lockboxes was unreasonable under *United States v. Place*, 462 U.S. 696 (1983). But “*Place* had nothing to do with the automobile exception and is inapposite.” *See Acevedo*, 500 U.S. at 578 (noting that the Supreme Court has consistently “explained that automobile searches differ from other searches” and has denied the applicability of cases that “do not concern automobiles or the automobile exception” to cases involving the automobile exception). Therefore, the district court did not err in denying Farrington’s motion to suppress.

III.

Farrington claims that the district court erred in denying his motion to strike the juror who had previously corresponded with Detective Bunch. We review the denial of a motion to strike a juror for cause for abuse of discretion. *Moran v. Clarke*, 443 F.3d 646, 650 (8th Cir. 2006). “Appellants must clear a high hurdle to obtain reversal” *Id.* “To challenge for cause, a party must show actual partiality growing out of the nature and circumstances of the particular case.” *United States v. Tibesar*, 894 F.2d 317, 319 (8th Cir. 1990) (brackets omitted). “Essentially, . . . a juror must profess his inability to be impartial and resist any attempt to rehabilitate his position” for a party to show actual partiality. *Moran*, 443 F.3d at 650-51.

Here, there was no abuse of discretion because the juror stated that she could remain fair and would listen to Detective Bunch's testimony before deciding if she believed it. *See id.* at 651 (holding that the district court did not abuse its discretion when it denied a motion to strike jurors who had "acknowledged difficulty being impartial" but "consistently stated that they could be impartial"). Moreover, this case does not involve an "extreme situation[]" where juror partiality might be implied, such as when a "juror is a close relative of one of the participants in the trial or the criminal transaction." *See United States v. Needham*, 852 F.3d 830, 840 (8th Cir. 2017).

Farrington challenges the district court's announcement that it was ruling under the standard set forth in *United States v. McCaw*, 92 F. App'x 372 (8th Cir. 2004) (per curiam), a case referring to *United States v. Tucker*, 137 F.3d 1016 (8th Cir. 1998). *McCaw* and *Tucker* addressed, respectively, motions for a mistrial and a new trial based on alleged concealed juror bias, and those cases were governed by a standard requiring a showing of juror dishonesty in addition to partiality. *See McCaw*, 92 F. App'x at 372-73; *Tucker*, 137 F.3d at 1026. This case, by contrast, involves a motion to strike a juror for cause and requires a showing only of actual partiality. *See Tibesar*, 894 F.2d at 319. Assuming the district court erred by requiring juror dishonesty in addition to actual partiality, any error was harmless because the juror's explicit statement of impartiality defeats Farrington's attempt to show actual impartiality. *See Fed. R. Crim. P. 52(a)* ("Any error, defect, irregularity, or variance that does not affect substantial rights must be disregarded.").

IV.

Last, Farrington argues that the district court erred by denying his motion to admit a portion of the jail video-call recording under Federal Rule of Evidence 106. We review a district court's decision about the admissibility of evidence under Rule 106 for a clear abuse of discretion. *United States v. Ramos-Caraballo*, 375 F.3d 797, 802 (8th Cir. 2004).

Rule 106 provides that “[i]f a party introduces all or part of a writing or recorded statement, an adverse party may require the introduction, at that time, of any other part—or any other writing or recorded statement—that in fairness ought to be considered at the same time.” This “rule of completeness” is “designed in part to avoid misleading impressions created by taking matters out of context.” *Ramos-Caraballo*, 375 F.3d at 802. “Additional parts of [a] recording can be admitted if they are necessary to (1) explain the admitted portion, (2) place the admitted portion in context, (3) avoid misleading the trier of fact, or (4) [e]nsure a fair and impartial understanding.” *McCoy v. Augusta Fiberglass Coatings, Inc.*, 593 F.3d 737, 746-47 (8th Cir. 2010) (internal quotation marks omitted). “[T]he party urging admission has the burden to specify the portion of the testimony that is relevant to the issue at trial and that qualifies or explains portions already admitted.” *United States v. Aungie*, 4 F.4th 638, 646-47 (8th Cir. 2021) (internal quotation marks omitted).

Farrington argues that the twelve-second recording of him telling Goodwin “I’m the fucking lawyer, you just remember that. . . . There’s a reason why the lockboxes were lockboxes,” created a false impression because it lacked context. At trial, the Government used Farrington’s statement in the recording to suggest that Farrington “knew what was inside the lockboxes” and believed they could “keep his and Stefani Goodwin’s methamphetamine hidden from the police.” This accorded with Goodwin’s testimony that Farrington used lockboxes “[b]ecause then [law enforcement would] have to file for a warrant in order to get to [them].”

Farrington claims that the “partial recording and the Government’s characterization of it . . . gave a misleading and unfair understanding of the meaning of Mr. Farrington’s statement to the jury.” But he offers no explanation of how the recording was misleading. He states that the additional portion contextualizes the “lawyer” comment by showing that it was “in response to Ms. Goodwin offering to retain private counsel.” He further states that the additional portion explains the “lockboxes” comment by showing that Farrington had “a belief based at least in part [on] conversations with counsel regarding the search of the locked containers.” But neither suggestion is inconsistent with how the Government used the recording at trial. To the contrary, Farrington’s counsel admitted at the pretrial hearing that the

additional portion reveals Farrington’s belief that “this case is going to be thrown out of court” because lockboxes were used. Rather than provide necessary context to correct a false impression, that evidence would only reinforce the Government’s characterization of the recording and Goodwin’s testimony. Furthermore, the district court reviewed the entire video and did not “find anything . . . that places [the admitted portion] into context.” Because Farrington has not shown how the additional portion is necessary to explain or contextualize the admitted portion, correct a misleading impression, or ensure a fair and impartial understanding, we hold that there was no abuse of discretion, much less a clear one, in excluding it. *See Aungie*, 4 F.4th at 647 (“[T]he rule of completeness does not apply because [the defendant] fails to specify how the admitted text messages distorted or misled the jury without the addition of the missing texts.”); *McCoy*, 593 F.3d at 747 (holding that “without further explanation, [the appellant] did not meet its burden under Rule 106” where its counsel did not “specify why the district court should admit the entire report”).

V.

For the foregoing reasons, we affirm Farrington’s convictions.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA

v.

Shaun Michael Farrington

JUDGMENT IN A CRIMINAL CASE

Case Number: 3:20-CR-00006-001

USM Number: 19412-030

Elizabeth Araguas, Charles Paul

Defendant's Attorney

THE DEFENDANT:☐ pleaded guilty to count(s) _____☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.☒ was found guilty on count(s) One and Two of the Indictment filed on January 15, 2020.
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
21 U.S.C. §§ 841(a)(1), 841(b)(1)(A), 846	Conspiracy to Distribute 50 Grams or More of Actual Methamphetamine	10/02/2019	One
21 U.S.C. § 841(a)(1), 841(b)(1)(A)	Possession with Intent to Distribute at Least 50 Grams or More of Methamphetamine	10/02/2019	Two

☐ See additional count(s) on page 2

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

August 18, 2021

Date of Imposition of Judgment

Signature of Judge

John A. Jarvey, Chief U.S. District Judge

Name of Judge

Title of Judge

Date

August 18, 2021

DEFENDANT: Shaun Michael Farrington
CASE NUMBER: 3:20-CR-00006-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

292 months as to Counts One and Two of the Indictment filed on January 15, 2020, to be served concurrently.

☒ The court makes the following recommendations to the Bureau of Prisons:

The Court recommends placement at FCI Oxford, Wisconsin, to be near family in Iowa, if commensurate with his security classification and needs.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant is remanded to the custody of the United States Marshal for surrender to the ICE detainer.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before _____ on _____

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

a _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Shaun Michael Farrington
CASE NUMBER: 3:20-CR-00006-001

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of :

Five years as to Counts One and Two of the Indictment filed on January 15, 2020, to be served concurrently.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☒ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: Shaun Michael Farrington
CASE NUMBER: 3:20-CR-00006-001

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: Shaun Michael Farrington
CASE NUMBER: 3:20-CR-00006-001

SPECIAL CONDITIONS OF SUPERVISION

You must participate in a program of testing and/or treatment for substance abuse, as directed by the Probation Officer, until such time as the defendant is released from the program by the Probation Office. At the direction of the probation office, you must receive a substance abuse evaluation and participate in inpatient and/or outpatient treatment, as recommended. Participation may also include compliance with a medication regimen. You will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment. You must not use alcohol and/or other intoxicants during the course of supervision.

You must not patronize business establishments where more than fifty percent of the revenue is derived from the sale of alcoholic beverages.

You must submit to a mental health evaluation. If treatment is recommended, you must participate in an approved treatment program and abide by all supplemental conditions of treatment. Participation may include inpatient/outpatient treatment and/or compliance with a medication regimen. You will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

You must participate in an approved treatment program for domestic violence. Participation may include inpatient/outpatient treatment. You will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

You must participate in a cognitive behavioral treatment program, which may include journaling and other curriculum requirements, as directed by the U.S. Probation Officer.

You will submit to a search of your person, property, residence, adjacent structures, office, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), and other electronic communications or data storage devices or media, conducted by a U.S. Probation Officer. Failure to submit to a search may be grounds for revocation. You must warn any other residents or occupants that the premises and/or vehicle may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that you have violated a condition of your release and/or that the area(s) or item(s) to be searched contain evidence of this violation or contain contraband. Any search must be conducted at a reasonable time and in a reasonable manner. This condition may be invoked with or without the assistance of law enforcement, including the U.S. Marshals Service.

DEFENDANT: Shaun Michael Farrington
CASE NUMBER: 3:20-CR-00006-001**CRIMINAL MONETARY PENALTIES**

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

- ☐ Pursuant to 18 U.S.C. § 3573, upon the motion of the government, the Court hereby remits the defendant's Special Penalty Assessment; the fee is waived and no payment is required.

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTALS	\$ 200.00	\$0.00	\$ 0.00	\$ 0.00	\$ 0.00

- ☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.
- ☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss***</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
TOTALS		\$0.00	\$0.00

- ☐ Restitution amount ordered pursuant to plea agreement \$ _____
- ☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- ☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:
- ☐ the interest requirement is waived for the ☐ fine ☐ restitution.
- ☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

*Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Shaun Michael Farrington
CASE NUMBER: 3:20-CR-00006-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A ☒ Lump sum payment of \$ 200.00 due immediately, balance due
- ☐ not later than _____, or
☒ in accordance ☐ C, ☐ D, ☐ E, or ☒ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:
- All criminal monetary payments are to be made to the Clerk's Office, U.S. District Court, P.O. Box 9344, Des Moines, IA. 50306-9344.
- While on supervised release, you shall cooperate with the Probation Officer in developing a monthly payment plan consistent with a schedule of allowable expenses provided by the Probation Office.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Case Number Defendant and Co-Defendant Names (including defendant number)	Total Amount	Joint and Several Amount	Corresponding Payee, if appropriate
---	--------------	-----------------------------	--

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
DAVENPORT DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SHAUN MICHAEL FARRINGTON,

Defendant.

No. 3:20-cr-00006-JAJ-SBJ

**OPINION AND ORDER
REGARDING DEFENDANT'S
OBJECTIONS TO REPORT AND
RECOMMENDATION**

On October 5, 2020, the defendant filed his Motion To Suppress Traffic Stop And Subsequent Evidence And Request For Hearing [Dkt. No. 81], and on October 9, 2020, he filed a supplement to that Motion with a supporting brief [Dkt. No. 86]. The government filed its Response To Motion To Suppress [Dkt. No. 89] on October 23, 2020, and the defendant filed his Reply [Dkt. No. 95] on November 5, 2020. On October 22, 2020, the defendant's Motion To Suppress was referred to United States Magistrate Judge Stephen B. Jackson, Jr., for the purpose of conducting any necessary proceedings and hearing and for submission of a report and recommendation regarding disposition of the Motion to the undersigned. Judge Jackson held an evidentiary hearing on the Motion on November 9, 2020. *See* Minutes [Dkt. No. 98]. After the hearing, the government filed a Supplemental Response [Dkt. No. 102] on November 9, 2020, and the defendant filed a Final Reply In Support Of Motion To Suppress [Dkt. No. 105] on November 12, 2020. On December 16, 2020, Judge Jackson filed his Report And Recommendation On Defendant's Motion To Suppress [Dkt. No. 110] recommending that the defendant's Motion To Suppress be denied. This case is now before the court on the defendant's December 30, 2020,

Objections To Report And Recommendation [Dkt. No. 115]. The government filed no response to the defendant's Objections.

The defendant did not request a transcript of the hearing before Judge Jackson, as required by both the applicable local rule and the applicable Federal Rule of Criminal Procedure. *See* LCrR 59 ("A party asserting such objections must arrange promptly for the transcription of all portions of the record the district court judge will need to rule on the objections."); FED. R. CRIM. P. 59(b)(2) ("Unless the district judge directs otherwise, the objecting party must promptly arrange for transcribing the record, or whatever portions of it the parties agree to or the magistrate judge considers sufficient."). The court deems the defendant's failure to request a transcript to be a waiver of review of the transcript by this court. *Cf.* FED. R. CRIM. P. 59(b)(2) ("Failure to object in accordance with this rule waives a party's right to review."). Nevertheless, in addition to reviewing the parties' written submissions and Judge Jackson's Report And Recommendation, the court has reviewed an unedited realtime transcript of the hearing before Judge Jackson.

For the reasons stated below, the defendant's December 30, 2020, Objections To Report And Recommendation [Dkt. No. 115] are **OVERRULED**; Judge Jackson's December 16, 2020, Report And Recommendation On Defendant's Motion To Suppress [Dkt. No. 110] is **ACCEPTED**; and the defendant's October 5, 2020, Motion To Suppress Traffic Stop And Subsequent Evidence And Request For Hearing [Dkt. No. 81], as supplemented on October 9, 2020 [Dkt. No. 86], is **DENIED**.

I. INTRODUCTION

A. Factual Background

Defendant Shaun Michael Farrington does not object to any specific factual findings by Judge Jackson. The court will not repeat all of Judge Jackson's findings, however. Rather, the court will focus on matters relevant to Farrington's objections.

In early September of 2019, Deputy Jesse Bell, an investigator with the Henry County Sheriff's Office became aware of Farrington and his co-defendant being involved

in methamphetamine sales. Surveillance of Farrington and his co-defendant indicated that they were likely making deliveries of narcotics by car. Deputy Bell also determined Farrington's driver's license was suspended. On October 2, 2019, Deputy Bell observed Farrington and his co-defendant depart on another suspected drug delivery run. Deputy Bell contacted Sergeant Wall, also of the Henry County Sheriff's Office, to advise him that Farrington was driving a vehicle with a suspended license and to request that he make a traffic stop, as Sergeant Wall was in uniform in a marked squad car, while Deputy Bell was not.

Sergeant Wall stopped the vehicle after confirming that Farrington was driving, with his co-defendant in the passenger seat. As Judge Jackson found,

At the stop, Sergeant Wall identified Defendant as the driver and [his co-defendant] as the front seat passenger. No one else was in the car. Sergeant Wall confirmed Defendant did not have a valid driver's license and made the decision to run Uno [his K-9] around the vehicle as he was aware of Deputy Bell's investigation on the car. In addition, prior to the K-9 open air sniff, Sergeant Wall took note of multiple cellphones in the car, a torch lighter in the center console cup holder area and a camera mounted to the rear-view mirror. Based on his experience investigating drug cases, Sergeant Wall testified a torch style lighter is used to make methamphetamine and individuals involved in drug trafficking often have multiple cell phones. He further indicated these items are odd for people to have in their vehicles.

* * *

Sergeant Wall estimated he initiated the open-air sniff about a minute to minute and a half after the initial encounter with Defendant. Uno gave a passive alert, by sitting at the driver's side rear door near a folded down back seat. Sergeant Wall told Defendant the vehicle would be searched. According to Sergeant Wall, Defendant became a little bit more agitated and blurted out the vehicle did not belong to him. An unused methamphetamine pipe was found in [the co-defendant's] purse. In the trunk of the vehicle, Sergeant Wall found a large red scale, multiple individual baggies and locked containers within brief-case style bags. The locked containers were

approximately six by six to six by twelve inches big. Each was secured by a lock with a code, similar to a bicycle lock. Both Defendant and [his co-defendant] denied knowledge or possession of the locked containers. Sergeant Wall testified, if he had the means to at the time, he would have opened and searched the containers immediately.

