NO. 22-_____

IN THE UNITED STATES SUPREME COURT

_____ TERM

SHANE ALAN NAULT,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Appendix

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. SHANE ALAN NAULT, Defendant-Appellant.	No. 20-30231 D.C. No. 4:19-cr-00051-BMM-1 District of Montana, Great Falls ORDER

Before: TASHIMA, M. SMITH, and NGUYEN, Circuit Judges.

Judge M. Smith and Judge Nguyen have voted to deny the petition for rehearing en banc, and Judge Tashima has recommended granting the petition. The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35. The petition for rehearing en banc is DENIED.

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, *Plaintiff-Appellee*, v. SHANE ALAN NAULT, *Defendant-Appellant.*	No. 20-30231 D.C. No. 4:19-cr-00051- BMM-1 OPINION

Appeal from the United States District Court
for the District of Montana
Brian M. Morris, District Judge, Presiding

Argued and Submitted October 4, 2021
Seattle, Washington

Filed July 21, 2022

Before: A. Wallace Tashima, Milan D. Smith, Jr., and Jacqueline H. Nguyen, Circuit Judges.

Opinion by Judge Nguyen;
Dissent by Judge Tashima

SUMMARY*

Criminal Law

The panel affirmed the district court's denial of Shane Nault's motions to suppress evidence and to traverse a search warrant that resulted in the discovery of methamphetamine and a firearm in Nault's vehicle.

Nault pled guilty to possession with intent to distribute methamphetamine and felon in possession of a firearm, but reserved the right to appeal the denial of the motions. An officer stopped the vehicle after learning that the vehicle—whose registered owner, Joei Ross, had an outstanding arrest warrant—was in the parking lot of a gas station.

In his motion to suppress, Nault argued that the officer unconstitutionally prolonged the vehicle stop when he asked Nault to provide his license, registration, and proof of insurance because the suspicion that motivated the stop had evaporated once the officer determined that Ross was not in the vehicle. The government countered that the stop was supported by independent reasonable suspicion because the officer began to suspect that Nault was intoxicated shortly after initiating contact. Assuming without deciding that the officer lacked reasonable suspicion that Nault was intoxicated until he first asked Nault whether he had been drinking, the panel held that even if the officer's request came before he developed independent suspicion, the officer's continuation of the stop to request Nault's documents did not violate the Fourth Amendment because

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

that request fell within the mission of the stop. The panel wrote that the circumstances of the officer's encounter with Nault implicate the same vehicle safety purpose discussed in *Rodriguez v. United States*, 575 U.S. 348 (2015), under which a routine document check would remain part of the officer's mission even when the suspicion that justified a stop was based on an outstanding warrant rather than a traffic violation. The panel wrote that because the mission of the officer's stop encompassed his routine request for documents, Nault was lawfully detained when the officer began noticing signs of impairment, at which point his continued detention was supported by independent reasonable suspicion of a DUI, and that the evidence acquired during the subsequent investigation and search of the truck—further indicia of intoxication from the officer's field sobriety tests, and a positive alert from a dog sniff—was not tainted. The panel concluded that this evidence, combined with evidence from a controlled methamphetamine buy from Nault out of the same truck a month earlier, amounted to probable cause that amply supported a subsequently issued search warrant; and that the district court correctly denied the motion to suppress.

In his motion to traverse the search warrant, Nault argued that the search warrant affidavit failed to disclose information about the dog sniff and requested a hearing under *Franks v. Delaware*, 438 U.S. 154 (1978). Holding that the district court properly denied the motion, the panel wrote that Nault failed to make a substantial preliminary showing that any statement or omission in the affidavit was intentionally or recklessly false or misleading, where an expert report provided by Nault at most establishes that the canine's alert was unreliable on a single unrelated occasion.

Dissenting, Judge Tashima wrote that the majority should have analyzed this case not as a traffic stop under *Rodriguez*, but as an investigatory stop under *Terry v. Ohio*, 392 U.S. 1 (1968); that asking Nault for his license, registration, and proof of insurance was not part of the officers' mission, which was to look for and arrest Ross; that the driving credentials of Nault, who was not traveling on or parked on a public street or highway, were no more suspect than those of every other motorist on the road that day; and that the officers therefore were not permitted under the Fourth Amendment to detain him in order to conduct a traffic safety investigation.

COUNSEL

Elizabeth T. Musick (argued), Musick & Tierney Law PLLC, Bozeman, Montana, for Defendant-Appellant.

Jeffrey K. Starnes (argued), Assistant United States Attorney; Leif M. Johnson, Acting United States Attorney; United States Attorney's Office, Great Falls, Montana; for Plaintiff-Appellee.

OPINION

NGUYEN, Circuit Judge:

Shane Nault appeals his conviction for possession with intent to distribute methamphetamine, 21 U.S.C. § 841(a)(1), and felon in possession of a firearm, 18 U.S.C. § 922(g)(1). Nault pled guilty but reserved the right to appeal the district court's denial of his motions to suppress and traverse the search warrant that resulted in the discovery of methamphetamine and a firearm in his vehicle. Because the district court properly denied both motions, we affirm.

I.

A. Factual Background

On March 30, 2018, Officer Jordan Chroniger of the Havre Police Department was informed by a drug task force that a vehicle of interest to law enforcement was in the parking lot of the High Land Park Zip Trip gas station in Havre, Montana. Officer Chroniger was told that the vehicle was frequently driven by Nault and a woman named Joei Ross. The vehicle was a red GMC truck registered to Ross. Ross had an outstanding arrest warrant for failure to appear.

As Officer Chroniger's police car entered the parking lot, Ross's truck was idling and a figure was visible in the driver's seat. Officer Chroniger pulled his car directly behind the truck and another police car boxed the truck in from the other side. Officer Chroniger approached on foot, but he could not tell whether the person in the driver's seat was male or female because the windows were tinted.

After reaching the driver's side door, Officer Chroniger identified the driver as Nault. Officer Chroniger promptly

informed Nault that the truck's plates were connected to a warrant for Ross and asked for her whereabouts. Nault responded that she was at the "Emporium," another gas station in town.

Around twenty seconds after initiating contact, Officer Chroniger asked for Nault's license, registration, and proof of insurance. Officer Chroniger described this document request as standard procedure when he encounters someone in control of a motor vehicle.[1] Nault did not have his license, and he spent the next two minutes looking for the truck's registration and proof of insurance.

While Nault was looking for the documents, Officer Chroniger noticed that Nault was "fidgety," "making kind of sporadic movements," that "his pupils were constricted," and he was "sweating profusely" even though it was "a chilly day." To Officer Chroniger, these were signs that Nault was "under the influence of something." Just over a minute after initiating contact, Officer Chroniger asked Nault whether he had been drinking, was nervous, or had taken any illegal drugs.

Although Nault denied being under the influence, Officer Chroniger began to conduct a DUI investigation. Officer Chroniger testified that he patted Nault down for officer safety and discovered brass knuckles and a glass marijuana pipe. Officer Chroniger then administered a series of field sobriety tests, which showed signs of

[1] Montana law provides that "[a] peace officer who has lawfully stopped a person or vehicle … may … request the person's name and present address and an explanation of the person's actions and, if the person is the driver of a vehicle, demand the person's driver's license and the vehicle's registration and proof of insurance." Mont. Code Ann. § 46-5-401(2)(a).

impairment. Officer Chroniger arrested Nault and took him into custody.

After learning of Nault's arrest, agents from the drug task force responded to the scene and arranged for a canine sniff around Nault's truck. The agent conducting the sniff reported that his canine, Nato, alerted to Nault's driver's side door.

An agent from the drug task force applied for a search warrant. The affidavit explained Officer Chroniger's encounter with Nault. It noted that the truck was registered to Ross, who had an outstanding warrant, but that Nault was driving the vehicle and was asked to produce his license, registration, and proof of insurance. It explained that Nault was arrested on a DUI charge, that a marijuana pipe was found on his person, and that a canine had alerted to the truck's driver's side door. The warrant also described a controlled buy operation a month earlier, on February 18, 2018, in which an informant purchased methamphetamine from Nault out of the same truck.

A judge issued the warrant, and task force officers searched the truck. Among other items, officers recovered a pistol and more than 500 grams of methamphetamine.

B. Procedural History

Nault was charged with conspiracy to distribute methamphetamine, 21 U.S.C. § 846; possession with intent to distribute methamphetamine, 21 U.S.C. § 841(a)(1); possession of a firearm in furtherance of a drug trafficking crime, 21 U.S.C. § 924(c)(1)(A); and felon in possession of a firearm, 18 U.S.C. § 922(g)(1).

Nault moved to suppress the evidence, arguing that the vehicle stop and resulting canine sniff were unlawful and that the items found in Nault's vehicle were the fruit of the poisonous tree. After a hearing, the district court denied the motion to suppress on the ground that Officer Chroniger had a right to ask for Nault's license, registration, and proof of insurance even after learning that Nault was not the subject of the warrant associated with the truck. The district court concluded that, from that point on, law enforcement acted lawfully and the warrant was supported by probable cause.

Nault then moved to traverse the search warrant and requested a hearing pursuant to *Franks v. Delaware*, 436 U.S. 154 (1978). The district court denied the motion without a hearing.

Nault pled guilty to possession with intent to distribute methamphetamine and felon in possession of a firearm. Nault reserved the right to appeal the denial of his motions to suppress and traverse. Nault was sentenced to concurrent terms of 180 months for the methamphetamine offense and 120 months for the firearm offense. Nault timely appealed.

We have jurisdiction under 28 U.S.C. § 1291.

II. Motion to Suppress

Reviewing legal conclusions de novo and factual findings for clear error, *see United States v. Dixon*, 984 F.3d 814, 818 (9th Cir. 2020), we hold that the district court properly denied Nault's motion to suppress.

"Like a *Terry* stop, the tolerable duration of police inquiries in the traffic-stop context is determined by the seizure's 'mission'—to address the traffic violation that warranted the stop, and attend to related safety concerns."

Rodriguez v. United States, 575 U.S. 348, 354 (2015). "[A] police stop exceeding the time needed to handle the matter for which the stop was made violates the Constitution's shield against unreasonable seizures." *Id.* at 350. Accordingly, an officer's inquiries during a traffic stop are constitutionally permissible if they are "(1) part of the stop's 'mission' or (2) supported by independent reasonable suspicion." *United States v. Landeros*, 913 F.3d 862, 868 (9th Cir. 2019).

Nault argues Officer Chroniger unconstitutionally prolonged the vehicle stop when he asked for Nault to provide his license, registration, and proof of insurance because the suspicion that motivated the stop had evaporated once Officer Chroniger determined that Ross, the subject of the outstanding warrant, was not in the vehicle.

The government counters that the stop was supported by independent reasonable suspicion because Officer Chroniger began to suspect that Nault was intoxicated shortly after initiating contact. But the government's response does not account for the fact that around twenty seconds had elapsed between Officer Chroniger's first contact and his request for Nault's information, and Officer Chroniger did not observe signs of impairment until *after* he asked Nault for his documents.

We need not decide, and therefore assume for purposes of this opinion, that Officer Chroniger lacked reasonable suspicion that Nault was intoxicated until he first asked Nault whether he had been drinking, roughly a minute into the stop.[2] Even if Officer Chroniger's request came before

[2] We note that other courts have found stops unconstitutional when prolonged by under thirty seconds before officers developed independent

he developed independent suspicion, Officer Chroniger's continuation of the stop to request Nault's documents did not violate the Fourth Amendment because that request fell within the mission of the stop.

An officer conducting a vehicle stop has interests extending beyond that of "detecting evidence of ordinary criminal wrongdoing." *Rodriguez*, 575 U.S. at 355 (citation and internal quotation marks omitted). An officer's "mission" includes certain "ordinary inquiries incident to the traffic stop," even if they are not required to investigate a particular traffic violation. *Id.* (citation and internal quotation marks omitted). Those inquiries "[t]ypically … involve checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance." *Id.* Such routine checks "ensur[e] that vehicles on the road are operated safely and responsibly." *Id.* By contrast, unrelated inquiries such as dog sniffs or other non-routine checks, which are "aimed at 'detect[ing] evidence of ordinary criminal wrongdoing,'" lack the same "close connection to roadway safety," and must be justified by independent reasonable suspicion. *Rodriguez*, 575 U.S. at 355–56 (quoting *Indianapolis v. Edmond*, 531 U.S. 32, 40–41 (2000)); *see Landeros*, 913 F.3d at 868 (requesting passenger's identification was not part of an officer's traffic stop mission because "[t]he identity of a passenger … will ordinarily have no relation to a driver's safe operation of a

suspicion. *See United States v. Clark*, 902 F.3d 404, 410–11 (3d Cir. 2018) (twenty seconds of questioning about criminal history); *United States v. Campbell*, 26 F.4th 860, 885 (11th Cir. 2022) (en banc) (twenty-five seconds of questioning about contraband).

vehicle"); *United States v. Evans*, 786 F.3d 779, 786 (9th Cir. 2015) (ex-felon registration check and dog sniff).