Sergeant Wall contacted Deputy Bell to brief him on the traffic stop. From this the decision was made to remove the containers from the vehicle, bring them to the Sherriff's Office and have an open-air dog sniff performed on them. Sergeant Wall did this with Uno, who alerted to all four containers. He testified it is not uncommon for him to remove items from a vehicle and have Uno do an open-air sniff around those items. A state search warrant was then obtained for the containers. A search of the containers revealed a significant amount of methamphetamine.

Report And Recommendation, 7-8.

Farrington was indicted on January 15, 2020, along with his co-defendant, in Count 1, for conspiracy to distribute methamphetamine in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A) and 846 and, in Count 2, for possession with the intent to distribute methamphetamine in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(A). Trial in this matter is set to begin on February 1, 2021.

B. The Report And Recommendation

In his Report And Recommendation, Judge Jackson concluded, first, that the traffic stop was appropriate. Report And Recommendation at 12. Although Farrington challenged the stop in his Motion, Farrington does not now object to Judge Jackson's conclusion that the stop was appropriate.

Turning to seizure of the locked containers from the vehicle, Judge Jackson began by setting out the applicable standards, as follows:

The "automobile exception" to the Fourth Amendment's warrant requirement established in *Carroll v. United States*, 267 U.S. 132 (1925) applies to searches of vehicles that are supported by probable cause to believe that the vehicle contains contraband. *United States v. Ross*, 456

U.S. 798, 808 (1982). The probable-cause determination must be based on objective facts. *Id.* The *Ross* Court notes that *Carroll* held that “contraband goods concealed and illegally transported in an automobile or other vehicle may be searched for without a warrant.” *Id.* at 820 (*quoting Carroll*, 267 U.S. at 153). The scope of a warrantless search of an automobile thus is not defined by the nature of the container in which the contraband is secreted. *Id.* at 824. Rather, it is defined by the object of the search and the places in which there is probable cause to believe that it may be found. *Id.*

Report And Recommendation, 12.

Then, recognizing that the government challenged Farrington’s standing to challenge the search of the vehicle and the seizure of containers from it, Judge Jackson observed,

The defendant moving to suppress has the burden of proving a reasonable expectation of privacy in the area searched. *United States v. Gomez*, 16 F.3d 254, 256 (8th Cir. 1994); *Rakas v. Illinois*, 439 U.S. 128, 130-31 n. 1 (1978); *United States v. Kiser*, 948 F.2d 418, 423 (8th Cir. 1991). We adhere to these cases and to the general rule that Fourth Amendment rights are personal rights which, like some other constitutional rights, may not be vicariously asserted. *Alderman v. United States*, 394 U.S. 165, 174 (1969); *Simmons v. United States*, 390 U.S. 377, 389 (1968); *Jones v. United States*, 362 U.S. 257, 261 (1960); *cf. Tileston v. Ullman*, 318 U.S. 44, 46 (1943). Factors relevant to the determination of standing include: ownership, possession and/or control of the area searched or item seized; historical use of the property or item; ability to regulate access; the totality of the circumstances surrounding the search; the existence or nonexistence of a subjective anticipation of privacy; and the objective reasonableness of the expectation of privacy considering the specific facts of the case. *Gomez*, 16 F.3d at 256. If a defendant fails to prove a sufficiently close connection to the relevant places or objects searched, he has no standing to claim that they were searched or seized illegally. *Id.*

Report And Recommendation at 12-13.

In the part of the Report And Recommendation to which Farrington specifically objects, Judge Jackson concluded as follows:

Concerning the question of standing, by his own words, Defendant denied ownership of the vehicle and denied possessing the locked containers. There was no evidence Defendant had a key to the locked containers, a possessory interest in the locked containers, a possessory interest in the vehicle, the ability to exclude others from the vehicle or whether he took precautions to maintain privacy within the vehicle. On the other hand, law enforcement was aware from tracking the vehicle for several days [that] Defendant had been in possession of the vehicle during that time. His denial of ownership of the vehicle only occurred when he was notified the vehicle was going to be searched. *Examining the totality of the circumstances surrounding the search and the objective reasonableness of the expectation of privacy, it is arguable Defendant has not met his burden to show standing and that he had a reasonable expectation of privacy in the vehicle and/or locked containers.*

Regardless, even if Defendant has standing, law enforcement had probable cause to seize the locked containers pending further investigation. Deputy Bell had information Defendant and [his co-defendant] were trafficking drugs based on the GPS tracking information received about the vehicle in the days before the vehicle was stopped by officers on October 2, 2019. Defendant was driving the vehicle of a known drug trafficker. A certified drug dog, Uno, alerted to the area of the vehicle containing the locked containers. Sergeant Wall testified if the containers had not been locked, he would have searched them at the scene.

Instead, the locked containers were removed from the vehicle and transported to the Henry County Sherriff's Office and placed in the evidence shed. From there, Uno was deployed around the containers, alerting again to the presence of contraband. A state search warrant was then obtained to open and search the locked containers. Sergeant Wall testified it is not uncommon for him to remove items from a vehicle and have Uno do an open-air sniff around those items. During this time, Defendant was in custody at the Henry County Jail for driving with a suspended license. Defendant was not released

from custody from the time of his initial arrest up at the traffic stop to the time he was taken into custody upon the indictment in this case. *For these reasons, the Magistrate Judge determines the warrantless seizure of the locked containers was not unreasonable merely because law enforcement removed the locked containers from the vehicle and transported them to the Henry County Sherriff's Office evidence shed, rather than immediately opening them at the scene of the traffic stop.*

Report And Recommendation, 13-15 (emphasis added).

Consequently, Judge Jackson recommended that Farrington's Motions to Suppress Traffic Stop and Subsequent Evidence and Request for Hearing [Dkts. 81 and 86] be denied.

II. LEGAL ANALYSIS

A. Standard Of Review

Pursuant to 28 U.S.C. § 636(b)(1)(B), a district judge may designate a magistrate judge to conduct hearings, including evidentiary hearings, and to submit to a judge of the court proposed findings of fact and recommendations for the disposition of various matters, including motions to suppress evidence in criminal cases. Further,

Within fourteen days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. *A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.* The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions.

28 U.S.C. § 636(b)(1) (emphasis added); *see also* FED. R. CRIM. P. 59(b); LCrR 59.

Here, Farrington makes two objections to Judge Jackson's Report And Recommendation: "First, Mr. Farrington objects to the finding that the warrantless seizure of containers found in the vehicle he was driving falls under the *Carroll* exception to the

warrant requirement. Secondly, Mr. Farrington objects to the Court’s determination that he lacked standing to object to the search and seizure of that vehicle.” Def.’s Obj. [Dkt. No. 115], 1. The court will conduct a *de novo* review of both parts of the Report And Recommendation to which Farrington objects, 28 U.S.C. § 636(b)(1), albeit in reverse order.

B. Standing

Farrington argues that, contrary to the government’s assertions, he has standing to assert his challenges to the search and seizure at issue, because testimony at the hearing established that he had possession, control, and the ability to regulate access to the vehicle from which the containers were seized. He argues that his lawful possession and his reasonable expectation of privacy were established by the record and supported by the testimony of Deputy Bell and Sergeant Wall at the hearing.

Standing is a constitutional prerequisite to consideration of the merits of a challenge to a search or seizure under the Fourth Amendment. *See, e.g., United States v. White*, 962 F.3d 1052, 1054–55 (8th Cir. 2020). Indeed, Judge Jackson addressed the issue of standing before he considered the merits of Farrington’s challenge to seizure of the locked containers, as shown in the excerpts of the Report And Recommendation quoted, above. *See* Report And Recommendation at 13-15.

Judge Jackson also properly considered various factors as relevant to the question of standing. As the Eighth Circuit Court of Appeals recently explained,

Fourth Amendment standing is “useful shorthand for capturing the idea that a person must have a cognizable Fourth Amendment interest in the place searched before seeking relief for an unconstitutional search,” but it does not implicate Article III jurisdiction. *Byrd v. United States*, — U.S. —, 138 S. Ct. 1518, 1530, 200 L.Ed.2d 805 (2018). We must determine whether [the defendant] “had a legitimate expectation of privacy in the area searched or the item seized.” *United States v. Gomez*, 16 F.3d 254, 256 (8th Cir. 1994) (citing *Rakas v. Illinois*, 439 U.S. 128, 138–44, 99 S.Ct. 421, 58 L.Ed.2d 387 (1978)). There is no “single metric or

exhaustive list of considerations,” but a defendant’s expectation of privacy must be grounded in property law or understandings that are recognized by society. *Byrd*, 138 S. Ct. at 1527. The defendant bears this burden by a preponderance of the evidence. *See United States v. Anguiano*, 795 F.3d 873, 878 (8th Cir. 2015).

United States v. Bettis, 946 F.3d 1024, 1027 (8th Cir. 2020), and compare Report And Recommendation at 12-13.

Contrary to Farrington’s assertions, however, Judge Jackson did not hold that Farrington did not have standing. Rather, as set out, above, Judge Jackson considered the evidence on both sides of the question, then stated that “it is *arguable* Defendant has not met his burden to show standing and that he had a reasonable expectation of privacy in the vehicle and/or locked containers.” *Id.* at 14 (emphasis added). Judge Jackson then *assumed* that Farrington had met his burden, so he considered the merits of Farrington’s challenge. *Id.* (“Regardless, even if Defendant has standing, law enforcement had probable cause to seize the locked containers pending further investigation.”). This court, likewise, will simply assume, for the sake of argument, that Farrington has standing to challenge the seizure of the containers and turn to the merits of that challenge.

Farrington’s objection to Judge Jackson’s conclusion regarding standing is **overruled**.

C. Seizure Of The Containers

In support of his objection to Judge Jackson’s finding on the merits of the seizure of the containers, Farrington argues that the Report And Recommendation provides no authority for the proposition that luggage or other containers may be seized from vehicles without a warrant, because he argues that the caselaw dealing with seizure of containers is distinct from that dealing with searches and seizures of vehicles. Farrington argues that this case is controlled by *United States v. Place*, 462 U.S. 696, 701 (1983), concerning a seizure of luggage, rather than cases concerning searches and seizures of vehicles, such as *Carroll v. United States*, 267 U.S. 132 (1925), and *United States v. Ross*, 456 U.S. 798,

809 (1982). Here, Farrington argues that the law enforcement officers exceeded the scope of the seizure authorized by *Place* and that there was no exception to the warrant requirement. Specifically, he argues that after the search and impound of the vehicle, the containers, which were not apparent as contraband, were improperly seized separately, without justification, when the vehicle was otherwise impounded and immobilized.

Contrary to Farrington's assertions, the applicable law, here, is the law for search of a vehicle. Once officers have sufficient objective indicia of possible criminal activity that justifies further investigation, including such things as a drug dog's alert to a car, the officers have probable cause to search the car. *United States v. Stringer*, 739 F.3d 391, 395 (8th Cir. 2014). Furthermore, "the officers [ar]e permitted to search the vehicle and any closed containers therein without a warrant, based on the automobile exception to the Fourth Amendment's warrant requirement." *Id.* (citing *United States v. Ross*, 456 U.S. 798, 820–21 (1982), which in turn discusses the scope of the *Carroll* exception). As Judge Jackson noted, in *Ross*, the Supreme Court observed,

The scope of a warrantless search of an automobile thus is not defined by the nature of the container in which the contraband is secreted. Rather, it is defined by the object of the search and the places in which there is probable cause to believe that it may be found.

Ross, 456 U.S. at 824. In other words, the probable cause to search the vehicle provides the probable cause to search and seize a closed container in the vehicle that might contain contraband.

In contrast, *Place*, on which Farrington relies, did not involve containers in a vehicle at all. Rather, it involved the seizure of bags from an airline passenger upon his arrival in New York from Miami. *Place*, 462 U.S. at 699. It is true that *Place* stands for the proposition that the seizure of personal property from the possession of a person ordinarily requires a warrant based on probable cause, or "exigencies of the circumstances" requiring seizure while seeking a warrant, or the presence of "some other recognized exception to the warrant requirement." *Id.* at 701. The Court in *Place* also recognized that it was appropriate to apply *Terry*-stop standards, allowing seizure based on reasonable,

articulable suspicion, based on objective facts, that the personal property contains contraband, in order to seek a warrant to search the personal property. *Id.* at 702. The Court found “that the police conduct here exceeded the permissible limits of a *Terry*-type investigative stop,” because of “[t]he length of the detention of respondent’s luggage,” and “the failure of the agents to accurately inform respondent of the place to which they were transporting his luggage, of the length of time he might be dispossessed, and of what arrangements would be made for return of the luggage if the investigation dispelled the suspicion.” *Id.* at 709-10.

What is important, here, however, is the Court’s discussion in *Place* concerning its prior holding in *Arkansas v. Sanders*, 442 U.S. 753, 761 (1979). *See Place*, 462 U.S. at 702 n.3. In *Sanders*, the Court had held that law enforcement officers could properly seize luggage from a person, where they had probable cause to believe the luggage contained marijuana and they had probable cause to believe the luggage was about to be driven away in a taxi, but the Court held the officers “violated the Fourth Amendment in immediately searching the luggage rather than first obtaining a warrant authorizing the search.” *Id.* The Court explained that the holding in *Sanders* was “not affected by our recent decision in *United States v. Ross*, 456 U.S. 798, 824, 102 S.Ct. 2157, 2172, 72 L.Ed.2d 572 (1982).” *Id.* Thus, the Court in *Place* recognized that its standards for the search and seizure of *luggage in a person’s direct possession*, are not applicable to the seizure or search of *closed containers in a vehicle*, where law enforcement officers have probable cause to search the vehicle, because the latter situation is controlled by the standards in *Ross*.

In the circumstances presented, here, *Ross* does not require that law enforcement officers have probable cause as to a particular closed container in a vehicle that is separate from the probable cause to believe that the vehicle contains contraband before they may seize or search the closed container. Thus, as Judge Jackson concluded, Sergeant Wall could have immediately opened the locked containers at the scene of the traffic stop, if he had had the means to do so. The decision not to do so at the side of busy highway as night was falling was entirely reasonable. Moreover, by instead seizing the closed containers—

which Sgt. Wall was entitled to do under *Ross*—and not searching them until separate probable cause had been established by a K-9 alert to the specific containers and a warrant had been obtained, the law enforcement officers acted with commendable caution and actually provided greater Fourth Amendment protection than they were required to provide.

Farrington's objection to Judge Jackson's conclusion regarding the propriety of the seizure of the closed containers is **overruled**.

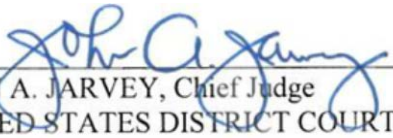
III. CONCLUSION

Upon the foregoing,

IT IS ORDERED that

1. the defendant's December 30, 2020, Objections To Report And Recommendation [Dkt. No. 115] are **overruled**;
2. Judge Jackson's December 16, 2020, Report And Recommendation On Defendant's Motion To Suppress [Dkt. No. 110] is **accepted**; and
3. the defendant's October 5, 2020, Motion To Suppress Traffic Stop And Subsequent Evidence And Request For Hearing [Dkt. No. 81], as supplemented on October 9, 2020 [Dkt. No. 86], is **denied**.

DATED this 28th day of January, 2021.



JOHN A. JARVEY, Chief Judge
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	CASE NO. 3:20-cr-00006
)	
v.)	REPORT AND RECOMMENDATION
)	ON DEFENDANT’S MOTION TO
SHAUN MICHAEL FARRINGTON,)	SUPPRESS
)	
Defendant.)	
)	

TABLE OF CONTENTS

I.	INTRODUCTION.....	2
II.	FINDINGS OF FACT.....	2
	A. TESTIMONY OF DEPUTY JESSE BELL.....	3
	B. TESTIMONY OF SERGEANT DAVID WALL.....	6
III.	ANALYSIS.....	8
	A. THE TRAFFIC STOP.....	8
	B. SEIZURE OF THE LOCKED CONTAINERS.....	12
IV.	RECOMMENDATION AND ORDER.....	16

I. INTRODUCTION

This matter comes before the Court pursuant to Defendant's Motions to Suppress Traffic Stop and Subsequent Evidence and Request for Hearing (Dkts. 81 and 86) and brief in support (Dkt. 86-1), filed October 5, 2020 and October 9, 2020, respectively. The government resisted the motion on October 23, 2020. Dkt. 89. Defendant filed a reply brief in support of his motion on November 5, 2020. Dkt. 95. The matter was referred to this Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) for report and recommendation by Chief Judge John A. Jarvey. Dkt. 87. Trial is set for February 1, 2021. Dkt. 107.

An evidentiary hearing was held on November 9, 2020. Dkt. 98. The government appeared by Assistant U.S. Attorney Caleb J. Copley. Defendant appeared personally and with his attorneys, Elizabeth Araguas and Charles Paul. Testimony was received from Henry County Deputy Jesse Bell and Henry County Sergeant David Wall. *Id.* The Court received two exhibits offered by the government without objection: Exhibit 1 – Driver's License Photo of Defendant and Exhibit 2 – Booking Photo of Defendant. *Id.* The parties were allowed to file post-hearing briefs. *Id.* The government submitted a supplemental response (Dkt. 102) on November 9, 2020 and Defendant filed a final reply (Dkt. 105) on November 12, 2020.

The Court considers the matter to be fully submitted. This Magistrate Judge has carefully considered the record evidence, including the exhibits admitted, the briefs filed by both parties, the arguments and statements of counsel and submits the following report. As set forth below, based on the facts presented and applicable law, it is recommended that the motion be denied.

II. FINDINGS OF FACT

A criminal complaint was filed on December 16, 2019, against Defendant and Stefani Goodwin, alleging possession with the intent to distribute at least fifty grams of methamphetamine

in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(A). Dkt. 3. Subsequently, Defendant was indicted on January 15, 2020, along with Goodwin, in Count 1 of conspiracy to distribute methamphetamine in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A) and 846 and in Count 2 of possession with the intent to distribute methamphetamine in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(A). Dkt. 33.

A. Testimony of Deputy Jesse Bell

Deputy Jesse Bell of the Henry County Sheriff's Office testified. Deputy Bell is the investigator for Henry County Deputy's Office, responsible for investigation of general crimes and narcotics. He has been a deputy with Henry County since June 2013 and investigator since May 2017. He has received surveillance training, a narcotic officer two-week training course and informant management training. He has been a member of the Southeast Iowa Narcotics Task Force since July 2019. Previously, he served with the Mt. Pleasant Police Department beginning in July 2010.

As a part of his duties, on March 31, 2019, Deputy Bell became aware of a suspected drug trafficking house in New London, Iowa, as well as a 2010 Ford Fusion registered to an Emily Richardson. In June 2019, during an interview with law enforcement, Richardson admitted to living at this house. Shortly thereafter, in July 2019 as part of a separate methamphetamine investigation, Deputy Bell applied for and received Facebook records which showed Richardson was trafficking narcotics with other individuals. On August 28, 2019, Deputy Bell obtained a state warrant authorizing installation of a GPS tracker for the 2010 Ford Fusion. The tracker was installed on the vehicle the next day and information received from it showed the vehicle being in Burlington, Washington and Henry County, Iowa. At that time, Deputy Bell knew Burlington to be a major source of methamphetamine.

In early September, Deputy Bell became aware of the Defendant and Goodwin being involved in methamphetamine sales. This information came to Deputy Bell from Facebook messages he received from another individual. Within those messages, Defendant discusses with this individual delivery of drugs to Defendant and drug quantities. These messages also implicated Goodwin. On September 30, 2019, Richardson's vehicle was seen at the Super 8 Motel in Burlington, Iowa, which is known to Deputy Bell as a drug trafficking location. Surveillance was conducted on the vehicle and Deputy Bell observed a male and female approach it. He did not know who the individuals were but knew they were not Richardson or her boyfriend. Using the GPS tracker, Deputy Bell was able to determine the 2010 Ford Fusion left the motel at 6:15 p.m. on September 30, returning to Burlington on October 1 at 12:45 p.m. The tracking shows the vehicle made multiple stops for short periods of time, indicating to him based on his experience in drug investigations, likely delivery of narcotics.

On October 1, 2019, the 2010 Ford Fusion was picked up on visual surveillance by other law enforcement and followed to a Dick's Sporting Goods store in Burlington. When Deputy Bell arrived, the vehicle was parked at the store. Deputy Bell observed the same male and same female he had seen at the motel on September 30, return to the vehicle. Deputy Bell testified that, after he had seen these people at the motel on September 30, he undertook further investigation to identify them. The GPS tracker showed the vehicle made a stop at a residence in Iowa City. Deputy Bell checked with Johnson County drug force task members and learned the vehicle was at or near Defendant's residence. With this information, Deputy Bell reviewed Defendant's driver's license and determined Defendant was the male he saw on September 30 with the vehicle at the motel and on October 1 with the vehicle at the store. A copy of Defendant's driver's license photo was admitted as government's Exhibit 1. From this information, he confirmed Defendant's address on

his driver's license matched the residence he had noted the vehicle stopping near in Iowa City. Deputy Bell also determined Defendant's driver's license was suspended. Deputy Bell further testified he was able to identify the female as Goodwin.

Deputy Bell followed the vehicle from the store back to the motel. He saw Defendant and Goodwin go into the motel, carrying a backpack, numerous other bags and a blue plastic tote. The GPS tracker showed the vehicle left Burlington at 6:00 p.m. that evening, returning at 2:42 p.m. the next day, October 2. During that time, the vehicle again made multiple short stops. The vehicle stayed at the motel on October 2 until about 6:10 p.m. Deputy Bell picked up visual surveillance of the vehicle again and saw the vehicle leave the motel. He identified Defendant as driving the vehicle from the motel. Deputy Bell estimated he was 200-300 feet from Defendant, watching through binoculars from a parking lot with an unobstructed view. He saw Defendant and Goodwin placing several bags into the back-seat trunk area of the vehicle before leaving the motel. Deputy Bell followed the vehicle as it left the motel, westbound on Highway 34 towards Mt. Pleasant. At that time, he contacted Sergeant Wall to advise him Defendant was driving the vehicle with a suspended license and requested he make a traffic stop, as Sergeant Wall was in uniform in a marked squad car while Deputy Bell was not.

Deputy Bell testified he was not present for the traffic stop performed by Sergeant Wall. However, he was aware the vehicle was towed to the Henry County Sherriff's Office, along with locked containers seized from the vehicle. Those containers were placed in the evidence shed at the Sherriff's Office. A drug dog sniffed each of the locked containers and alerted to them. Subsequent to this, Deputy Bell applied for a state search warrant to open the locked containers. Based on dispatch records, Deputy Bell believes the traffic stop occurred at approximately 6:46 p.m. and he would have sought the search warrant between that time and 10:00 p.m. After the

traffic stop, Defendant was placed under arrest for driving on a suspended license and booked into the Henry County Jail. He remained in custody through his indictment in this case.

A copy of Defendant's arrest booking photo from that evening was admitted as government's Exhibit 2. Deputy Bell testified Defendant's driver's license photo, Exhibit 1 and Defendant's arrest booking photo, Exhibit 2, except for some facial hair that is a little more prevalent, look similar to him. Further, by looking at these photos, he can identify Defendant.

B. Testimony of Sergeant David Wall

Sergeant David Wall of the Henry County Sherriff's Department testified. He is a K-9 handler for the department and has been with the department since 2017. Previously he was a police officer with the city of Fairfield. Sergeant Wall testified when he is on duty, he typically wears his uniform, drives a marked squad car and is with his K-9, Uno, and this was the case on October 2, 2019. That evening, Deputy Bell asked him to make a traffic stop on the vehicle because the driver, Defendant, was operating with a suspended driver's license. Deputy Bell gave him Defendant's name. Sergeant Wall testified he became aware of Deputy Bell's investigation a week or two before the traffic stop and was aware it involved a suspected methamphetamine trafficking situation.

Sergeant Wall looked up Defendant's driver's license photo and identified Exhibit 1 as the same photo he viewed that day. Prior to making the stop, Sergeant Wall pulled up parallel to Defendant on the four-lane highway they were on to confirm Defendant was, in fact, the driver of the vehicle. He looked over at Defendant, who turned his head and looked directly at Sergeant Wall. Nothing obstructed his view of Defendant, nor did the vehicle have tinted windows. Sergeant Wall indicated Defendant had on a baseball cap, but this did not obstruct his view, either. Sergeant Wall then initiated a traffic stop of the vehicle.

At the stop, Sergeant Wall identified Defendant as the driver and Stephanie Goodwin as the front seat passenger. No one else was in the car. Sergeant Wall confirmed Defendant did not have a valid driver's license and made the decision to run Uno around the vehicle as he was aware of Deputy Bell's investigation on the car. In addition, prior to the K-9 open air sniff, Sergeant Wall took note of multiple cellphones in the car, a torch lighter in the center console cup holder area and a camera mounted to the rear-view mirror. Based on his experience investigating drug cases, Sergeant Wall testified a torch style lighter is used to make methamphetamine and individuals involved in drug trafficking often have multiple cell phones. He further indicated these items are odd for people to have in their vehicles.

Sergeant Wall testified Uno is certified to find the odor of methamphetamine, heroin, ecstasy, cocaine and marijuana. He and Uno were certified in 2013 through Mid-Michigan Kennels. Sergeant Wall and Uno undertake an annual certification from an independent organization and were certified on the date of this stop. When Uno alerts to a vehicle, he makes his final indication by sitting - what is called a passive alert. Sergeant Wall testified he and Uno have performed hundreds of open-air sniffs around vehicles.

Sergeant Wall estimated he initiated the open-air sniff about a minute to minute and a half after the initial encounter with Defendant. Uno gave a passive alert, by sitting at the driver's side rear door near a folded down back seat. Sergeant Wall told Defendant the vehicle would be searched. According to Sergeant Wall, Defendant became a little bit more agitated and blurted out the vehicle did not belong to him. An unused methamphetamine pipe was found in Goodwin's purse. In the trunk of the vehicle, Sergeant Wall found a large red scale, multiple individual baggies and locked containers within brief-case style bags. The locked containers were approximately six by six to six by twelve inches big. Each was secured by a lock with a code, similar to a bicycle

lock. Both Defendant and Goodwin denied knowledge or possession of the locked containers. Sergeant Wall testified, if he had the means to at the time, he would have opened and searched the containers immediately.

Sergeant Wall contacted Deputy Bell to brief him on the traffic stop. From this the decision was made to remove the containers from the vehicle, bring them to the Sherriff's Office and have an open-air dog sniff performed on them. Sergeant Wall did this with Uno, who alerted to all four containers. He testified it is not uncommon for him to remove items from a vehicle and have Uno do an open-air sniff around those items. A state search warrant was then obtained for the containers. A search of the containers revealed a significant amount of methamphetamine.

III. ANALYSIS

Defendant seeks to suppress all physical evidence obtained as a result of the traffic stop on October 2, 2019 and all evidence obtained by search warrants obtained subsequent to the stop based upon evidence recovered during the stop. Dkts. 81, 86, 95 and 105. Defendant contends the traffic stop was not justified because it was not supported by specific, articulable facts. Dkt. 86-1, p. 4. In addition, Defendant argues law enforcement was not justified in the seizure of the locked containers from the vehicle driven by Defendant. *Id.*, pp. 7-8.

The government resists the motion in each particular. Dkts. 89, 102. The Court addresses each of Defendant's arguments in turn.

A. The Traffic Stop.

The Fourth Amendment protects against "unreasonable searches and seizures," and a traffic stop constitutes a seizure of the vehicle's occupants. U.S. Const. amend. IV, *United States v. Sanchez*, 955 F.3d 669, 674 (8th Cir. 2020), *Brendlin v. California*, 551 U.S. 249, 255 (2007). Regarding pretextual stops:

“An officer has probable cause to conduct a traffic stop when he observes even a minor traffic violation. ‘This is true even if a valid traffic stop is a pretext for other investigation.’ ” *United States v. Coney*, 456 F.3d 850, 855-56 (8th Cir. 2006) (internal citation omitted) (*quoting United States v. Linkous*, 285 F.3d 716, 719 (8th Cir. 2002)); *see Whren v. United States*, 517 U.S. 806, 813, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996) (holding that an officer's subjective intentions for conducting a traffic stop “play no role in ordinary, probable-cause Fourth Amendment analysis”); *United States v. Herrera-Gonzalez*, 474 F.3d 1105, 1109 (8th Cir. 2007) (“[T]he constitutional reasonableness of a traffic stop does not depend on the actual motivations of the officer involved, and the subjective intentions of the officer making the stop are irrelevant in determining the validity of the stop.”); *United States v. Andrews*, 465 F.3d 346, 347 (8th Cir. 2006) (*per curiam*) (“[T]he fourth amendment is not violated if an objectively good reason for a traffic stop exists, whatever the actual subjective motive of the officer making the stop may have been.”); *United States v. Thomas*, 93 F.3d 479, 485 (8th Cir. 1996) (finding a traffic stop for failing to wear seatbelts is valid “even if the police would have ignored the traffic violation but for their suspicion that greater crimes are afoot”).

United States v. Sallis, 507 F.3d 646, 649 (8th Cir. 2007).

As such, a traffic stop must be justified by “reasonable suspicion ... that criminal activity may be afoot.” *United States v. Sanchez*, 955 F.3d 669, 674 (8th Cir. 2020), *United States v. Arvizu*, 534 U.S. 266, 273 (2002) (quotation marks and citation omitted). “When an officer makes a routine traffic stop, the officer is entitled to conduct an investigation reasonably related in scope to the circumstances that initially prompted the stop.” *Sanchez*, 955 F.3d at 674, *United States v. Lyons*, 486 F.3d 367, 371 (8th Cir. 2007) (quotation marks and citation omitted). The reasonable suspicion inquiry asks “whether the detaining officer has a particularized and objective basis for suspecting legal wrongdoing.” *Sanchez*, 955 F.3d at 674, *United States v. Walker*, 771 F.3d 449, 450 (8th Cir. 2014) (quotation marks and citation omitted).

“A police officer who observes a traffic violation has probable cause to stop the vehicle and its driver.” *United States v. Nassar*, 546 F.3d 569, 570 (8th Cir. 2008) (*citing United States v. Olivera-Mendez*, 484 F.3d 505, 509 (8th Cir. 2007)); *see United States v. Cummins*, 920 F.2d 498,

500 (8th Cir. 1990) (“When an officer observes a traffic offense—however minor—he has probable cause to stop the driver of the vehicle.”) (*citing Pennsylvania v. Mimms*, 434 U.S. 106 (1977)). “If there is an ‘articulable and reasonable suspicion that a motorist is unlicensed or that an automobile is not registered,’ a traffic stop on that basis is not unreasonable under the Fourth Amendment.” *United States v. Chartier*, 772 F.3d 539, 543 (8th Cir. 2014) (*quoting Delaware v. Prouse*, 440 U.S. 648, 663 (1979)). In *Chartier*, the Eighth Circuit Court of Appeals held that an officer properly stopped a vehicle after determining the vehicle's registered owner did not have a valid license to drive despite not “affirmatively identify[ing]” the driver. *Id.* at 543.