We therefore must determine whether Officer Chroniger's request for documents—as it would be in a typical traffic stop—was "fairly characterized as part of the officer's traffic mission." *Rodriguez*, 575 U.S. at 356; *see also United States v. Cole*, 21 F.4th 421, 429 (7th Cir. 2021) (en banc) (asking whether police inquiries during a stop "are justified by the traffic violation itself or by the 'related' concerns of '[h]ighway and officer safety'" (quoting *Rodriguez*, 575 U.S. at 354)), *cert. denied*, 142 S. Ct. 1420 (2022). To the extent the document request was part of Officer Chroniger's mission, it was an integral component of—rather than a prolongation of—the vehicle stop. *See United States v. Gorman*, 859 F.3d 706, 714 (9th Cir. 2017) (explaining that only "[a] stop that is unreasonably prolonged beyond the time needed to perform these tasks [i.e., routine document checks] … violates the Constitution").

The circumstances of Officer Chroniger's encounter with Nault implicate the same vehicle safety purpose discussed in *Rodriguez*. When Officer Chroniger pulled into the Zip Trip parking lot, Nault was sitting in the driver's seat of the truck. The engine was running. There was no indication either that someone else had driven Nault to the gas station or that someone else would drive him away. As with any traffic stop, Officer Chroniger had a strong interest in ensuring that Nault had the ability to legally operate his vehicle. *See Delaware v. Prouse*, 440 U.S. 648, 658 (1979) ("States have a vital interest in ensuring that only those qualified to do so are permitted to operate motor vehicles, that these vehicles are fit for safe operation, and hence that

licensing, registration, and vehicle inspection requirements are being observed.").

It is of no moment that Officer Chroniger never observed Nault commit a traffic violation. In describing the scope of an officer's mission during a traffic stop, the Supreme Court said categorically that it includes the "ordinary inquiries" that Officer Chroniger conducted, without any need for individualized suspicion that a driver poses a risk to others or is violating vehicle licensing, registration, or insurance requirements. *Rodriguez*, 575 U.S. at 355. While an interest in traffic safety would not alone justify a stop to conduct these ordinary inquiries, *see Prouse*, 440 U.S. at 661, these inquiries can be performed during a traffic stop once the intrusion of a stop has been justified by some other lawful basis. *See*, *e.g.*, *Evans*, 786 F.3d at 782, 786 (during traffic stop for unsafe lane changes and following vehicle too closely, officer could run a records check to ensure driver had a valid license and no warrants).

Of course, a traffic violation is not the only lawful basis for an officer to conduct a vehicle stop. An officer may stop a vehicle with reasonable suspicion that a person inside "has committed, is committing, or is about to commit a crime." *See United States v. Lopez-Soto*, 205 F.3d 1101, 1104 (9th Cir. 2000) (quoting *Berkemer v. McCarty*, 468 U.S. 420, 439 (1984)). That can include suspicion that the vehicle's driver is the subject of an outstanding warrant.[3] Under *Rodriguez*'s

[3] We have so held in several unpublished dispositions. *See*, *e.g.*, *United States v. Marcum*, 797 F. App'x 278, 281 (9th Cir. 2019); *United States v. Bueno-Martinez*, 443 F. App'x 249, 250 (9th Cir. 2011); *United States v. Castro*, 379 F. App'x 549, 550 (9th Cir. 2010); *United States v. Wallace*, 321 F. App'x 713, 714 (9th Cir. 2009). As here, absent other information, police may infer from the presence of a vehicle on the road

categorical rule, a routine document check would remain part of the officer's mission even when the suspicion that justified a stop was based on an outstanding warrant rather than a traffic violation. That is precisely the case here.

On this point, we find instructive the Seventh Circuit's decision in *United States v. Yancey*, 928 F.3d 627 (7th Cir. 2019). There, officers stopped a vehicle because they believed the driver had an outstanding warrant. *Id.* at 628. After arresting the driver, the officers did not let the passenger drive the vehicle away, instead waiting to determine whether the passenger had a valid license. *Id.* at 629. Without finding reasonable suspicion to continue to hold the passenger, the court held that ensuring the passenger "could legally drive the car" was part of the stop's mission and justified extending the detention for two additional minutes. *Id.* at 631. Similarly, here, although Officer Chroniger's stop was initially justified by an outstanding warrant connected to the vehicle, having conducted a vehicle stop on this basis, Officer Chroniger's mission continued to justify the additional time required to ensure that Nault was lawfully able to drive away the vehicle. *See also United States v. Gurule*, 935 F.3d 878, 884 (10th Cir. 2019) ("[T]he efforts on the part of law enforcement to help locate a licensed driver cannot be characterized as unconstitutionally extending this traffic stop."); *United States v. Vargas*, 848 F.3d 971, 974 (11th Cir. 2017) (extending stop to try to identify someone who could lawfully operate the vehicle could be "fairly characterized as part of [the officer's] mission" (quoting *Rodriguez*, 575 U.S. at 356)).

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that its registered owner is inside. *See Kansas v. Glover*, 140 S. Ct. 1183, 1188 (2020).

We respectfully disagree with the dissent's narrow view of the mission of Officer Chroniger's stop. As the dissent sees it, that Nault was stopped in an idling vehicle has no bearing on Officer Chroniger's mission. Dissent at 18–19. But *Rodriguez* teaches that an officer stopping a vehicle has a broader vehicle safety mission than an officer stopping a pedestrian. When stopping a vehicle, "[a]n officer . . . may conduct certain unrelated checks" with a "close connection to roadway safety" even though conducting those checks was not the purpose of the stop. *Rodriguez*, 575 U.S. at 355–56.