Defendant argues the traffic stop was not justified because it was not supported by specific, articulable facts. Dkt. 86-1. In his view, nothing in the reports or affidavits filed by the officers provides information as to how they could have positively identified Defendant. *Id.*, p. 4. Defendant contends he looked significantly different from the picture used to identify him, did not identify himself at the traffic stop and carried no photo identification. Dkt. 81, p. 2, Dkt. 86, p. 2. The traffic stop is a hunch from Defendant’s perspective, and cannot be the basis of reasonable suspicion, so all evidence flowing from the stop should be suppressed. Dkt. 86-1, p. 5. He further asserts the visual identification based solely on an out of date driving record photograph is both entirely subjective and not sufficiently reliable. Dkt. 81, p. 3, Dkt. 86, p. 3. He notes the law enforcement officers who identified Defendant had no previous encounters with him. Dkt. 86-1, p. 5. Further, when he identified Defendant, Sergeant Wall was travelling at highway speeds and Defendant was wearing a baseball cap. *Id.*

The government argues Defendant’s rights were not violated during the traffic stop. Dkt. 89, pp. 5-13. In fact, the government emphasizes, in this case, the only issue for the court is to determine is whether the totality of the circumstances supported the traffic stop. Dkt. 89, p. 6.

Sergeant Wall had reasonable suspicion to stop the car and positively identified Defendant. Dkt. 89, pp. 5-7. The traffic stop was not based on a hunch but on specific, articulable reasons, supported by probable cause. Dkt. 89, p.7.

This Magistrate Judge concludes the traffic stop in this case was appropriate. A traffic violation, no matter how minor, provides probable cause to support a traffic stop. Here, the stop was based on a particularized and objective basis for suspecting legal wrongdoing – Defendant was driving the vehicle while his driver’s license was suspended. Sergeant Bell positively identified Defendant and did so by deliberately pulling up alongside the vehicle. He knew Defendant had a suspended driver’s license. Sergeant Wall reviewed Defendant’s driver’s license photograph through the State of Iowa. Sergeant Wall pulled up parallel to the 2010 Ford Fusion and Defendant looked right at him. He testified the vehicle did not have tinted windows and Defendant’s hat did not obstruct his face.

Sergeant Wall testified he had a clear view of Defendant. Whether the driver’s license photograph looked “significantly different” than Defendant did when he was stopped is a matter of degree and not a determinative factor on this issue. Police officers frequently view photographs of people to identify individuals, using their training and experience to match facial characteristics. Sergeant Wall has been an officer with the Henry County Sheriff’s Office since 2017 and was previously with the City of Fairfield Police Department.

In addition, this Magistrate Judge has compared the driver’s license photo of Defendant (Exhibit 1) to the booking photo of Defendant from that evening (Exhibit 2). The similarity of Defendant’s appearance on the day of the traffic stop to his appearance in the driver’s license photo is significant. Finally, it is notable Deputy Bell had previously identified Defendant through his investigation into the prior route of the vehicle. From his investigation, he determined the

previously unknown operator of the vehicle to be the Defendant. Then, prior to the traffic stop by Sergeant Wall, Deputy Bell positively identified the driver of the vehicle at that time on October 2, 2019 to be Defendant. For all these reasons, the traffic stop was appropriate.

B. SEIZURE OF THE LOCKED CONTAINERS.

The “automobile exception” to the Fourth Amendment’s warrant requirement established in *Carroll v. United States*, 267 U.S. 132 (1925) applies to searches of vehicles that are supported by probable cause to believe that the vehicle contains contraband. *United States v. Ross*, 456 U.S. 798, 808 (1982). The probable-cause determination must be based on objective facts. *Id.* The *Ross* Court notes that *Carroll* held that “contraband goods concealed and illegally transported in an automobile or other vehicle may be searched for without a warrant.” *Id.* at 820 (*quoting Carroll* 267 U.S. at 153). The scope of a warrantless search of an automobile thus is not defined by the nature of the container in which the contraband is secreted. *Id.* at 824. Rather, it is defined by the object of the search and the places in which there is probable cause to believe that it may be found. *Id.*

A dog sniff of the exterior of a vehicle does not violate the Fourth Amendment. *United States v. Rivera*, 570 F.3d 1009, 1012 (8th Cir. 2009) (*citing Caballes*, 543 U.S. at 409–10). “[A]n alert or indication by a properly trained and reliable drug dog provides probable cause for the arrest and search of a person or for the search of a vehicle.” *United States v. Winters*, 600 F.3d 963, 967 (8th Cir. 2010), *see United States v. Sundby*, 186 F.3d 873, 876 (8th Cir. 1999); *see also United States v. Perez*, 440 F.3d 363, 374 (6th Cir. 2006).

The defendant moving to suppress has the burden of proving a reasonable expectation of privacy in the area searched. *United States v. Gomez*, 16 F.3d 254, 256 (8th Cir. 1994); *Rakas v. Illinois*, 439 U.S. 128, 130-31 n. 1 (1978); *United States v. Kiser*, 948 F.2d 418, 423 (8th Cir.

1991). We adhere to these cases and to the general rule that Fourth Amendment rights are personal rights which, like some other constitutional rights, may not be vicariously asserted. *Alderman v. United States*, 394 U.S. 165, 174 (1969); *Simmons v. United States*, 390 U.S. 377, 389 (1968); *Jones v. United States*, 362 U.S. 257, 261 (1960); cf. *Tileston v. Ullman*, 318 U.S. 44, 46 (1943). Factors relevant to the determination of standing include: ownership, possession and/or control of the area searched or item seized; historical use of the property or item; ability to regulate access; the totality of the circumstances surrounding the search; the existence or nonexistence of a subjective anticipation of privacy; and the objective reasonableness of the expectation of privacy considering the specific facts of the case. *Gomez*, 16 F.3d at 256. If a defendant fails to prove a sufficiently close connection to the relevant places or objects searched, he has no standing to claim that they were searched or seized illegally. *Id.*

Defendant contends law enforcement was not justified in the seizure of the locked containers as neither danger nor risk of disappearance existed to support their seizure from the vehicle driven by Defendant. Dkt. 86-1, pp. 7-8. As the driver, Defendant had a reasonable expectation of privacy, and has standing to challenge the seizure and search of the containers found in the trunk. Dkt. 105, pp. 4-6. Finally, there exists no applicable warrant exception to justify law enforcement's seizure of the locked containers found in the vehicle. Dkt. 105, pp. 6-7. At hearing, Defendant indicated he was contesting only the second dog sniff of the locked containers and argued putting the locked containers in an evidence locker was not the appropriate way to handle them.

Regarding the locked containers, the government contends Defendant does not have standing to challenge the seizure of the containers from the vehicle. Dkt. 89., pp. 8-9. Additionally, based on the positive alert by the drug dog, probable cause existed to believe contraband was

present, which authorized a warrantless search of the vehicle. Dkt. 89, pp. 9-13. The government contends the automobile exception justifies seizing the locked containers in the same manner it authorized a warrantless search of the vehicle in the first place. Dkt. 102, p. 5.

Concerning the question of standing, by his own words, Defendant denied ownership of the vehicle and denied possessing the locked containers. There was no evidence Defendant had a key to the locked containers, a possessory interest in the locked containers, a possessory interest in the vehicle, the ability to exclude others from the vehicle or whether he took precautions to maintain privacy within the vehicle. On the other hand, law enforcement was aware from tracking the vehicle for several days of Defendant had been in possession of the vehicle during that time. His denial of ownership of the vehicle only occurred when he was notified the vehicle was going to be searched. Examining the totality of the circumstances surrounding the search and the objective reasonableness of the expectation of privacy, it is arguable Defendant has not met his burden to show standing and that he had a reasonable expectation of privacy in the vehicle and/or locked containers.

Regardless, even if Defendant has standing, law enforcement had probable cause to seize the locked containers pending further investigation. Deputy Bell had information Defendant and Goodwin were trafficking drugs based on the GPS tracking information received about the vehicle in the days before the vehicle was stopped by officers on October 2, 2019. Defendant was driving the vehicle of a known drug trafficker. A certified drug dog, Uno, alerted to the area of the vehicle containing the locked containers. Sergeant Wall testified if the containers had not been locked, he would have searched them at the scene.

Instead, the locked containers were removed from the vehicle and transported to the Henry County Sheriff's Office and placed in the evidence shed. From there, Uno was deployed around

the containers, alerting again to the presence of contraband. A state search warrant was then obtained to open and search the locked containers. Sergeant Wall testified it is not uncommon for him to remove items from a vehicle and have Uno do an open-air sniff around those items. During this time, Defendant was in custody at the Henry County Jail for driving with a suspended license. Defendant was not released from custody from the time of his initial arrest up at the traffic stop to the time he was taken into custody upon the indictment in this case. For these reasons, the Magistrate Judge determines the warrantless seizure of the locked containers was not unreasonable merely because law enforcement removed the locked containers from the vehicle and transported them to the Henry County Sherriff's Office evidence shed, rather than immediately opening them at the scene of the traffic stop.

To the extent Defendant suggests the drug dog employed in this case was not reliable or the open-air sniff conducted was irregular, for a full report and recommendation, this Magistrate Judge addresses those matters and determines any such arguments have no merit. In this case, Sergeant Wall testified credibly to the certification of the drug dog, Uno, his ongoing training with him and the method and manner of the open-air sniffs conducted in this case. A drug dog is considered reliable when it has been "trained and certified to detect drugs and a detailed account of the dog's track record or education is unnecessary." *United States v. Olivera-Mendez*, 484 F.3d 505, 512 (8th Cir. 2007). In addition, the facts surrounding the alerts by Uno in this case, suggest a reasonably prudent person would think a search would reveal contraband or evidence of a crime. *See Florida v. Harris*, 568 U.S. 237, 248 (2013) (the appropriate inquiry is "whether all the facts surrounding a dog's alert, viewed through the lens of common sense, would make a reasonably prudent person think that a search would reveal contraband or evidence of a crime").

IV. RECOMMENDATION AND ORDER

IT IS RESPECTFULLY RECOMMENDED, that Defendant's Motions to Suppress Traffic Stop and Subsequent Evidence and Request for Hearing (Dkt. 81 and 86) be denied.

IT IS ORDERED, the parties have until December 30, 2020 to file written objections to the Report and Recommendation, pursuant to 20 U.S.C. § 636(b)(1), Fed. R. Crim. P. 59(b)(2), and L.Cr.R. 59.

IT IS SO ORDERED.

DATED this 16th day of December, 2020.

A handwritten signature in black ink, reading "Stephen B. Jackson, Jr.", is written over a horizontal line.

STEPHEN B. JACKSON, JR.
UNITED STATES MAGISTRATE JUDGE

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF IOWA
3 DAVENPORT DIVISION

4 UNITED STATES OF AMERICA,)
5)
6 PLAINTIFF,)
7) CRIMINAL ACTION
8 VS.) FILE NO. 3:20-cr-00006
9)
10)
11 SHAUN MICHAEL FARRINGTON,) TRANSCRIPT OF MOTION
12)
13)
14 DEFENDANT.)
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)

BEFORE THE HONORABLE STEPHEN B. JACKSON, JR.
Monday, November 9, 2020 11:05 a.m.
Davenport, Iowa 52801

APPEARANCES:

FOR THE GOVERNMENT:

CALEB COPLEY
ASSISTANT U.S. ATTORNEY
131 E. Fourth Street
Davenport, Iowa 52801

FOR THE DEFENDANT:

ELIZABETH ARAGUAS
CHARLES DAVID PAUL
ATTORNEYS AT LAW
452 2nd Street SE, #1000
Cedar Rapids, Iowa 52401

DEBRA M. THORNBURG, CSR, RPR, CRR
FEDERAL OFFICIAL COURT REPORTER
UNITED STATES COURTHOUSE
131 EAST FOURTH STREET
DAVENPORT, IOWA 52801

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY, TRANSCRIPT
PRODUCED BY CAT

I N D E X

<u>WITNESS</u>	<u>EXAMINATION</u>	<u>PAGE</u>
----------------	--------------------	-------------

For the Government:

Jesse Bell	By Mr. Copley	10
------------	---------------	----

	By Ms. Araguas	29
--	----------------	----

David Wall	By Mr. Copley	39
------------	---------------	----

	By Mr. Paul	52
--	-------------	----

EXHIBITSReceived

Government's No. 1 - photo		20
----------------------------	--	----

Government's No. 2 - booking photo		27
------------------------------------	--	----

P R O C E E D I N G S

(Following proceedings were held in open court with the Court, counsel, and the defendant present)

THE COURT: Good morning. This case is United States of America v. Shaun Michael Farrington. This is Case No. 320-cr-6. Today is the date and time set for hearing on the motion to suppress filed by Mr. Farrington. The Government appears today by Assistant U.S. Attorney Caleb Copley. Shaun Farrington appears personally with his attorney, Liz Araguas.

Couple things before we begin. Mr. Copley, I assume you plan on witness testimony today. How many witnesses do you have?

MR. COPLEY: Just two, your Honor.

THE COURT: Okay. And is your other witness outside?

MR. COPLEY: He is, your Honor.

THE COURT: All right. Good. I also understand that your first witness has some very important things that may be going on at any moment that we can't predict and so good luck to him and his wife especially with that, and he may have his cellphone on the stand in case he gets a call.

MR. COPLEY: Thank you. I appreciate it.

THE COURT: Absolutely.

1 Ms. Araguas, I'm also aware of your motion
2 concerning co-counsel. I'll be taking that up. I need to
3 touch base with CJA panel members, but that will be
4 processed within the next week to seven or ten days, but
5 that is something on my radar, and I'm working on that.

6 MS. ARAGUAS: Could I ask a brief question about
7 that, your Honor?

8 THE COURT: Yes.

9 MS. ARAGUAS: I just want to clarify, I had just
10 filed a limited appearance for Mr. Paul from our office
11 today just because he would be here today and had prepped
12 this, so even if the Court does not appoint him, that's
13 fine. I would just like to ask the Court's permission for
14 Mr. Paul to be part of the hearing today and sit at counsel
15 table if the Court is okay with that pending whether or not
16 he would be appointed.

17 THE COURT: But he did file a limited appearance
18 today?

19 MS. ARAGUAS: Yes, our assistant did this
20 morning.

21 THE COURT: Any objection, Mr. Copley?

22 MR. COPLEY: No, your Honor.

23 THE COURT: Yes, I think that's perfectly fine.

24 MS. ARAGUAS: Thank you, your Honor.

25 THE COURT: Okay. Next before we begin with

1 hearing today, this is the first appearance of Mr.
2 Farrington since revisions to Rule of Criminal Procedure 5
3 (f) and so pursuant to that rule, I am ordering the United
4 States to disclose to the defendant all exculpatory
5 evidence, that is, evidence that favors the defendant or
6 casts doubt on the United States' case to the defendant as
7 required by Brady v. Maryland and its progeny. Not doing so
8 in a timely manner may result in consequences including but
9 not limited to exclusion of evidence, adverse jury
10 instructions, dismissal of charges, contempt proceedings,
11 disciplinary action or sanctions by the Court.

12 Mr. Copley, do you confirm you fully understand
13 the obligations of the Government to disclose all such
14 exculpatory evidence to the defendant?

15 MR. COPLEY: I do, your Honor.

16 THE COURT: And do you understand the possible
17 consequences of failing to disclose exculpatory evidence in
18 a timely manner?

19 MR. COPLEY: Yes, your Honor.

20 THE COURT: Ms. Araguas, do you confirm that you
21 understand the rights of Defendant's exculpatory evidence
22 being disclosed in a timely manner to the defendant?

23 MS. ARAGUAS: I am, your Honor.

24 THE COURT: I'll enter an order consistent with 5
25 (f) as I'm required to do as well. With that, I have a

1 question for the parties just in terms of clarifying or
2 lasering in on the issues, and I'm going to direct it to
3 you, Ms. Araguas. In the Government's response, the
4 Government suggested that really the only issues that from
5 their perspective you are raising in the suppression motion
6 is an inappropriateness concerning the traffic stop of Mr.
7 Farrington and also whether the seizure of the locked
8 containers was justified. Do you agree with that
9 characteristic?

10 MR. PAUL: Your Honor, if I may respond, the
11 traffic stop, we could agree with the Government's
12 characterization of that issue. As far as the seizure,
13 because any search or seizure has to be justified at its
14 initiation, the seizure became the first link in the chain
15 that then goes to the continued seizure, the dog sniff and
16 the search warrant. If there's any issue with that seizure
17 of the locked packages separate from the car, that would
18 invalidate everything else down the chain.

19 THE COURT: Well, are you raising issues with
20 certifications of K-9 or that the alert was not valid or
21 things of that nature? Because that's not super clear from
22 your pleading.

23 MR. PAUL: Not right now, your Honor. We would
24 reserve the option to ask -- if information were to come up
25 today that would bring more issues to light, we may ask to

1 brief those issues, but the -- frankly, the record of the
2 stop and search is sparse and right now we are not seeing
3 any issues with the dog certification or the search.

4 THE COURT: Are you arguing that probable cause
5 was lacking to search the car?

6 MR. PAUL: No, your Honor.

7 THE COURT: Are you arguing that probable cause
8 was lacking to search the locked containers?

9 MR. PAUL: Yes, your Honor.

10 THE COURT: Anything that you want to address in
11 that regard, Mr. Copley?

12 MR. COPLEY: Your Honor, the only thing I would
13 ask of the Court is on, I believe it was, Friday the
14 defendant filed a reply brief in support of the motion to
15 suppress. I did work over the weekend on a brief response
16 to that. I do believe there are some important cases that I
17 cited in that case -- or, in my response brief that I would
18 like to file, and I do believe it would help guide the Court
19 in reaching its decision. I could have that on file by no
20 later than the end of the day today, and I would just ask
21 permission of the Court to file that and, in the
22 alternative, if the Court does not want a filing, I would
23 just like the opportunity at the end of this hearing to
24 summarize those arguments if that pleases the Court
25 better.

1 THE COURT: All right. I'll allow the Government
2 to file a sur-reply by the end of business today.

3 And Ms. Araguas, Mr. Paul, would you like some
4 time since -- would you like some time to respond to that?

5 MS. ARAGUAS: Yes, your Honor. I think two
6 additional business days after, so if Mr. Copley is filing
7 today, if we could have until Thursday.

8 THE COURT: Close of business on Thursday?

9 MS. ARAGUAS: Yes, please.

10 THE COURT: Okay. That will be fine. Mr. Paul,
11 could you just state and spell your first and last names for
12 your appearance for the record for our reporter too?

13 MR. PAUL: Yes, your Honor. Charles C-h-a-r-l-e-s
14 Paul P-a-u-l.

15 THE COURT: All right. Thank you very much. So
16 the traffic stop and probable cause is lacking to search the
17 locked containers and then also seize the containers. Is
18 that correct?

19 MS. ARAGUAS: That's correct, your Honor. I would
20 just like to clarify something that Mr. Paul mentioned.
21 When he mentions that we might challenge a sniff, it's not
22 the sniff at the scene but there's a second dog sniff of the
23 locked containers. There's a lot of questions that still
24 remain on the defense side about what happened once the
25 containers were removed from the vehicle and then

1 processed.

2 THE COURT: Well, I'm a little concerned because
3 where do we stop in this kind of never-ending suggestion of
4 these issues and so I need to issue report and
5 recommendation. I want it to be inclusive, so how do you
6 propose we address that?

7 MR. PAUL: Your Honor, once it's shown by evidence
8 that the search of the locked containers was warrantless, it
9 will be the Government's responsibility to show that they
10 were justified at the time they searched those containers.

11 THE COURT: We'll come back to these at the end of
12 this hearing today, and you can set forth exactly what it is
13 that you're contesting so that we're square on those things.

14 Mr. Copley, you may proceed with your evidence.

15 MR. COPLEY: Thank you, your Honor. The
16 Government calls Jesse Bell to the witness stand.

17 **JESSE BELL, WITNESS FOR THE GOVERNMENT, SWORN**

18 THE COURT: You may take your mask off while
19 you're testifying.

20 You may proceed.

21 DIRECT EXAMINATION

22 BY MR. COPLEY:

23 Q. Good morning, sir. Please state your name again for the
24 record.

25 A. Jesse Bell.

1 Q. What is your occupation, sir?

2 A. Deputy sheriff.

3 Q. And what county do you work for?

4 A. Henry County.

5 Q. Where is Henry County?

6 A. Southeast Iowa.

7 Q. What do you do as a deputy for the Henry County
8 sheriff's office?

9 A. I'm the investigator for the office.

10 Q. And what sort of crimes do you investigate?

11 A. General crimes but also narcotic investigations.

12 Q. Do you have any specialized training or certifications
13 for drug cases?

14 A. Yes.

15 Q. Can you just walk us through those?

16 A. I have surveillance training. I've been to narcotic
17 officer two-week training course, informant management.

18 Q. And would it be fair to say that there's also some
19 on-the-job training in order to become a drug
20 investigator?

21 A. Yes.

22 Q. Now, obviously in Southeast Iowa we have the Southeast
23 Iowa Narcotics Task Force. Are you a member of that task
24 force?

25 A. Yes.

1 Q. How long have you been a member?

2 A. Since July of 2019.

3 Q. How long have you been an investigator with the Henry
4 County sheriff's office?

5 A. Since May of 2017.

6 Q. How long have you been a deputy with the Henry County
7 sheriff's office?

8 A. Since June of 2013.

9 Q. And does that encompass all of your law enforcement
10 experience to date?

11 A. No. I was with the Mt. Pleasant Police Department since
12 July of 2010, prior to that.

13 Q. And is that the length of your law enforcement?

14 A. Yes.

15 Q. Okay. Thank you. Directing your attention to on or
16 about March 31, 2019, was law enforcement made aware and
17 subsequently you made aware of a suspected drug house in New
18 London, Iowa?

19 A. Yes.

20 Q. And where is New London, Iowa, in regards to Henry
21 County?

22 A. It's on the eastern portion of the central area of Henry
23 County.

24 Q. As part of that investigation, were you made aware of a
25 2010 Ford Fusion with Iowa license plate HZS 769?

1 A. Yes.

2 Q. And who is that Ford Fusion registered to?

3 A. Emily Richardson.

4 Q. And what did you or officers know about Emily Richardson
5 at that time?

6 A. In March?

7 Q. Sure. Let's start there. March 31, 2019, is that
8 really all you knew about that Ford Fusion, is that it was
9 registered to her?

10 A. Yes. I don't know exactly when I became aware that that
11 was registered to her, but the initial information for that
12 residence of traffic -- drug traffic was made aware in
13 March.

14 Q. Okay. Now let's move forward to June of 2019. Are you
15 aware of an interview with Ms. Richardson around that
16 time?

17 A. Yes. The sheriff spoke with her.

18 Q. And did she make any admissions about living at that
19 drug house?

20 A. Yes. She said she was residing there.

21 Q. Moving forward to on or about August 26, 2019 and
22 September 4, 2019, did you apply for and receive Facebook
23 records as part of a separate methamphetamine investigation
24 with ties to that New London house?

25 A. Yes, in July I did.

1 Q. Okay. And can you tell us about what those records
2 showed or what they told us?

3 A. They received -- facebook records in that investigation
4 showed that Emily Richardson was trafficking narcotics.

5 Q. Would it be fair to say that she was either conspiring
6 with or working with others to traffic in narcotics?

7 A. Yes.

8 Q. At some point did you obtain a State of Iowa search
9 warrant for her silver Ford Fusion?

10 A. Yes.

11 Q. And would that have been on or about August 28, 2019?

12 A. I believe so.

13 Q. Would that tracker have been installed around that
14 time?

15 A. Yes. I believe I affixed the tracker the day after the
16 warrant was signed.

17 Q. And in terms of just general information about that GPS
18 tracker, where was she involved with methamphetamine
19 distribution? What portions of the State of Iowa, if you
20 can recall?

21 A. I believe it was just our Henry County, Burlington and
22 up into Washington County a little bit.

23 Q. Would it be safe to say that Burlington, Iowa, at this
24 time was a fairly large source of methamphetamine for the
25 State of Iowa?

1 A. Yes.

2 Q. Now, during this same time frame, so we're kind of
3 talking end of August, beginning of September 2019, did the
4 defendant in this case and his co-defendant start to pop up
5 on your radar?

6 A. Yes.

7 Q. And particularly this defendant, Shaun Farrington, were
8 you aware of him being involved with methamphetamine
9 sales?

10 A. Yes.

11 Q. And let's talk about that. What was, kind of, the
12 primary source around this time frame that you were aware
13 of?

14 A. In early September, I received Facebook messages with
15 another individual, and within those messages Shaun
16 Farrington was asking this individual to deliver to him.

17 Q. Okay. And do those Facebook records also implicate his
18 co-defendant, Stephanie Goodwin?

19 A. Yes.

20 Q. Are there conversations about drug prices in those
21 messages?

22 A. The specific ones with Shaun, I don't recall.

23 Q. Okay. Do you know about quantities and drug debts? Was
24 that discussed in those messages?

25 A. Yes, quantities.

1 Q. Okay. On September 30, 2019, did you find and/or see
2 Ms. Richardson's car?

3 A. Yes.

4 Q. Where was it?

5 A. At the Super 8 Motel in Burlington.

6 Q. And through the course of your time with the Southeast
7 Iowa Narcotics Task Force, do you know anything about that
8 Super 8 Motel?

9 A. We've conducted drug investigations at that hotel,
10 yes.

11 Q. Would it be fair to say that it's a known drug
12 trafficking hotel in Burlington?

13 A. It's known for drugs.

14 Q. Did you conduct surveillance on that car?

15 A. On the 30th?

16 Q. Yes.

17 A. Yes.

18 Q. What did you see?

19 A. I observed a male and female subject come to the car and
20 both the male and female I knew not to being Emily
21 Richardson or her boyfriend at the time, Tyler Carpenter.

22 Q. Did the car eventually leave the motel?

23 A. That night it did, but not while I was watching.

24 Q. What time did it leave, approximately? Before I ask
25 that, let me take a step back. Was the GPS tracker still on

1 the car?

2 A. Yes.

3 Q. So you were still able to monitor that car and where it
4 was going with the GPS tracker?

5 A. Yes.

6 Q. Would it be fair to say that the car left that motel at
7 approximately 5:55 p.m. that night?

8 A. I wouldn't -- I could refer to my GPS report. I don't
9 remember the exact times.

10 Q. If you could, I would appreciate it.

11 A. So from analysis on my report, it appears to leave
12 Burlington approximately 6:15 p.m.

13 Q. And approximately when does the car return back to the
14 area of the Super 8 Motel?

15 A. From analysis on my report, it doesn't -- the vehicle
16 does not appear to come back to Burlington until
17 approximately 12:45 the next day, on the 1st.

18 Q. P.m.?

19 A. P.m., yes.

20 Q. Okay. Would it be fair to say, according to your
21 records, that the car made multiple stops while being gone
22 for that time?

23 A. Yes.

24 Q. And would it be fair to say that those stops were for
25 shorter periods of time?

1 A. Several locations, yes.

2 Q. What does that indicate to you, if anything, as someone
3 who is involved with drug investigations?

4 A. Someone that travels to multiple locations for short
5 periods of time is likely delivering narcotics.

6 Q. Now, you said the car came back on October 1 at
7 approximately 12:45 p.m. That's when you picked up on it
8 again. Did you conduct visual surveillance on the car that
9 day?

10 A. Yes.

11 Q. And at some point was it followed to --

12 THE COURT: Excuse me. 12:45 a.m. or p.m.?

13 Q. I believe you said p.m.?

14 A. P.m. October 1, 12:45 p.m.

15 THE COURT: Thank you.

16 Q. Was the car followed to a Dick's Sporting Goods in
17 Burlington?

18 A. Yes.

19 Q. Now, when the two people in -- let me ask you this. Did
20 you see the car leave the motel and go to Dick's?

21 A. No.

22 Q. When did you pick up on it or when did you see it
23 again?

24 A. I became involved -- other detectives were helping with
25 the case, or helping surveil, and once the vehicle arrived

1 at Dick's Sporting Goods is when I arrived, once it was
2 already parked there.

3 Q. And when the people came back out to the car, were you
4 able to identify them?

5 A. I observed that was it the same male and female that I
6 had seen on the 30th at the Super 8 at the vehicle.

7 Q. And what steps did you take to try and identify those
8 people?

9 A. I subsequently received a driver's license photo of
10 Shaun Farrington and verified that the subject I watched on
11 the 30th and now on the 1st was Shaun Farrington.

12 Q. And I'm assuming you got that photo from dispatch.
13 Would that be fair to say?

14 A. Yes.

15 Q. Why did you ask dispatch for a photo of Shaun
16 Farrington?

17 A. So after I'd identified that it was not Emily Richardson
18 or her boyfriend that I knew at the time to be occupying the
19 vehicle, one of the stops the GPS tracker had made with the
20 vehicle was at a residence in Iowa City, and upon checking
21 with the Johnson County Drug Task Force members, I learned
22 that it was at or near Shaun Farrington's residence.

23 Q. Okay. And would you recognize the driver's license
24 photo that you received for Shaun Farrington if I showed it
25 to you here in court today?

1 A. Yes.

2 Q. Investigator Bell, I'm going to hand you what's been
3 marked as Government's Exhibit 1 for identification. Do you
4 recognize that photograph?

5 A. Yes.

6 Q. What is it?

7 A. It's a driver's license photo of Shaun Farrington.

8 Q. And is that a fair and accurate copy of the driver's
9 license photo of Shaun Farrington that you received on or
10 about October 31 of 2019?

11 A. Yes. It's a little blurrier, but it is it.

12 MR. COPLEY: Your Honor, we'd offer proposed
13 Government's Exhibit 1.

14 THE COURT: Any objection?

15 MS. ARAGUAS: No, your Honor.

16 THE COURT: Government's 1 is received.

17 BY MR. COPLEY:

18 Q. The individual that is shown in Government's Exhibit 1
19 and the person you saw both on September 30 and October 1
20 leaving the Dick's Sporting Goods, do you see that person in
21 the courtroom here today?

22 A. Yes.

23 Q. Can you identify them by an article of clothing that
24 they're wearing?

25 A. Orange top.

1 MR. COPLEY: Your Honor, I'd ask that the record
2 reflect this witness has identified the defendant, Shaun
3 Farrington.

4 THE COURT: The record will reflect.

5 BY MR. COPLEY:

6 Q. Would it be fair to say that Mr. Farrington's hair is a
7 bit shorter now than it was back on October 31?

8 A. Yes. It's been cut.

9 Q. Okay. Did you end up following the car from Dick's
10 Sporting Goods back to the motel?

11 A. On October 1, yes.

12 Q. Okay. And before we talk about that further, the other
13 person, the female, were you able to identify her?

14 A. Yes.

15 Q. And who was that?

16 A. We found that to be Stephanie Goodwin.

17 Q. Okay. Now, the -- once the car got back to the Super 8
18 Motel, did you observe the defendant and his co-defendant
19 going into the hotel after that?

20 A. Yes.

21 Q. Were they carrying anything?

22 A. Yes. They carried -- referring to my report for
23 recollection, they carried a backpack as well as numerous
24 bags and a blue plastic tote.

25 Q. Did the defendants leave the Super 8 Motel that evening,

1 on October 1?

2 A. Yes, referring to my -- the GPS analysis, the vehicle
3 left Burlington at approximately 6 p.m.

4 Q. And when did it come back to the Super 8 Motel?

5 A. At approximately 2:42 p.m. on October 2.

6 Q. And same as before, would it be fair to say that there
7 were numerous short-in-duration stops throughout that time
8 period?

9 A. Yes.

10 Q. Okay. Did you again perform visual surveillance on that
11 car on October 2, 2019?

12 A. Yes.

13 Q. Would it be fair to say that from 2:43 a.m. until
14 approximately 6:10 p.m. on October 2, that that car stayed
15 at the motel? Would that be fair to say?

16 A. It appeared to, yes, from GPS analysis.

17 Q. And did you see the car leave the Super 8 Motel on
18 October 2?

19 A. Yes.

20 Q. Who was driving?

21 A. Shaun Farrington.

22 Q. The same Shaun Farrington you'd seen throughout the
23 couple days before that?

24 A. Yes.

25 Q. How far away were you from Mr. Farrington,

1 approximately?