We likewise disagree with the dissent's conclusion that the encounter here was not a "traffic stop" and with the importance that the dissent assigns to the "traffic stop" label. Dissent at 17–19. The Supreme Court and this court have used "traffic stop" to refer to investigative stops of drivers in their vehicles for reasons other than observed traffic violations. As an example of a "traffic stop" in *Brendlin v. California*, 551 U.S. 249, 256 (2007), the Supreme Court cited *United States v. Hensley*, which involved a stop of a vehicle in connection with a "wanted flyer." 469 U.S. 221, 223–24 (1985). We recently described as a "traffic stop" and analyzed under *Rodriguez* an encounter that began when police approached a vehicle stopped in the middle of a busy intersection. *United States v. Hylton*, 30 F.4th 842, 845, 847 (9th Cir. 2022).

Whether described as a "traffic stop" or an "investigative vehicle stop," the analysis here is the same. Traffic stops are analyzed under the same *Terry* principles that apply to investigative stops. *See Arizona v. Johnson*, 555 U.S. 323, 330–32 (2009). A "traffic stop" is simply "a seizure of the driver" of a vehicle for a "brief investigative stop[]" supported by reasonable suspicion. *Brendlin*, 551 U.S.

at 255; *Navarette v. California*, 572 U.S. 393, 396 (2014). And *Rodriguez* drew the very concept of "mission" on which our analysis relies from *Terry*. 575 U.S. at 354–55. We therefore do not see the salience of any distinction between a "traffic stop" and an "investigative stop" in this case.

Because the mission of Officer Chroniger's stop encompassed his routine request for documents, Nault was lawfully detained when Officer Chroniger began noticing signs of impairment. Officer Chroniger testified that, while Nault was searching for his documents, he was "fidgety," "his pupils were constricted," and he was "sweating profusely." At that point, Officer Chroniger suspected Nault was intoxicated and proceeded with a DUI investigation. The district court correctly determined that Nault's continued detention from that point on was supported by independent reasonable suspicion of a DUI. *See Evans*, 786 F.3d at 788 ("[A]n officer may prolong a traffic stop if the prolongation itself is supported by independent reasonable suspicion," which "exists when an officer is aware of specific, articulable facts which, when considered with objective and reasonable inferences, form a basis for particularized suspicion." (citation and internal quotation marks omitted)).

We hold that Officer Chroniger did not unconstitutionally prolong the stop, and the evidence acquired during the subsequent investigation and search of the truck was not tainted. As discussed above, that investigation revealed further indicia of intoxication from Officer Chroniger's field sobriety tests, and a positive alert from a dog sniff. Combined with the evidence from the controlled methamphetamine buy from Nault out of the same truck a month earlier, the search warrant was amply

supported by probable cause.[4] Therefore, no Fourth Amendment violation occurred and the district court correctly denied the motion to suppress.

III. Motion to Traverse

Nault also argues that the district court erred in denying his motion to traverse the search warrant. That motion argued in relevant part that the search warrant affidavit failed to disclose information about the dog sniff and requested a hearing under *Franks v. Delaware*, 438 U.S. 154 (1978).

"To obtain a *Franks* hearing, a defendant must make a substantial preliminary showing that: (1) 'the affiant officer intentionally or recklessly made false or misleading statements or omissions in support of the warrant,' and (2) 'the false or misleading statement or omission was material, *i.e.*, necessary to finding probable cause.'" *United States v. Norris*, 942 F.3d 902, 909–10 (9th Cir. 2019) (quoting *United States v. Perkins*, 850 F.3d 1109, 1116 (9th Cir. 2017)).

We conclude that Nault failed to show his entitlement to a *Franks* hearing. Nault provided an expert report from a different criminal case addressing a sniff by the same canine, Nato. The expert determined that the search in that case was

[4] We need not address Nault's argument that the marijuana pipe and brass knuckles were seized in violation of the Fourth Amendment. While included in the search warrant affidavit, that evidence was not necessary for a finding of probable cause. *See United States v. Heckenkamp*, 482 F.3d 1142, 1149 (9th Cir. 2007) ("In order to determine whether evidence obtained through a tainted warrant is admissible, '[a] reviewing court should excise the tainted evidence and determine whether the remaining untainted evidence would provide a neutral magistrate with probable cause to issue a warrant.'" (citation omitted)).

unreliable because Nato was distracted and only alerted the fourth time he was directed to a particular area. At most, this expert report establishes that Nato's alert was unreliable on a single unrelated occasion. The search warrant affidavit only said that Nato had "proven reliable in prior incidents." Even if Nato's sniff had been unreliable on one prior occasion, that does not mean Nato had not been reliable in most or a large number of prior incidents, which is all the affidavit implies. Nor does it establish that the affidavit described Nato's sniff of Ross's truck in a false or misleading way. Moreover, the expert report is dated seven months after the search warrant affidavit, so it could not demonstrate the government was aware of any issues with Nato when the search warrant application was submitted. Nault thus failed to make a substantial preliminary showing that any statement or omission in the affidavit was intentionally or recklessly false or misleading. *See Norris*, 942 F.3d at 910. Accordingly, the district court properly denied the motion to traverse.

AFFIRMED.

TASHIMA, Circuit Judge, dissenting:

In *Rodriguez v. United States*, 575 U.S. 348, 355–56 (2015), the Supreme Court held that, when police stop a vehicle for a traffic violation, they may prolong the stop to conduct "ordinary inquiries" incident to the stop, including asking the driver for his license, registration, and proof of insurance, because these inquiries are "part of the officer's traffic mission" and "serve the same objective as enforcement of the traffic code: ensuring that vehicles on the road are operated safely and responsibly." The officers, however, may not prolong a traffic stop to conduct inquiries

unrelated to the purpose of the stop. *Id.* They may not, for example, prolong the stop to investigate other crimes. *Id.* at 356–57.

This case, however, is unlike *Rodriguez*. Police officers approached Shane Nault's vehicle, which was already parked in a private lot, because they were looking for Joei Ross, who was the subject of an outstanding arrest warrant. When they learned that Ross was not present, their mission was completed and their authority for the seizure ended. The officers nevertheless prolonged the stop to thereafter conduct an unrelated traffic safety investigation, asking Nault for his license, registration, and proof of insurance. These inquiries, of course, were not part of the officers' mission in making the stop. The officers therefore violated Nault's Fourth Amendment rights. Because the majority holds otherwise, I respectfully dissent.[1]

The majority's first mistake is to classify the stop that occurred in this case as a "traffic stop." The Supreme Court has treated a traffic stop as "[a] seizure for a traffic violation." *Rodriguez*, 575 U.S. at 354. A traffic stop begins "when a vehicle is pulled over for investigation of a traffic violation." *Arizona v. Johnson*, 555 U.S. 323, 333 (2009). The purpose of the stop is to conduct a "traffic infraction investigation." *Rodriguez*, 575 U.S. at 358.

Here, the police officers did not stop Nault's vehicle for a traffic violation. Instead, they approached an already stopped vehicle because they were looking for Ross, who

[1] Regretfully, the majority does not discuss the fact that Nault was "stopped" on a private lot, *i.e.*, not on a public street or highway, and what difference, if any, that fact should make in the majority's "traffic stop" analysis.

was wanted on an arrest warrant. The majority therefore should have analyzed this case as an investigatory stop under *Terry v. Ohio*, 392 U.S. 1 (1968), not as a traffic stop under *Rodriguez*. *See United States v. Hensley*, 469 U.S. 221, 223–36 (1985).

The majority's second mistake is to hold that asking Nault for his license, registration, and proof of insurance was part of the officers' mission. Maj. Op. at 9–10. The mission of this stop, however, was to look for and arrest Ross. When that mission was completed, authorization for the stop ended. *Cf. Rodriguez*, 575 U.S. at 354 ("Authority for the seizure thus ends when tasks tied to the traffic infraction are—or reasonably should have been—completed."). Police officers may not prolong a stop to conduct an investigation that is unrelated to the purpose of the stop. As *Rodriguez* explains, "the tolerable duration of police inquiries . . . is determined by the seizure's 'mission.'" *Id.*

The majority attempts to justify the officers' traffic safety investigation by noting that the officers "had a strong interest in ensuring that Nault had the ability to legally operate his vehicle."[2] Maj. Op. at 11. But the Supreme Court has squarely held that this important interest does not justify a Fourth Amendment intrusion absent reasonable suspicion of a traffic violation. As the Court explained in *Delaware v. Prouse*, 440 U.S. 648 (1979):

> [I]t is an unreasonable seizure under the Fourth and Fourteenth Amendments to stop an automobile, being driven on a public highway, for the purpose of checking the

[2] Remember that the vehicle was not parked on a public street or highway. *See* footnote 1, *supra*.

> driving license of the operator and the registration of the car, where there is neither probable cause to believe nor reasonable suspicion that the car is being driven contrary to the laws governing the operation of motor vehicles or that either the car or any of its occupants is subject to seizure or detention in connection with the violation of any other applicable law.

Id. at 650. The majority dismisses *Prouse* on the ground that the officers in this case were prolonging a seizure rather than initiating one. Maj. Op. at 12. But the Fourth Amendment is not so easily brushed aside: "A stop that is unreasonably prolonged . . . violates the Constitution." *United States v. Gorman*, 859 F.3d 706, 714 (9th Cir. 2017) (as corrected).

The majority alternatively attempts to justify the officers' traffic safety investigation by noting that the lead investigator on the scene, Havre Police Officer Jordan Chroniger, "described this document request as standard procedure when he encounters someone in control of a motor vehicle." Maj. Op. at 6. Crediting Chroniger's testimony, the majority surmises that this case involves a "routine request for documents." Maj. Op. at 15. The record does not support that the officers' request, made of a driver whose vehicle was already parked in a private lot, was routine. But even assuming that it was, this does not make it lawful. The officer in *Prouse* made the same claim, "[c]haracterizing the stop as 'routine.'" 440 U.S. at 650. The Court readily concluded that the officer's actions violated the Fourth Amendment anyway. *Id.* at 651–63. We should do the same here.

The majority finally seeks to justify the officers' traffic safety investigation by reference to case law. Most of the cases upon which the majority relies, however, are bona fide traffic stop cases involving seizures for traffic violations. *See Rodriguez*, 575 U.S. at 351; *United States v. Cole*, 21 F.4th 421, 424 (7th Cir. 2021) (en banc); *United States v. Gurule*, 935 F.3d 878, 881 (10th Cir. 2019) (as revised); *United States v. Landeros*, 913 F.3d 862, 864 (9th Cir. 2019); *Gorman*, 859 F.3d at 709; *United States v. Evans*, 786 F.3d 779, 782 (9th Cir. 2015); *United States v. Lopez-Soto*, 205 F.3d 1101, 1103–04 (9th Cir. 2000). Those cases, therefore, do nothing to advance the majority's reasoning.

The majority also relies on *United States v. Yancey*, 928 F.3d 627 (7th. Cir. 2019), but *Yancey* offers little support for the majority's reasoning. True, the Seventh Circuit referred to the stop in *Yancey* as a "traffic stop," even though officers made the stop to arrest the driver on a warrant, rather than for a traffic violation. But the Seventh Circuit offered no reason for treating the case as a traffic stop. The court simply assumed that the "traffic stop" moniker applied. The court ultimately had no reason to focus on the question, given that the classification of the stop as a traffic stop or an investigatory stop played no role in the outcome of the appeal. The court, in fact, variously referred to the stop as a "traffic stop" and an "investigatory stop." *Id.* at 630. In any event, the seizure in *Yancey* was not a traffic stop; it was an investigatory stop. *See Hensley*, 469 U.S. at 226–36.

It is also true that, in *Yancey*, the officers were permitted to prolong the stop to determine whether Yancey had a valid driver's license. But the circumstances of that case and this one have nothing in common. In *Yancey*, the officers had arrested the driver and assumed custody of the vehicle. They

therefore had to figure out what to do with the vehicle, and, after the driver requested that the officers let Yancey take the vehicle, they had to figure out whether they could entrust Yancey with it. *Yancey*, 928 F.3d at 631. They therefore sought to verify that Yancey was a licensed and lawful driver. *Id.* These tasks were all *necessary* to the mission: the officers could not complete their mission—arresting the driver—without figuring out what to do with the car. *Id.* The officers were therefore justified in prolonging the stop to accomplish these tasks. *Id.*

Here, by contrast, the officers neither arrested the driver nor acquired custody of the vehicle. They did not have to figure out what to do with the vehicle and they were not being asked to entrust the vehicle to Nault. They therefore had no basis for determining whether Nault would serve as a trustworthy custodian. The officers completed their mission when they determined that Ross was not present. There were no "unresolved matters" to address; no "attendant tasks" to complete; no "necessary actions related to the traffic stop" to be performed. *See id.* at 630–31. The officers here, therefore, could not prolong the stop to conduct unrelated inquiries.