2 A. Two to three hundred feet, maybe? I was in the parking
3 lot, the casino parking lot, watching.

4 Q. Did you have any binoculars that kind of helped you zoom
5 in on people getting in and out of the car?

6 A. Yes, I had binoculars I was using.

7 Q. And nothing obstructed your view of the defendant
8 getting in and out of the car in the driver's seat?

9 A. No.

10 Q. Did the defendants, either one of them, place anything
11 into the car before they left?

12 A. Yes. When they left, exited the hotel on October 2 that
13 evening, they were carrying several bags and put them in the
14 back seat in the trunk area.

15 Q. Okay. Did you follow the car once it left the Super 8
16 Motel?

17 A. Yes.

18 Q. And what were you able to confirm about the defendant's
19 driver's license status, if anything?

20 A. On October 1 when I requested it from dispatch, I found
21 that Farrington had a suspended driver's license in Iowa.

22 Q. Which would make it illegal for him to drive a car in
23 the State of Iowa?

24 A. Yes.

25 Q. What did you do with that information?

1 A. I contacted Sergeant David Wall.

2 Q. And what was the purpose of contacting him?

3 A. To advise him that Shaun Farrington with a suspended
4 driver's license was driving a car. They left the casino
5 and drove westbound on Highway 34 towards Mt. Pleasant.

6 Q. And let me ask you this. Were you driving a marked
7 squad car?

8 A. No.

9 Q. Were you working in an undercover capacity?

10 A. Yes.

11 Q. Was Sergeant Wall driving a marked Henry County
12 sheriff's office car?

13 A. Yes.

14 Q. Wearing a full uniform?

15 A. Yes.

16 Q. Did you ask him to make the traffic stop as a marked
17 officer?

18 A. Yes.

19 Q. And is that what happened?

20 A. Yes.

21 Q. Now, the course of the, I guess, stop at the scene, were
22 you there for any of that?

23 A. At the scene?

24 Q. Yes.

25 A. No, I was not.

1 Q. So Sergeant Wall would be the best person to testify as
2 to interactions with the defendant at the scene?

3 A. Yes.

4 Q. Okay. Now, as you know, some items were seized from
5 that car, and the car was also towed back to the Henry
6 County sheriff's office. Is that correct?

7 A. Yes.

8 Q. And there were some lockboxes that were seized from the
9 car?

10 A. Yes.

11 Q. Okay. What happened with those lockboxes when they made
12 it back to the Henry County sheriff's office?

13 A. They were placed in our back evidence shed and then
14 the -- our narcotics K-9, Bree, sniffed each container.

15 Q. And did the dog alert to the containers?

16 A. Yes.

17 Q. What happened after that?

18 A. Then I applied for a State search warrant to open the
19 containers.

20 Q. Investigator Bell, do you recall approximately when the
21 traffic stop on the car was initiated, when Sergeant Wall
22 pulled that car over?

23 A. I believe it was approximately 6:46 p.m.

24 Q. And are you familiar with the dispatch records for this
25 incident?

1 A. Our call for service?

2 Q. Yes.

3 A. Yes.

4 Q. Sorry. What do those records tell us about when
5 Sergeant Wall was officially cleared from that call or, you
6 know, told he could go do something else?

7 A. I believe it was close to 10 p.m., but I don't remember
8 the exact time without the call for service in front of me,
9 and I don't believe I have it.

10 Q. So even if we assume 10:00, would it be fair to say that
11 you applied for, received the search warrant during that
12 time frame?

13 A. Yes.

14 Q. And the locked containers would have been searched in
15 that time frame?

16 A. Yes.

17 Q. Now, the defendant, what happened to him after the
18 traffic stop?

19 A. He was placed under arrest for driving under suspension
20 and transported to the sheriff's office.

21 Q. And was he booked into the Henry County Jail?

22 A. Yes.

23 Q. Did he remain in jail that entire evening?

24 A. Yes.

25 Q. In fact, did he remain in the custody of the Henry

1 County Jail until we indicted him as part of this case?

2 A. I believe so, yes.

3 Q. I'm gonna show you -- would you recognize a booking
4 photo of the defendant that night if I were to show it to
5 you?

6 A. Yeah.

7 Q. Investigator Bell, I've handed you what's been marked as
8 proposed Government's Exhibit 2 for identification. What
9 are we looking at there?

10 A. It is a booking photo of Shaun Farrington at our old
11 facility.

12 Q. Is that a fair and accurate booking photo of the
13 defendant from October 2, 2019?

14 A. I believe so, yes.

15 MR. COPLEY: Your Honor, I'd offer proposed
16 Government's Exhibit 2.

17 THE COURT: Any objection?

18 MS. ARAGUAS: No objection, your Honor.

19 THE COURT: 2 is received.

20 BY MR. COPLEY:

21 Q. Investigator Bell, I've handed you what's already been
22 admitted as Government's Exhibit 1 and put it next to
23 Government's Exhibit 2. Outside of some facial hair that
24 appears to be a little more prevalent in Government's
25 Exhibit 1, would you say these two photos look similar, to

1 you?

2 A. Yes.

3 Q. Looking at either one of those photos, are you able to
4 identify Shaun Farrington?

5 A. Yes.

6 Q. Now, as part of this investigation, did you ever
7 interview Stephanie Richardson or the registered owner of
8 that Ford Fusion?

9 A. Emily Richardson.

10 Q. Emily Richardson. My apologies.

11 A. Yes, I did.

12 Q. When did you interview her?

13 A. October 25, 2019.

14 Q. Now, in the defendant's response to -- or, Defendant's
15 reply brief in support of their motion to suppress, on one
16 of the pages there the defendant states that Ms. Richardson
17 stated she rented the silver Ford Fusion to Ms. Goodwin for
18 \$500 a week. Did you know that information on October 2,
19 2019?

20 A. No.

21 Q. On page 6 of that filing, the defendant states that
22 subsequent interviews of Richardson, the vehicle owner,
23 elicited a description of a rental agreement entered into
24 between Richardson and Goodwin for Goodwin's use of the car.
25 Again, did you know that information on October 2, 2019?

1 A. No.

2 Q. So the information about this rental agreement, that was
3 obtained on October 25, 2019, as you stated, correct?

4 A. Yes.

5 MR. COPLEY: Thank you. I have no further
6 questions for this witness, your Honor.

7 THE COURT: Who is gonna examine this witness for
8 Mr. Farrington?

9 MS. ARAGUAS: I will, your Honor.

10 THE COURT: Okay. Thank you. You can proceed.

11 CROSS-EXAMINATION

12 BY MS. ARAGUAS:

13 Q. Good morning, Deputy Bell.

14 A. Hello.

15 Q. I'd like to start by asking you about -- some specifics
16 about your identification of Mr. Farrington. So take me
17 through how exactly you went from September 30 of 2019 not
18 knowing who he was until October 2 and having a name to put
19 with his face.

20 A. So September 30 I found that it was not Emily Richardson
21 or her boyfriend at the time. October 1 discovered that
22 again and so then I started trying to think who may be in
23 the vehicle, and since one of the locations the GPS analysis
24 showed that it stopped near his residence, what I believed
25 was his residence, I thought that it might be him, as I had

1 information that he was also trafficking narcotics.

2 Q. And you mentioned that Ms. Richardson herself had made
3 several stops using her vehicle, allegedly, to distribute
4 methamphetamine, right, prior to Mr. Farrington's arrest?

5 A. Yes.

6 Q. And did you check on the -- any white males that may
7 have been at any of those residences or did you have some
8 information that allowed you to hone in on Mr. Farrington?

9 A. I did not. The only information that I used to check on
10 Mr. Farrington was on September 26, the GPS had went to his
11 residence and then I believe it went there a couple times
12 that day and then again, which led me to believe right then
13 on the 30th and the 1st and the 2nd that it -- or, I guess,
14 the time the 1st, that it may be him driving.

15 Q. Did you have lease information or a deed that would show
16 that he was the resident -- a resident of that address?

17 A. No.

18 Q. So you were -- you'd received word from another law
19 enforcement agency?

20 A. Yes, that that was his -- likely where he was staying,
21 and then also when I got his driver's license information on
22 the 1st, it showed that it was that trailer court, I
23 believe, that was on his license.

24 Q. And just to be clear, of all of Ms. Richardson's stops,
25 was that the only one where you checked to see who lives

1 there and could this person that I'm seeing be the person
2 that lives at this residence?

3 A. I don't recall exactly what I looked into on her prior
4 to September 30, but on September -- or, on September 30,
5 October 1, he is the only one that I checked on right
6 then.

7 Q. Thank you. When you were surveilling Ms. Goodwin and
8 Mr. Farrington at the Super 8 Motel, can you describe for us
9 what type of vehicle were you in? I understand you were
10 undercover, but did this vehicle have a camera mounted, like
11 a squad camera inside of it?

12 A. No. It was an unmarked truck.

13 Q. Okay. Did you have your body cam with you?

14 A. No.

15 Q. Did you use any video recording devices to record
16 Ms. Goodwin or Mr. Farrington as they went in and out of the
17 Super 8 Motel?

18 A. On October 1, one of the days I took pictures with a
19 digital camera.

20 Q. Okay. And have those pictures been provided to the U.S.
21 Attorney's office?

22 A. I believe they were. I'd have to double-check.

23 Q. Did you obtain any records or any surveillance footage
24 from the Super 8?

25 A. No.

1 Q. Did you see Ms. Goodwin conduct a drug transaction with
2 a man known by a street name as Action Jackson at the Super
3 8?

4 A. Can I refer to my surveillance notes?

5 Q. Yes, but could you please clarify what you're looking at
6 when you are looking?

7 A. So on my surveillance notes dated on September 30, I did
8 observe -- at the time I didn't know it was her, but then I
9 subsequently determined it was her, meet with a black male
10 subject at the vehicle, and I don't know who the subject
11 was.

12 Q. Did you come to understand that she was procuring
13 methamphetamine from that black male subject?

14 A. I did learn that she was obtaining meth from a black
15 male, yes. Again, I don't remember who that was on that
16 date.

17 Q. And Mr. Farrington played no part in the transaction
18 that you might have witnessed at the Super 8 with that other
19 male. Is that correct?

20 A. Correct. It appeared it was just the female and the
21 black male.

22 Q. Okay. You stated that in June of 2019 you interviewed
23 Ms. Richardson, the owner of the vehicle. Was that your
24 first interview with her ever in your work with the task
25 force?

1 A. I did not speak to her in June.

2 Q. Which officer did?

3 A. I believe it was Sheriff McNamee.

4 Q. Do you know where that interview took place?

5 A. I believe it was at the residence in New London, 302
6 East Jefferson.

7 Q. And I didn't catch the sheriff's last name, but is that
8 the sheriff of Henry County?

9 A. Yes.

10 Q. Do you know if he recorded that interview with Ms.
11 Richardson?

12 A. I do not.

13 Q. Do you know if the sheriff typically wears a body cam
14 for recording video in the field?

15 A. I do not believe he wears a body cam.

16 Q. Do you know if it's usually his practice to have any
17 type of recording device when he's in the field?

18 A. That I do not know.

19 Q. You've mentioned an awareness that Mr. Farrington was
20 part of meth distribution. Do you know that Mr. Farrington
21 was a meth user himself?

22 A. That I did not, I don't believe.

23 Q. Okay. What was the basis for your awareness that he was
24 part of meth distribution and not simply small-scale
25 consumption?

1 A. His name had surfaced in drug investigations that I was
2 made aware of.

3 Q. Can you be more specific?

4 A. One specific one was the Facebook messages that I
5 received with another subject where he was asking the
6 subject to deliver to him.

7 Q. And that subject -- is that subject named Katie
8 Manning?

9 A. Yes.

10 Q. And is there just one conversation between the two of
11 them from September 1 of 2019 that you're referring to? I'm
12 sorry. I'll ask an easier question. Is it just one
13 conversation between the two of them on Facebook messenger
14 that you are referring to?

15 A. In that specific instance, yes.

16 Q. And in that conversation, neither of them uses any
17 specific words for drugs. Is that correct?

18 A. Just the quantities.

19 Q. Okay. Is Ms. Manning Stephanie Goodwin's sister?

20 A. There's some relation. I don't recall exactly what the
21 relation is, off the top of my head.

22 Q. Did Sergeant Wall call you from the scene of Mr.
23 Farrington's detention and subsequent arrest?

24 A. I believe so, yes.

25 Q. And it's sort of my understanding from reviewing the

1 discovery that we have in this case that you were sort of
2 the manager of this entire investigation. Would that be a
3 fair characterization of the hierarchy here?

4 A. The case agent of the drug investigation, yes.

5 Q. I'd like to ask you some questions about the seizure of
6 the locked containers from the vehicle Mr. Farrington was
7 driving. You said the shed where these containers were
8 placed is at the sheriff's department. Is it on your main
9 grounds there?

10 A. Yes. So just to be clear, in October of 2019 we were at
11 our old facility. We've since moved, but at the old
12 facility there was our main sheriff's office building, the
13 office and the jail, and in the back there's a driveway with
14 a large shed and that's our -- was our evidence shed and
15 garage area, and that's where the containers were taken from
16 the scene to there.

17 Q. And you described this as an evidence shed. Was all
18 type of other evidence processed in this shed?

19 A. In the evidence -- so there's a big garage door where
20 you drive in and that's a big area, and then there's a wall
21 with two doors that are locked and that's where the actual
22 evidence shed is that only certain people have access to or
23 did at that time.

24 Q. Were you the officer in charge of performing the sniff
25 on the locked containers in that shed?

1 A. No.

2 Q. Who was?

3 A. Sergeant Wall.

4 Q. Okay. So the same dog performed the sniff in that
5 shed?

6 A. Yes.

7 Q. Did either you or Sergeant Wall have your body cameras
8 on or any other type of recording device going when that
9 sniff took place?

10 A. I did not.

11 Q. Is there a camera in that shed or was there in that
12 evidence shed?

13 A. No.

14 Q. Did you create any reports beyond, the affidavit that
15 you filed to get the search warrant, about the sniff that
16 took place in the shed?

17 A. No. It just would have been my traffic stop report from
18 what was located afterwards.

19 Q. Okay. So Mr. Farrington was arrested on October 2, but
20 Ms. Goodwin was not, correct?

21 A. Correct.

22 Q. And who made that call not to arrest Ms. Goodwin that
23 evening?

24 A. I don't recall exactly who determined to arrest or not
25 arrest her.

1 Q. And she was interviewed that evening by law
2 enforcement?

3 A. Yes.

4 Q. And is it true that the county attorney was called in to
5 give her some disclaimers about, you know, not promising
6 anything during that interview?

7 A. The assistant county attorney was present at that
8 time.

9 Q. And did the interview take place inside the jail?

10 A. It's -- at our old facility, it's a small facility, so
11 the interview room is also like our booking room and OWI
12 processing room, and that's where it was taking place.

13 Q. What type of recording was taken of that interview?

14 MR. COPLEY: Your Honor, I'm going to object at
15 this point to relevance only because that interview took
16 place after the traffic stop so anything that happened after
17 that has no bearing on whether or not officers had probable
18 cause to arrest her. This seems like cross-examination in
19 prep of trial at this point.

20 THE COURT: It does sound like that to me, Ms.
21 Araguas. This is focused on suppression issues. This is
22 not a discovery deposition, so what's the relevance of this
23 line of questioning?

24 MS. ARAGUAS: Your Honor, there are a lot of
25 questions remaining, and there appears to be a lot of

1 missing pieces of discovery here. Ms. Goodwin made
2 statements that evening that could be relevant to the stop.
3 It could be relevant to what was contained in the vehicle,
4 her relationship with Mr. Farrington. It's concerning to
5 the defense that there seems to be no recording of this even
6 though it took place at the jail and the county attorney's
7 office participated. We'd simply like to know if there is a
8 recording.

9 THE COURT: You simply want to know what?

10 MS. ARAGUAS: If there was a recording taken and
11 who was present for this interview.

12 THE COURT: Well, this is not discovery. This is
13 a suppression hearing, so let's focus on those issues, so
14 I'll give you some leeway, but keep that in mind, please.

15 MS. ARAGUAS: Thank you. Would the Court allow me
16 to simply ask if there was a recording taken of that
17 interview?