I assume that the officers were well-intentioned. Police officers plainly have a vital interest in "ensuring that vehicles on the road are operated safely and responsibly." *Rodriguez*, 575 U.S. at 355 (citing *Prouse*, 440 U.S. at 658–59). Police officers, however, may not prolong a seizure in order to make inquiries or conduct investigations unrelated to the purpose of the seizure, "absent the reasonable suspicion ordinarily demanded to justify detaining an individual." *Id.* Here, the driving credentials of Nault, who was not travelling on or parked on a public street or highway, were no more suspect than those of every other motorist on

the road that day. The officers, therefore, were not permitted under the Fourth Amendment to detain him in order to conduct a traffic safety investigation. The majority errs by concluding otherwise.

For the foregoing reasons, Nault's motion to suppress should have been granted. I respectfully dissent.

United States Court of Appeals for the Ninth Circuit

Office of the Clerk
95 Seventh Street
San Francisco, CA 94103

Information Regarding Judgment and Post-Judgment Proceedings

Judgment

- This Court has filed and entered the attached judgment in your case. Fed. R. App. P. 36. Please note the filed date on the attached decision because all of the dates described below run from that date, not from the date you receive this notice.

Mandate (Fed. R. App. P. 41; 9th Cir. R. 41-1 & -2)

- The mandate will issue 7 days after the expiration of the time for filing a petition for rehearing or 7 days from the denial of a petition for rehearing, unless the Court directs otherwise. To file a motion to stay the mandate, file it electronically via the appellate ECF system or, if you are a pro se litigant or an attorney with an exemption from using appellate ECF, file one original motion on paper.

Petition for Panel Rehearing (Fed. R. App. P. 40; 9th Cir. R. 40-1)
Petition for Rehearing En Banc (Fed. R. App. P. 35; 9th Cir. R. 35-1 to -3)

(1) A. Purpose (Panel Rehearing):

- A party should seek panel rehearing only if one or more of the following grounds exist:
  - A material point of fact or law was overlooked in the decision;
  - A change in the law occurred after the case was submitted which appears to have been overlooked by the panel; or
  - An apparent conflict with another decision of the Court was not addressed in the opinion.
- Do not file a petition for panel rehearing merely to reargue the case.

B. Purpose (Rehearing En Banc)

- A party should seek en banc rehearing only if one or more of the following grounds exist:

- ► Consideration by the full Court is necessary to secure or maintain uniformity of the Court's decisions; or
- ► The proceeding involves a question of exceptional importance; or
- ► The opinion directly conflicts with an existing opinion by another court of appeals or the Supreme Court and substantially affects a rule of national application in which there is an overriding need for national uniformity.

(2) Deadlines for Filing:

- A petition for rehearing may be filed within 14 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the United States or an agency or officer thereof is a party in a civil case, the time for filing a petition for rehearing is 45 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the mandate has issued, the petition for rehearing should be accompanied by a motion to recall the mandate.
- *See* Advisory Note to 9th Cir. R. 40-1 (petitions must be received on the due date).
- An order to publish a previously unpublished memorandum disposition extends the time to file a petition for rehearing to 14 days after the date of the order of publication or, in all civil cases in which the United States or an agency or officer thereof is a party, 45 days after the date of the order of publication. 9th Cir. R. 40-2.

(3) Statement of Counsel

- A petition should contain an introduction stating that, in counsel's judgment, one or more of the situations described in the "purpose" section above exist. The points to be raised must be stated clearly.

(4) Form & Number of Copies (9th Cir. R. 40-1; Fed. R. App. P. 32(c)(2))

- The petition shall not exceed 15 pages unless it complies with the alternative length limitations of 4,200 words or 390 lines of text.
- The petition must be accompanied by a copy of the panel's decision being challenged.
- A response, when ordered by the Court, shall comply with the same length limitations as the petition.
- If a pro se litigant elects to file a form brief pursuant to Circuit Rule 28-1, a petition for panel rehearing or for rehearing en banc need not comply with Fed. R. App. P. 32.

- The petition or response must be accompanied by a Certificate of Compliance found at Form 11, available on our website at www.ca9.uscourts.gov under *Forms.*
- You may file a petition electronically via the appellate ECF system. No paper copies are required unless the Court orders otherwise. If you are a pro se litigant or an attorney exempted from using the appellate ECF system, file one original petition on paper. No additional paper copies are required unless the Court orders otherwise.

Bill of Costs (Fed. R. App. P. 39, 9th Cir. R. 39-1)

- The Bill of Costs must be filed within 14 days after entry of judgment.
- See Form 10 for additional information, available on our website at www.ca9.uscourts.gov under *Forms.*

Attorneys Fees

- Ninth Circuit Rule 39-1 describes the content and due dates for attorneys fees applications.
- All relevant forms are available on our website at www.ca9.uscourts.gov under *Forms* or by telephoning (415) 355-7806.

Petition for a Writ of Certiorari

- Please refer to the Rules of the United States Supreme Court at www.supremecourt.gov

Counsel Listing in Published Opinions

- Please check counsel listing on the attached decision.
- If there are any errors in a published opinion, please send an email or letter **in writing within 10 days** to:
  - ► Thomson Reuters; 610 Opperman Drive; PO Box 64526; Eagan, MN 55123 (Attn: Maria Evangelista (maria.b.evangelista@tr.com));
  - ► and electronically file a copy of the letter via the appellate ECF system by using "File Correspondence to Court," or if you are an attorney exempted from using the appellate ECF system, mail the Court one copy of the letter.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Form 10. Bill of Costs

Instructions for this form: http://www.ca9.uscourts.gov/forms/form10instructions.pdf

9th Cir. Case Number(s)

Case Name

The Clerk is requested to award costs to *(party name(s))*:

I swear under penalty of perjury that the copies for which costs are requested were actually and necessarily produced, and that the requested costs were actually expended.

Signature **Date**

*(use "*s/[typed name]*" to sign electronically-filed documents)*

COST TAXABLE	**REQUESTED** *(each column must be completed)*			
DOCUMENTS / FEE PAID	No. of Copies	Pages per Copy	Cost per Page	TOTAL COST
Excerpts of Record*			$	$
Principal Brief(s) *(Opening Brief; Answering Brief; 1st, 2nd , and/or 3rd Brief on Cross-Appeal; Intervenor Brief)*			$	$
Reply Brief / Cross-Appeal Reply Brief			$	$
Supplemental Brief(s)			$	$
Petition for Review Docket Fee / Petition for Writ of Mandamus Docket Fee / Appeal from Bankruptcy Appellate Panel Docket Fee				$
			TOTAL:	$

***Example:** Calculate 4 copies of 3 volumes of excerpts of record that total 500 pages [Vol. 1 (10 pgs.) + Vol. 2 (250 pgs.) + Vol. 3 (240 pgs.)] as:*
No. of Copies: 4; Pages per Copy: 500; Cost per Page: $.10 (or actual cost IF less than $.10);
TOTAL: 4 x 500 x $.10 = $200.