18 THE COURT: You can go ahead and ask your next
19 question.

20 MS. ARAGUAS: Thank you.

21 BY MS. ARAGUAS:

22 Q. Was there a recording taken of the interview that
23 night?

24 A. I don't believe so.

25 Q. Had you ever interviewed Ms. Goodwin prior to the arrest

1 on October 2?

2 A. I don't believe so.

3 Q. Had you ever interviewed or came in contact with Mr.
4 Farrington prior to his arrest on October 2 of 2019?

5 A. I don't believe so.

6 MS. ARAGUAS: I don't have any other questions for
7 this witness, your Honor. Thank you.

8 THE COURT: Thank you.

9 Mr. Copley, anything further?

10 MR. COPLEY: Nothing based off that.

11 THE COURT: Okay. Deputy, you're excused. Best
12 wishes. Good luck.

13 THE WITNESS: Thanks.

14 THE COURT: Call your next witness.

15 MR. COPLEY: Yes, your Honor. The Government
16 calls David Wall.

17 THE COURT: Ms. Araguas, are you going to do
18 cross-examination on this witness or will Mr. Paul?

19 MS. ARAGUAS: Mr. Paul will, with the Court's
20 permission.

21 THE COURT: Yes.

22 Step forward, sir. Before you take your seat,
23 you'll take your oath from our clerk.

24 **DAVID WALL, WITNESS FOR THE GOVERNMENT, SWORN**

25

DIRECT EXAMINATION

BY MR. COPLEY:

Q. Good morning, sir. Please state your name again for the record.

A. David Wall.

Q. What is your occupation, sir?

A. Sheriff's deputy with the Henry County sheriff's office.

Q. Say that again?

A. Sheriff's department with the Henry County sheriff's office.

Q. How long have you been a deputy with the Henry County sheriff's office?

A. Since 2017.

Q. What did you do prior to working with the Henry County sheriff's office?

A. I was a police officer for the city of Fairfield.

Q. And what is your primary assignment as a deputy with the Henry County sheriff's office?

A. I'm the K-9 handler and the sergeant.

Q. What shift do you typically work?

A. An evening shift typically. The hours vary.

Q. Okay. And do you typically wear the same uniform you're wearing here in court today?

A. Similar. It's my -- one is a little bit more lax. It's

1 not as fancy as this one. This is the court uniform.

2 Q. Okay. But you're typically wearing a standard uniform
3 issued to deputies with the Henry County sheriff's office
4 when you're working?

5 A. Yes, sir.

6 Q. Do you typically drive a marked squad car?

7 A. Yes, I do.

8 Q. And what's your dog's name?

9 A. Uno.

10 Q. And is Uno typically with you when you're working?

11 A. Yes.

12 Q. Were you working as a deputy with the Henry County
13 Sheriff's office on October 2 of 2019?

14 A. Yes, I was.

15 Q. And in the early evening hours of that day or that
16 shift, I guess, were you asked to make a traffic stop on a
17 silver Ford Fusion?

18 A. Yes.

19 Q. And what was the reasoning for the traffic stop?

20 A. That the driver of the vehicle was operating the vehicle
21 with a suspended driver's license.

22 Q. And was it Investigator Bell who informed you of that?

23 A. Yes, it was.

24 Q. Did you also confirm that prior to making the traffic
25 stop?

1 A. Yes, I did.

2 Q. Did you confirm the identity of the person driving the
3 car prior to making the traffic stop?

4 A. Yes, I did.

5 Q. What information were you given to help you make that
6 determination?

7 A. Investigator Bell had informed me that the driver's name
8 was Shaun Farrington, and I also looked up the driver's
9 license photo through the State of Iowa that he had.

10 Q. Would you recognize that photo if I showed it to you
11 today?

12 A. Yes.

13 Q. Sergeant Wall, I've handed you what's been admitted as
14 Government's Exhibit 1. Is that the photo that you were --
15 that you looked up to try and figure out who the driver of
16 the car was?

17 A. Yes, it was.

18 Q. Okay. And how did you confirm that the defendant was
19 driving the car?

20 A. We were on a four-lane highway, and I pulled up to what
21 would be the driver's side of the vehicle, perpendicular
22 with it, and I looked over at the driver, who turned his
23 head and looked right directly at me.

24 Q. So literally, the driver turned like this to you and you
25 got a full --

1 A. Yes, sir.

2 Q. Anything obstructing your view, tinted windows, anything
3 like that?

4 A. No, there wasn't.

5 Q. And the driver of that car and the person in that
6 photograph, Government's Exhibit 1, do you see that person
7 in this courtroom?

8 A. Yes, I do.

9 Q. Can you identify them by an article of clothing that
10 they're wearing?

11 A. An orange shirt.

12 MR. COPLEY: Your Honor, I'd ask that the record
13 reflect this witness has identified the defendant, Shaun
14 Farrington.

15 THE COURT: It will reflect.

16 Q. So with the information in mind that this defendant was
17 driving with a suspended license, what did you do?

18 A. I initiated a traffic stop on the vehicle.

19 Q. Okay. And did you --

20 THE COURT: Can I interject a question --

21 MR. COPLEY: Sorry.

22 THE COURT: -- so that I'm straight for the
23 record?

24 Deputy, while you said you pulled up perpendicular
25 to the car --

1 THE WITNESS: Parallel.

2 THE COURT: Parallel. Okay. That makes more
3 sense. I don't know if it would be possible to do that if
4 you were on a highway. All right. Thank you.

5 MR. COPLEY: At least not safely.

6 BY MR. COPLEY:

7 Q. Did you make contact with the driver of the car?

8 A. Yes, I did.

9 Q. Was there anyone else in the car?

10 A. There was a female in the passenger seat.

11 Q. Did you identify her?

12 A. Yes, I did.

13 Q. And what was her name, if you recall? Was it Stephanie
14 Goodwin?

15 A. I was gonna say, I remember the last name. Yes, it was
16 Stephanie Goodwin.

17 Q. When you made contact with the defendant, did you tell
18 him the reason for the stop?

19 A. Yes, I did.

20 Q. Did the defendant deny that he was Shaun Farrington?

21 A. No.

22 Q. Did he act surprised that you were identifying him as
23 Shaun Farrington?

24 A. His face seemed like he was kind of startled, but he
25 never openly said anything about it.

1 Q. Never gave you a fake name or anything like that?

2 A. No, he didn't.

3 Q. Did the defendant have a valid driver's license?

4 A. No, he did not.

5 Q. And at some point the decision was made to run your dog
6 around the car. Is that correct?

7 A. Yes.

8 Q. And why did you do that?

9 A. Um, Investigator Bell and I had -- I knew he had been
10 working an investigation on this vehicle for narcotics
11 trafficking.

12 Q. Was there anything plain view in the car that kind of
13 raised your suspicions a little bit that something else
14 might be going on here?

15 A. Yes, there was. There was also other indicators.

16 Q. Okay. Tell us about those.

17 A. There was multiple cellphones in the vehicle. There was
18 torch lighters in the center console, cup holder area.
19 There was also a camera mounted to the rear-view mirror of
20 the vehicle.

21 Q. So it would have been recording what was going on inside
22 of the car?

23 A. I never really noticed which way it was going, if it
24 went both ways or if it just went one way. I never messed
25 with the camera, but you could tell it was a video camera

1 mounted to the rear-view mirror.

2 Q. Sergeant Wall, in your time as a law enforcement
3 officer, have you had opportunities to investigate drug
4 cases?

5 A. Yes.

6 Q. Specifically methamphetamine cases?

7 A. Yes.

8 Q. What about a torch-style lighter is significant for
9 purposes of methamphetamine?

10 A. It's commonly used to smoke with.

11 Q. And is it common, based on your training and experience,
12 for individuals involved in drug trafficking to have
13 multiple cellphones?

14 A. Yes.

15 Q. Okay. Now, you told us your dog's name is Uno. Uno was
16 with you at that time?

17 A. Yes, he was.

18 Q. Approximately are we talking just a couple of minutes?
19 Hours? How long after you first made contact with the
20 defendant at the driver's door did you say hey, I'm gonna
21 run my dog around the car? How long was that?

22 A. Minute, minute and a half.

23 Q. Tops?

24 A. Yeah. It wasn't very long.

25 Q. Okay. And tell us about Uno. Is it a he or a she?

1 A. It's a he.

2 Q. What are his certifications for drug detection?

3 A. He is certified to find the odor of methamphetamine,
4 heroin, Ecstasy, cocaine, and marijuana.

5 Q. Did you train with Uno?

6 A. Yes.

7 Q. Where did you guys get certified from?

8 A. We were certified in 2013 through Mid Michigan
9 Kennels.

10 Q. Okay. And I'm assuming there are some follow-up
11 certifications or training that you guys have to do as part
12 of that?

13 A. Yes, sir. Yearly we go through an outside independent
14 organization that certifies us.

15 Q. Okay. And have you maintained those certifications with
16 Uno to this date?

17 A. Yes, sir.

18 Q. Including back on October 2, 2019?

19 A. Yes.

20 Q. So if Uno alerts on a car, what sort of behaviors does
21 he display?

22 A. He's what they would call a passive alert, so he sits
23 when he makes his final indication. That's the best way to
24 explain it.

25 Q. And you said you and Uno were certified in 2013?

1 A. Yes. That's when we first initially got teamed up as a
2 K-9 unit.

3 Q. Would it be fair to say that you and Uno had done a lot
4 of free air sniffs around cars before October 2?

5 A. Yes, hundreds.

6 Q. Did Uno alert in this case?

7 A. Yes, he did.

8 Q. And where did Uno alert?

9 A. He alerted on the driver's side rear door.

10 Q. And with that alert in mind, did you inform the
11 defendants that you were going to search the car?

12 A. Yes, I did.

13 Q. Did the defendant's behavior change after you told him
14 you were going to search the car?

15 A. Yes.

16 Q. And tell us what changed.

17 A. Just seemed a a little bit more agitated, is all.

18 Q. Did he say anything about the car?

19 A. Said the car did not belong to him.

20 Q. Was that prompted to him?

21 A. No.

22 Q. So he just kind of blurted out, car doesn't belong to
23 me?

24 A. Yes.

25 Q. Okay. During the search of the car -- that was on the

1 side of the road?

2 A. Yes.

3 Q. You said this is a four-lane highway?

4 A. It was on Highway 218. Yes.

5 Q. Dark at that time?

6 A. It was starting to become dark.

7 Q. Is that a fairly busy highway in your area of town?

8 A. It can be. Yes.

9 Q. Okay. What did you find during the, I guess I'll call
10 it, preliminary search of the car?

11 A. Um, as we were searching the vehicle, things that stuck
12 out that were found, there was an actually unused meth pipe
13 in the passenger's purse and then as you got to the trunk of
14 the vehicle is where most of the items that were found -- do
15 you want me to list off everything?

16 Q. Yeah. Why don't you go ahead.

17 A. In the trunk there was -- first thing that stuck out was
18 a scale. There was a large red scale and then there was
19 also multiple individual baggies and then locked
20 containers.

21 Q. Okay. What's the relevance of a digital scale as it
22 relates to drug trafficking?

23 A. They use it to weigh out their product when they're
24 buying it or selling it.

25 Q. And what about the baggies?

1 A. That's what they're packaged in and used to split up
2 large amounts.

3 Q. These lockboxes, how big were they?

4 A. Um, they varied in size, but they were all roughly about
5 six inches by six inches, maybe 6 by 12.

6 Q. Did you ask the defendants about the lockboxes?

7 A. Yes, I asked both of them.

8 Q. What did they say?

9 A. Denied having any knowledge or possession of them.

10 Q. Was there any way for you to get into those lockboxes on
11 the side of the road?

12 A. Absolutely not.

13 Q. And why is that?

14 A. They were locked.

15 Q. Locked with, like, a passcode-type thing?

16 A. Yeah. They were all locked like number, like bicycle
17 kind of combo lock codes.

18 Q. Certainly if the defendants provided a means or you had
19 a way of getting into those lockboxes on the side of the
20 road, would you have done that?

21 A. Yes.

22 Q. Okay. At some point did you have a conversation with
23 investigator Bell about the car and the lockboxes?

24 A. Yes.

25 Q. And what decision was made after talking with him?

1 A. To seize those boxes.

2 Q. And where did you take them?

3 A. To the sheriff's office.

4 Q. And did you run Uno around the lockboxes again at the
5 police station?

6 A. Yes, I did.

7 Q. And what did Uno do?

8 A. He alerted to all four boxes.

9 Q. Is that something you've done in the past with Uno where
10 evidence has been taken out of a car and then you take it
11 back to the police station and run the dogs around it. Is
12 that something you've done before?

13 A. I've removed items from the vehicle and set them out and
14 had him run around items, yes.

15 Q. So that's not uncommon for you to do?

16 A. No.

17 Q. Okay. And you said after that that a search warrant was
18 obtained for the lock cases?

19 A. Yes.

20 Q. And would it be fair to say that there was a fairly
21 substantial amount of methamphetamine found in those lock
22 cases?

23 A. Yes, there was.

24 Q. Now, where were the lock cases -- and I think you
25 mentioned this, but where were they at in the car itself?

1 A. They were in bags, like, just, like, I guess,
2 brief-case-type-style bags.

3 Q. Were they in the front seat, back seat, trunk? What
4 area of the trunk?

5 A. All the baggage was in the trunk of the vehicle.

6 Q. Would it be fair to say that that was the general area
7 of the vehicle that Uno alerted to?

8 A. Yes, especially because the back seat of the vehicle on
9 the driver's side was actually down, folded down.

10 Q. Okay.

11 MR. COPLEY: Thank you. I have no further
12 questions for you.

13 THE COURT: Mr. Paul, do you have
14 cross-examination?

15 MR. PAUL: Yes, your Honor.

16 CROSS-EXAMINATION

17 BY MR. PAUL:

18 Q. Hello, Sergeant Wall.

19 A. Hi.

20 Q. When did you become involved in this investigation?

21 A. When?

22 Q. Yes.

23 A. I would probably have to say in the late stages of
24 Investigator Bell's investigation.

25 Q. Could you give me an approximate date?

1 A. Maybe like a week or two weeks before the actual date of
2 the traffic stop he let me know that he was keeping eyes on
3 this vehicle, this certain vehicle. He wasn't sure yet.

4 Q. And you were aware that it was a narcotics
5 investigation?

6 A. Yes, because he works -- he's our task force officer.

7 Q. So when you said that you pulled over this vehicle
8 because the driver had a suspended driver's license, you
9 were aware at that time that this was a suspected
10 methamphetamine trafficking situation?

11 A. Yes.

12 Q. And so that probably colored your interpretation of the
13 camera, the torch lighter, the cellphones?

14 A. No, I wouldn't say that. I mean, that's odd things that
15 most people usually do not have in their vehicle.

16 Q. So it had no affect?

17 A. No.

18 Q. Okay. What time did you initiate the traffic stop on
19 October 2?

20 A. I can't tell you the exact time without looking at the
21 call card. It was roughly, I believe, 6:00, 7. I'd have to
22 look at the actual call card to give you the exact time.

23 Q. And at what time did Uno alert?

24 A. Again, I don't know the exact time. It's all logged on
25 the call card.

1 Q. You said it was approximately a minute after, I believe,
2 Deputy Alplara -- am I getting that name right?

3 A. Alplara?

4 Q. Yeah. Is that correct?

5 A. You're gonna have to rephrase your question. I don't
6 understand what you're asking.

7 Q. Was it about a minute after the other deputy appeared?

8 A. No. It was probably less than that. I was saying from
9 the initial time of contact and speaking with everybody.

10 Q. How did Detective -- I'm sorry, Deputy Bell communicate
11 with you on October 2?

12 A. At what point in time?

13 Q. What were all the manners he communicated with you?

14 A. He called me on the cellphone and then also through our
15 car radios.

16 Q. So he didn't send you any text messages?

17 A. I don't believe so.

18 Q. As you pulled alongside the Ford Fusion, what is the
19 driver wearing?

20 A. I remember he had a dark blue hat on, like just normal
21 baseball-style cap, and then maybe a white shirt. That's
22 all I could see.