Feedback or questions about this form? Email us at forms@ca9.uscourts.gov

UNITED STATES DISTRICT COURT
DISTRICT OF MONTANA GREAT FALLS DIVISION

UNITED STATES OF AMERICA

v.

SHANE ALAN NAULT

JUDGMENT IN A CRIMINAL CASE

Case Number: CR 19-51-GF-BMM-1
USM Number: 07159-046
Elizabeth T. Musick
Defendant's Attorney

THE DEFENDANT:

☒	pleaded guilty to count(s)	**2 and 4 of the Indictment**
☐	pleaded nolo contendere to count(s) which was accepted by the court	
☐	was found guilty on count(s) after a plea of not guilty	

The defendant is adjudicated guilty of these offenses:

Title & Section / Nature of Offense		**Offense Ended**	**Count**
21 U.S.C. §§ 841(a), 841(b)(1)(A)	Possession With Intent To Distribute Methamphetamine	03/31/2018	2
18 U.S.C. §§ 922(g)(1), 924(a)(2)	Prohibited Person In Possession Of A Firearm	03/31/2018	4

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) 1 and 3 ☐ 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.

10/14/2020
Date of Imposition of Judgment

Signature of Judge

Brian Morris, Chief Judge
United States District Court
Name and Title of Judge

10/14/2020
Date

DEFENDANT: SHANE ALAN NAULT
CASE NUMBER: CR 19-51-GF-BMM-1

IMPRISONMENT

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

180 months on Count 2 and 120 months on Count 4, to run concurrently with each other.

☒ The court makes the following recommendations to the Bureau of Prisons:
(1) Defendant shall participate in the Bureau of Prisons' 500-hour Residential Drug Treatment Program (RDAP) if eligible.
(2) Defendant shall be placed at the Bureau of Prisons' in Englewood, Colorado.

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

☐ 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 2 p.m. 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

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By: _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: SHANE ALAN NAULT
CASE NUMBER: CR 19-51-GF-BMM-1

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of : **5 years on Count 2 and 3 years on Count 4, to run concurrently with each other.**

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 additional conditions on the attached page.

DEFENDANT: SHANE ALAN NAULT
CASE NUMBER: CR 19-51-GF-BMM-1

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. I understand additional information regarding these conditions is available at https://www.mtp.uscourts.gov/post-conviction-supervision.

Defendant's Signature _____ Date _____

DEFENDANT: SHANE ALAN NAULT
CASE NUMBER: CR 19-51-GF-BMM-1

SPECIAL CONDITIONS OF SUPERVISION

1. You must participate in a program for mental health treatment as approved by the probation officer. You must remain in the program until you are released by the probation office in consultation with the treatment provider. You must pay part or all of the costs of this treatment as directed by the probation office.

2. You must submit your person, residence, vehicles, and papers, to a search, with or without a warrant by any probation officer based on reasonable suspicion of contraband or evidence in violation of a condition of release. Failure to submit to search may be grounds for revocation. You must warn any other occupants that the premises may be subject to searches pursuant to this condition. You must allow seizure of suspected contraband for further examination.

3. You must participate in and successfully complete a program of substance abuse treatment as approved by the probation office. You must remain in the program until you are released by the probation office in consultation with the treatment provider. You must pay part or all of the costs of this treatment as directed by the probation office.

4. You must abstain from the consumption of alcohol and are prohibited from entering establishments where alcohol is the primary item of sale.

5. You must participate in substance abuse testing to include not more than 104 urinalysis tests, not more than 104 breathalyzer tests, and not more than 36 sweat patch applications annually during the period of supervision. You must pay part or all of the costs of testing as directed by the probation office.

6. You must not possess, ingest or inhale any psychoactive substances that are not manufactured for human consumption for the purpose of altering your mental or physical state.

DEFENDANT: SHANE ALAN NAULT
CASE NUMBER: CR 19-51-GF-BMM-1

CRIMINAL MONETARY PENALTIES

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

	Assessment	JVTA Assessment**	AVAA Assessment*	Fine	Restitution
TOTALS	$200.00	N/A	N/A	WAIVED	N/A

☐ The determination of restitution is deferred until An *Amended Judgment in a Criminal Case (AO245C)* 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. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

☐ 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: SHANE ALAN NAULT
CASE NUMBER: CR 19-51-GF-BMM-1

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 payments of $ _____ due immediately, balance due

☐ not later than , or

☐ in accordance with ☐ 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 20 *(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:

Special assessment shall be immediately due and payable. While incarcerated, criminal monetary penalty payments are due during imprisonment at the rate of not less than $25 per quarter, and payment shall be through the Bureau of Prisons' Inmate Financial Responsibility Program. Criminal monetary payments shall be made to the Clerk, United States District Court, Missouri River Courthouse, 125 Central Avenue West, Suite 110, Great Falls, MT 59404.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during 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
See above for Defendant and Co-Defendant Names and Case Numbers *(including defendant number)*, Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ Defendant shall receive credit on his restitution obligation for recovery from other defendants who contributed to the same loss that gave rise to defendant's restitution obligation.

☐ 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 DISTRICT OF MONTANA
GREAT FALLS DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. SHANE ALAN NAULT, Defendant.	**CR-19-51-BMM** **ORDER**

ORDER

Plaintiff Shane Alan Nault ("Nault") filed a motion to traverse the warrant executed to search the car that Nault was driving at the time of his arrest. (Doc. 48.) This motion comes on the heels of this Court denying a motion to suppress related to the same stop that Nault now attempts to challenge. (Doc. 27.) The Court ultimately denied the motion to suppress, in part, because law enforcement found the methamphetamine in reliance on a search warrant. (Transcript, Doc. 43 at 102:5-8.)

The United States Supreme Court has established that courts cannot suppress evidence "obtained in objectively reasonable reliance on a subsequently invalidated search warrant." *United States v. Leon*, 468 U.S. 897, 922 (1984). Defendants may attack the warrant itself, however, under *Franks v. Delaware*, 438

U.S. 154 (1978). To succeed on a *Franks* claim, a defendant must show (1) that a law enforcement official deliberately or recklessly included a false statement or omitted a true statement from the warrant affidavit, and (2) establish the warrant affidavit would not establish probable cause if the false or omitted information was omitted from the analysis. *United States v. Perkins*, 850 F.3d 1109, 1116 (9th Cir. 2017). A defendant may receive a *Franks* hearing, however, only if they make "a substantial preliminary showing" on both prongs of the *Franks* analysis. The party must then satisfy both prongs by a preponderance of evidence at the *Franks* hearing. *United States v. Chavez-Miranda*, 306 F.3d 973, 979 (9th Cir. 2002).

Nault alleges that the search warrant contained at least four material omissions: the search warrant lacked sufficient information about the narcotics detector dog and his reliability and experience; the dog sniff did not occur as reported in the affidavit; that the stop was purely pretextual; that the officer who conducted the field sobriety tests was not trained as a Drug Recognition Expert. (Doc 49.)

Nault has failed to make a substantial preliminary showing on at least two fronts. First, nothing in his motion or affidavits speaks to whether the alleged omissions were deliberate or reckless. Nault cannot receive a *Franks* hearing simply alleging factual inaccuracies or omissions. *See United States v. Rettig*, 589

F.2d 418, 422 (9th Cir. 1978); *accord United States v. Norris*, 942 F.3d 902, 909-10 (9th Cir. 2019).

Nault's motion also fails because he has not made a significant preliminary showing that the drug dog sniff was material to the probable cause determination. "Probable cause to search a location exists if, based on the totality of the circumstances," a "fair probability" exists that the police will find evidence of a crime. *Perkins*, 850 F.3d at 1119 (citation omitted). The key inquiry in resolving a *Franks* motion is whether probable cause remains once any misrepresentations are corrected and any omissions are supplemented. *See id.* If probable cause remains, the defendant has failed to establish a material omission. *See id.*

The warrant application provides ample evidence to support probable cause even without the alleged omissions. Principally, at least 14 people implicated Nault in methamphetamine trafficking in the Havre area. (Doc. 25-1 at 1222-1226.) Two of those people also conducted a controlled buy from Nault on behalf of the Tri-Agency Task Force just one month before Nault was arrested. (*Id.* at 1222.) On top of that, Nault used the same vehicle to sell the drugs in the controlled buy that he was using at the time of his arrest. (*Id.*) Further, the officers stated in the application that based on their experience "drug traffickers sometimes store their drugs and paraphernalia in several different locations." (*Id.* at 1220.) "[T]he . . . automobile . . . of those individuals who are trusted and intimate companions are

commonly used for this purpose." (*Id.*) This information proves more than enough to establish probable cause to support the warrant. *Perkins*, 850 F.3d at 1119

Accordingly, **IT IS ORDERED** that Nault's motion to traverse the warrant (Doc. 48) is **DENIED**. Further, the following ex parte motions for subpoenas are **DENIED**, as moot: Docs 53, 54, 55, 56, 57, 58, 59. Nault's Fourth Motion to Continue (Doc. 61) is **DENIED.**

Dated this 17th day of June, 2020.

Brian Morris, Chief District Judge
United State District Court

Vista. That is the -- where they held if an officer has probable cause to believe that an individual has committed even a very minor criminal offense in his presence, he may, without violating the Fourth Amendment, arrest the offender. It's a Supreme Court decision from 2001. In that case it was arresting somebody for not wearing a seatbelt, which is in fact a fine only offense. The other case was *Arkansas v Sullivan*, which I also cite. That was a traffic violation, typically a fine offense. The point is the Supreme Court has clearly spoken. Even if we're talking about citation only offenses, generally as long as there's probable cause you can make the arrest.

THE COURT: Thank you, Mr. Starnes.

MR. STARNES: Thank you.

THE COURT: All right. This matter submitted.

I think here the officers had a right to approach the running vehicle in the parking lot at the Zip Trip when the owner of the vehicle -- the registered owner of the vehicle had an outstanding warrant, even though that was a misdemeanor warrant for no insurance. But at the very least they could knock on the door and make sure that the owner with the outstanding warrant for no insurance wasn't to flaunt the law by driving with no insurance by driving the car to the Zip Trip. They knock on the door and discover it's not Ms. Ross. In fact, it's Mr. Nault in the vehicle. He's the driver of the

vehicle. It's running. He's in actual physical control. Under Montana law, I think that entitles the officers to ask for his driver's license, the vehicle registration, and proof of insurance. He cannot provide any of those documents.

And then officer's questioning leads them to have a reasonable suspicion that Mr. Nault is under the influence of some drug. He steps out of the vehicle, at which point I think they lawfully conduct a pat down. Mr. Nault volunteers that he has brass knuckles, and then they discover the drug paraphernalia. I think those two victims, for which he was eventually cited, gave the officers the right to arrest Mr. Nault.

We then went off on the field sobriety tests. I don't think there was anything improper about those tests or the way they were conducted. It's hard to gauge what happened from a layperson's standpoint. The officer testified in good faith about the triggers he saw or the violations he saw. They weren't really refuted on cross-examination. But even if I were to set aside the field sobriety tests, the propriety of those, I think we have the arrest on the drug paraphernalia and the brass knuckles as sufficient cause to warrant the arrest of Mr. Nault.

And upon arresting Mr. Nault, then the vehicle proper could have been impounded just as it was after the field sobriety test. And once the vehicle is impounded, there's no

violation of bringing the drug dog. Ms. Lord classifies the drug dog sniff as fruit of the poisonous tree, but there's no violation of that point. I don't have a direct challenge to the drug sniff. That information was provided by Agent Ost to Officer Beard. Officer Beard in his warrant application includes the information to the other officers regarding the drug dog sniff, the drug paraphernalia, the brass knuckles the field sobriety tests, as well as the earlier stop -- excuse me -- earlier controlled buy of the drugs from Mr. Nault. I think all of that information was sufficient to establish probable cause to support the warrant. So I'm going to deny Ms. Lord's motion to suppress the statements.

Anything else, Mr. Starnes?

MR. STARNES: No, Your Honor. Thank you.

THE COURT: Ms. Lord?

MS. LORD: Nothing further, Your Honor.

THE COURT: Thank you all. We'll be in recess.

(The proceedings concluded at 2:25 p.m.)

--o0o--