23 Q. And you were driving in a truck, correct?

24 A. No. A Ford Explorer.

25 Q. Ford Explorer, so does that sit higher than the

1 Fusion?

2 A. Yeah, a little bit.

3 Q. So you're looking down. He's got a hat on, so that
4 would have probably obstructed your view.

5 A. No, it did not.

6 Q. Okay. When did Bell inform you that he wanted to
7 interview Goodwin?

8 A. That was not until after all the items were located.

9 Q. He called you and said, I'd like to interview
10 Ms. Goodwin?

11 A. Actually, I called him after the traffic stop and all
12 the items we had found to let him know what was going on and
13 update him on everything, and that's when he said that,
14 yes.

15 Q. And he told you not to arrest her?

16 A. At that time there was nothing to arrest her for.

17 Q. But you did inform her -- you recall informing her that
18 she was not under arrest, that she was just going down to
19 the sheriff's office to be interviewed by the investigator,
20 correct?

21 A. Yes.

22 Q. Did Deputy Bell communicate with you on that day because
23 he knew you were a K-9 officer?

24 A. It's possible, yes.

25 Q. What time did you arrest Mr. Farrington?

1 A. That would be in the call card as well, but it was after
2 everything had been located as we were finishing up.

3 Q. Did you create any report other than the narrative that
4 you submitted to both the state and the state court?

5 A. No, I did not.

6 Q. What time did you lead Uno around the locked
7 containers?

8 A. Um, it was after we got to the sheriff's office with
9 them.

10 Q. Was it after the interview with Goodwin?

11 A. I didn't interview her, so I don't know what time the
12 interview actually took place.

13 Q. Was Deputy Bell present?

14 A. When we ran around the containers?

15 Q. Yes.

16 A. Yes, he was.

17 Q. He was?

18 A. Yes.

19 Q. Did you create any report regarding the dog sniff of the
20 locked containers?

21 A. It's in the call for service that we initiated.

22 Q. How long between the dog sniff and the issuance of the
23 search warrant on the locked containers?

24 A. I can give you a guess, but I don't know the exact
25 time.

1 Q. What's your guess?

2 A. Until when the search warrant was issued and granted?

3 Q. Yep.

4 A. Two, maybe an hour and a half, two hours.

5 Q. Okay. You mentioned that there was an unused
6 methamphetamine pipe that you found in the car, correct?

7 A. It was in Ms. Goodwin's purse.

8 Q. Did you cite -- you have no information whatsoever about
9 the interview with Ms. Goodwin?

10 A. No, I do not.

11 Q. The trunk of that vehicle was pretty cluttered,
12 correct?

13 A. I mean, I guess it just depends on your definition of
14 cluttered. I remember there was a laundry basket in the
15 back, so that was about it.

16 Q. So there was a laundry basket with laundry in it. There
17 was at least five bags, maybe more?

18 A. That sounds about right.

19 Q. Lots of loose items?

20 A. Yeah.

21 Q. When you -- you had a body camera on at the stop. Is
22 that correct?

23 A. Yes, I did.

24 Q. Did you have that body camera turned on when you ran Uno
25 around the locked containers?

1 A. I don't think I did.

2 Q. You realized when you were running Uno around those
3 locked containers that was going to be used as justification
4 for a search and possibly a search warrant, correct?

5 A. Yes.

6 Q. And you had your body camera still on you?

7 A. Yes.

8 Q. And you didn't turn it on?

9 A. No. I must not have thought about it.

10 MR. PAUL: No further questions, your Honor.

11 THE COURT: Mr. Copley?

12 MR. COPLEY: No, your Honor. Thank you.

13 THE COURT: All right. You can step down, Deputy.
14 You're excused.

15 Any other evidence from the Government?

16 MR. COPLEY: No, your Honor. Thank you.

17 THE COURT: Any evidence from Mr. Farrington?

18 MS. ARAGUAS: Not aside from the legal argument
19 we've already submitted, your Honor.

20 THE COURT: All right. Would you do me a favor
21 and now that the evidence has been presented, distill for me
22 the contentions you have in support of your motion to
23 suppress?

24 MS. ARAGUAS: Thank you, your Honor.

25 THE COURT: What I mean is specifically what it is

1 you're alleging was improper or in violation of the 4th
2 Amendment.

3 MS. ARAGUAS: Just to create a bookend for the
4 Court, we're asking the Court to suppress all evidence
5 contained in those locked containers. We still feel there's
6 some -- some squishiness in terms of how Mr. Farrington was
7 identified out of the grand scope of any white male in
8 Southeast Iowa on that date, that Terry and its progeny call
9 for objective and specific facts in order to identify
10 someone and detain them.

11 As to the containers, we don't understand why law
12 enforcement would choose to put those in a squad car, then
13 bring them to a shed, then have an unrecorded second dog
14 sniff. It didn't fit in with any of the well-defined
15 exceptions to the prohibition against warrantless search and
16 not the correct way to process that and it was a violation
17 of our client's rights in the Fourth Amendment

18 THE COURT: What is the proper way to process
19 that?

20 MS. ARAGUAS: Well, your Honor, the officer could
21 have left the locked containers in the vehicle for a later
22 inventory search. The officer could have sought out a
23 warrant at the scene, but placing them in the squad car and
24 then we sort of lose sight of them and how they were
25 processed at that point, putting them in an evidence locker

1 was not the appropriate way to deal with that.

2 THE COURT: Thank you.

3 Mr. Copley, anything further?

4 MR. COPLEY: No, your Honor. I do believe my
5 supplemental resistance will address those concerns, and
6 I'll just leave my argument to that.

7 THE COURT: Okay. That will be filed by the end
8 of business today and then Mr. Farrington has an opportunity
9 to file a response by the end of business on November 12,
10 correct?

11 MS. ARAGUAS: Yes. Thursday, I believe, is
12 November 12. Yes, your Honor.

13 THE COURT: All right. Thank you for confirming
14 that.

15 Anything further, Mr. Copley?

16 MR. COPLEY: Yes, your Honor. Just briefly. I've
17 never had a motion to suppress before, so I know you do a
18 report and recommendation to Judge Jarvey. My only question
19 is trial in this matter is scheduled for November 30, so I
20 just -- I don't know your time frame and I don't want to put
21 any pressure on you. I just don't know if you felt you'd be
22 able to get that done before that in terms of just trial
23 prep for both sides.

24 THE COURT: The parties are going to have to
25 address the trial date. Obviously you have 14 days to

1 object to my ruling and, you know, I've gotta have some time
2 to get my ruling done, so if you're not gonna be ready for
3 the 30th or you're concerned about that, we are on a tight
4 time frame to get it done before then even without an
5 objection and then, if there is an objection, for Judge
6 Jarvey to rule on that objection. If you're gonna file --
7 Defendant's gonna file something by Thursday, the 12th, that
8 gives little time, so if you want to talk about that with
9 each other and file an appropriate motion in that regard, we
10 can take that up too.

11 MR. COPLEY: Thank you, your Honor.

12 THE COURT: Was there a question you had as well,
13 Ms. Araguas?

14 MS. ARAGUAS: Yes. I feel bad we're on a time
15 crunch and it's a holiday and time crunch with the COVID,
16 but that was a concern for the defense.

17 THE COURT: Just to lay it out there so both of
18 you know, I need to see what's filed today. I need to see
19 what's filed Thursday. I need to distill that, and I need
20 to provide a report and recommendation that includes factual
21 findings. That's part of the process, so that can often be
22 a little bit lengthier than you might receive because it
23 needs to be considered by the District Judge. Then you have
24 14 days to object to that, just as you would any other
25 report and recommendation.

1 If there's an objection, there needs to be
2 specific basis stated for it and in particular the
3 particular findings that you dispute so then that would go
4 to the District Judge who would need some time to do that,
5 so we're probably not in a good situation to have all that
6 done within the next period of time for a November 30 trial
7 date, but that's also for your information so you understand
8 the process too.

9 MR. COPLEY: Thank you, Judge.

10 THE COURT: Anything further, Mr. Copley?

11 MR. COPLEY: No, your Honor. Thank you.

12 THE COURT: Ms. Araguas?

13 MS. ARAGUAS: Not for the defendant, your Honor.

14 THE COURT: We're adjourned.

15 (Wherein the hearing concluded at 12:14 p.m.)
16
17
18
19
20
21
22
23
24
25

REPORTER'S CERTIFICATION

I, Debra Thornburg, a Certified Shorthand Reporter of the State of Iowa and Federal Official Realtime Court Reporter in and for the United States District Court for the Southern District of Iowa, do hereby certify, pursuant to Title 28, United States Code, Section 753, that the foregoing is a correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformity with the regulations of the Judicial Conference of the United States.

/s/ Debra M. Thornburg

Debra M. Thornburg
Official Court Reporter
United States District Court
Southern District of Iowa

Date: February 4, 2021

- - - - - X
UNITED STATES OF AMERICA, :
 :
Plaintiff, :
 :
vs. : Case No. 3:20-cr-06
 :
SHAUN MICHAEL FARRINGTON, : TRANSCRIPT OF TRIAL
 : Volume 1
Defendant. :
- - - - - X

Courtroom 242, Second Floor
U.S. Courthouse
131 East Fourth Street
Davenport, Iowa
Wednesday, February 10, 2021
8:32 a.m.

BEFORE: THE HONORABLE JOHN A. JARVEY, Chief Judge

APPEARANCES:

For the Plaintiff: TORRIE SCHNEIDER, ESQ.
CALEB COPLEY, ESQ.
United States Attorney's Office
U.S. Courthouse
131 East Fourth Street, Suite 310
Davenport, Iowa 52801

For the Defendant: ELIZABETH ARAGUAS, ESQ.
CHARLES D. PAUL, ESQ.
Nidey, Erdahl, Meier & Araguas, PLC
425 Second Street SE, Suite 1000
Cedar Rapids, Iowa 52401

TONYA R. GERKE, CSR, RDR, CRR
United States Courthouse
123 East Walnut Street, Room 197
Des Moines, Iowa 50309

1 (Jury selection is contained in a separate volume.)
2 (Proceedings reconvened outside the presence of the
3 jury.)

4 P R O C E E D I N G S

5 THE COURT: So the juror in question, Ms. Wolfswinkel,
6 is coming up, and the record can reflect that we're outside the
7 presence of the other jurors. The defendant is present, and all
8 counsel are.

9 (Juror Wolfswinkel entered the courtroom.)

10 THE COURT: Good morning. Come on forward. Maybe if
11 you'd just have a seat in the jury box, that would be great.
12 You are Ms. Wolfswinkel?

13 JUROR WOLFSWINKEL: Yes, sir.

14 THE COURT: I'm Judge Jarvey. Have a seat. Of
15 course, I wasn't here for jury selection. I'm going to preside
16 over the trial. I did have a chance to read a transcript of the
17 Monday jury selection, and I recall from that transcript that
18 you recognized a name was familiar to you, but you didn't
19 remember why.

20 JUROR WOLFSWINKEL: Yes.

21 THE COURT: And that you sent us an e-mail later --

22 JUROR WOLFSWINKEL: Yes.

23 THE COURT: -- saying that you had gone back, looked
24 at your e-mails and that you recognized the name further. Would
25 you tell us a little bit more about that?

1 JUROR WOLFSWINKEL: Yes. So in my prior residence, I
2 lived in a condo association, and where I lived, there was a lot
3 of drug activity in the parking lot which kind of led me to move
4 from that residence.

5 THE COURT: Use that microphone if you would.

6 JUROR WOLFSWINKEL: Sorry.

7 THE COURT: That's all right.

8 JUROR WOLFSWINKEL: And I got to the point where I was
9 calling the police department often just with license plates and
10 what I was seeing, and so they came and talked to me a time or
11 two, and eventually Officer Bunch just gave me his work e-mail
12 so I could just send e-mails with what I was seeing, so probably
13 once or twice a week I was sending him e-mails just of license
14 plates and activity that I was seeing in the parking lot.

15 THE COURT: How long ago was this?

16 JUROR WOLFSWINKEL: I moved from that residence just
17 about three years ago.

18 THE COURT: And for what period of time were you
19 sending the e-mails?

20 JUROR WOLFSWINKEL: Probably nine months'ish.

21 THE COURT: Did you meet with him in person?

22 JUROR WOLFSWINKEL: I met with an officer in person,
23 but I don't remember if I met with him in person.

24 THE COURT: Thanks. And after that have you seen him
25 or talked to him or heard about him since then?

1 JUROR WOLFSWINKEL: I have not.

2 THE COURT: Yeah. Good. Is there anything about
3 those experiences that causes you any concern in your own mind
4 about your ability to be fair to both sides in this case?

5 JUROR WOLFSWINKEL: No, sir.

6 THE COURT: Are you willing to wait and listen to
7 Officer Bunch's testimony before deciding whether you believe
8 it?

9 JUROR WOLFSWINKEL: Yes.

10 THE COURT: Good. Are there additional questions that
11 you wanted me to ask?

12 MS. ARAGUAS: Just briefly, Your Honor. We just
13 wondered if -- just to be clear, that Ms. Wolfswinkel had never
14 served as a witness in any prosecutions from her calls or
15 anything like that.

16 JUROR WOLFSWINKEL: I have not.

17 THE COURT: Anything else? Anything from the
18 Government?

19 MR. COPLEY: No, Your Honor.

20 THE COURT: Thank you very much, ma'am. Appreciate
21 it.

22 JUROR WOLFSWINKEL: Yes, very much.

23 THE COURT: Appreciate the additional information.

24 JUROR WOLFSWINKEL: Absolutely.

25 THE COURT: You can take her back.

1 (Juror Wolfswinkel exited the courtroom.)

2 THE COURT: She's gone. In light of that, is there
3 any motion from the defendant?

4 MS. ARAGUAS: Your Honor, we would renew our motion to
5 strike Ms. Wolfswinkel as a juror. I'm also not sure if this is
6 procedurally allowed, but if there was a way to make her the
7 alternate, we would be open to that as well instead of
8 Mr. Steinhauer I believe is our alternate.

9 THE COURT: And so what do you think you need to show
10 in order to have her excused?

11 MS. ARAGUAS: Well, we believe that she, because she
12 was calling in drug tips, is going to have prejudice against our
13 client and maybe prejudice against -- she clearly had to move
14 from her residence because of her perception of drug activity,
15 was participating in drug investigation. I'm sure that was very
16 concerning for her and expensive and inconvenient for her to
17 have to move because of that, and we are concerned that she
18 unconsciously may have bias against people involved in the drug
19 trade.

20 THE COURT: Thank you.

21 Mr. Copley?

22 MR. COPLEY: Your Honor, we would certainly resist.
23 This is now the second time that Ms. Wolfswinkel -- after
24 hearing it from Judge Jackson when asked about concerns about
25 serving on a drug case, she said no originally or did not put

1 her hand up. She has now had additional time to think about it,
2 reflect on the relationship with Officer Bunch, still has no
3 concerns. I would submit to the Court that her answers were
4 very genuine, and she did not seem to even stutter or struggle
5 with the concept of serving on a drug case. We did have jurors
6 with those problems that spoke up. Certainly to any extent that
7 she needed to be rehabilitated, we believe that has been done.
8 The relationship between her and Officer Bunch has been
9 concluded for at least three years. We believe she is perfectly
10 able and willing to serve on this jury.

11 THE COURT: The standard in this situation is set
12 forth in the Eighth Circuit Court of Appeals decision of the
13 *United States versus McCaw*, M-c-C-a-w. It's a federal appendix
14 case referring to its decision in *United States versus Tucker*.
15 Under that standard, the motion to excuse the juror is denied.

16 All right. So we'll just stand at ease here until we
17 find out that the juror orientation is done, and then we'll
18 begin. We'll have the jurors' preliminary oath and the
19 preliminary instructions, and we'll be ready to go. Thank you.

20 MR. COPLEY: Thank you, Your Honor.

21 (Recess at 8:38 a.m.)

22 (The jury entered the courtroom, and proceedings
23 reconvened at 8:50 a.m.)

24 THE COURT: So if the jurors will remain standing for
25 the jurors' oath. Everyone else can be seated.