

No. _____

IN THE
SUPREME COURT OF UNITED STATES

LARRY REDERICK - PETITIONER

vs.

UNITED STATES OF AMERICA – RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

- 1) Whether the Eighth Circuit Court of Appeals Decision Authorizes Unreasonably Prolonged Traffic Stops and Unreasonable Searching of a Separate Vehicle Without Probable Cause as Required Under the Fourth Amendment of the United States Constitution.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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None

IN THE
SUPREME COURT OF UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari be issued to review the judgment below.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eighth Circuit appears at Appendix A to the petition and is reported at 65 F.4th 961.

JURISDICTION

The date on which the United States Court of Appeals for the Eighth Circuit decided this case was April 20, 2023. A timely motion for rehearing and rehearing En banc was denied on May 25, 2023. The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution states:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT OF THE CASE

Special Agent Ryan Pennock (hereinafter referred to as “Agent Pennock”), of the South Dakota Division of Criminal Investigation, testified he was investigating Larry Rederick (hereinafter referred to as “Rederick”). APP at 11-12. Agent

Pennock believed Rederick was involved in the sale of illegal narcotics. APP. 39. Agent Pennock testified he obtained a pen registry trap and trace for the purpose of tracking Rederick's cell phone location information. APP. 43. Agent Pennock testified he was tracking Rederick's cell phone location on January 9, 2020. APP at 2. Agent Pennock testified he believed Rederick was traveling from Nebraska into Nebraska for a narcotics related trip. APP at 15. Agent Pennock testified he relayed information regarding the investigation and travel of Rederick to Trooper Cody Jansen (hereinafter referred to as "Trooper Jansen") with the South Dakota Highway Patrol. *Id.* Agent Pennock testified that he requested Trooper Jansen be available to which he testified that Trooper Jansen said agreed. *Id.* Agent Pennock testified that he had a "pretty good idea of [Rederick's] travel and general location." MT 27:5-7. Agent Pennock testified he again communicated with the South Dakota Highway Patrol regarding his desire that Rederick be stopped upon return. APP at 15. Agent Pennock testified he again communicated Rederick's travel and new investigatory information. MT 29:25; 30:1-8. Agent Pennock testified that the South Dakota Highway Patrol had been waiting hours for Rederick to return to Yankton, South Dakota. MT 30:6-8.

South Dakota Highway Patrol Trooper Eric Peterson (hereinafter referred to as "Trooper Peterson") testified that he was also contacted by Agent Pennock regarding Rederick's travel. MT 61:15-22. Trooper Peterson testified that Agent Pennock requested that he and Trooper Jansen stop the vehicle in South Dakota to assist in an ongoing investigation regarding the transportation of

methamphetamine. APP at 15; MT 62:17-23. Trooper Peterson testified that he was given timely updates while Rederick was traveling down into Nebraska and back to South Dakota. APP at 15; MT 62:6-10. Trooper Peterson testified that he observed Rederick travel into South Dakota and began to follow Rederick through Yankton, South Dakota. APP at 15. Trooper Peterson testified that Rederick's trailer license plate was not illuminated, which is a traffic violation, so he initiated the traffic stop. APP at 15-16.

Trooper Peterson captured part of the period of time that he followed Rederick and the traffic stop on a dash video recording device. APP at 18; Suppression Hearing Exhibit 3. Trooper Peterson activated his overhead lights and initiated a traffic stop at 00:30. APP at 18; Suppression Hearing Exhibit 3.

Trooper Peterson made contact with Rederick at 1:31 into Exhibit 3. APP at 46. Rederick entered Trooper Peterson's vehicle at 2:37. Id. Trooper Peterson then returned to Rederick's truck to retrieve the VIN at 7:30. Suppression Hearing Exhibit 3. Trooper Peterson then began to question Rederick regarding his travel to which Rederick clearly indicated that he wanted to get his tickets/warnings and go home if he was not under arrest or detained at 12:27. APP at 49.

Following questioning, Trooper Peterson testified that he called the K-9 unit to investigate, "At that point, I knew that I wasn't going to be asking for consent or consent for a dog or ask narcotics questions, so I called the police K-9." MT 72:22-24, see also APP at 49. Rederick then indicated that Trooper Peterson was taking longer than necessary. APP at 49. Trooper Peterson stated that he was making

sure everything was correct at 13:40. Id. Trooper Peterson then stated that he had more questions for Rederick and Rederick clearly stated that he was not answering any more questions at 13:42. Id.

Trooper Peterson then referred to the delay being due to systems and that he could not help it at 14:37 and 15:00. APP at 49; Suppression Hearing Exhibit 3. Rederick again asked Trooper Peterson if he was done at 15:30 and Trooper Peterson stated I'm almost done at 15:18. APP at 50. Trooper Peterson then stated he was proofreading it to make sure it looks right at 16:09. Id. Rederick again asked Trooper Peterson if he was done, and Trooper Peterson then stated he was done, but Rederick was not free to go at 16:36. Id.

Rederick subsequently again stated that he should be free to go and was upset that he felt that Trooper Peterson was just taking his time and trying to drag it out at 16:55. Id. Rederick even pointed out how Trooper Peterson was shaking and Trooper Peterson stated it was because Rederick is making Trooper Peterson upset at 16:58 - 17:07. Id. Rederick again stated that he was ready to go and Trooper Peterson stated Rederick could not go because Trooper Peterson was not done at 17:16. Id. However, despite Trooper Peterson stating that he was not done, Trooper Peterson again reiterated that he was done with his warning, but Rederick was still not free to go. Id.

Rederick asked if he was being arrested, and Trooper Peterson said he was not; he was only being detained. Id. Rederick then asked why he was being detained at 17:20. Id. Trooper Peterson responded, "for reasonable suspicion of something."

Id. Rederick responded, “of what, what have I done?” Id. Trooper Peterson then stated, “I don’t know what’s going on and you’re not willing to answer any questions for me.” Id. Rederick replied that he didn’t have to. Id. Rederick again asked if he could go at 17:57 and indicated that he knew the law and it was taking longer than reasonable to give him his ticket. Id. Rederick again requested if he could go home now at 18:41 and Trooper Peterson stated no. Id. At 18:47, Rederick asked why and Trooper Peterson stated that he was being detained and they were going to wait for the K9 to show up. Id. By this point, Trooper Peterson had tried contacting the K9 officer at least two times. Id.

Rederick then stated that he was not consenting to any searches at 18:53. Id. Despite Rederick previously stating that he did not want to answer any questions, Trooper Peterson again attempted to ask Rederick more questions and Rederick reiterated again that he was not answering any questions at 19:05. Id. Trooper Peterson then stated, “see again, you’re not willing to answer any of my questions.” Id. Rederick specifically asserted that he did not have to under the Fifth Amendment at 19:09. Id.

Rederick then told Trooper Peterson that this took longer than your normal traffic stop and Trooper Peterson conceded that it did at 20:50. Id. Rederick subsequently stated multiple times that he wanted to leave and asked if he was going to be arrested if he got out of Trooper Peterson’s car. Id. Trooper Peterson told Rederick he would be arrested for obstruction of an officer if he got out of Trooper Peterson’s vehicle at 21:38. Id.

At 22:21 Trooper Jansen arrived. APP. 51. Trooper Peterson then exited his vehicle at 22:24 to speak to Trooper Cody Jansen (hereinafter referred to as Jansen) who had just arrived. Id. At 25:00, Trooper Jansen and K9 Rex (hereinafter referred to as “Rex”) began their search at the passenger side rear fender of Rederick’s trailer and the vehicle on the trailer. *See* Suppression Hearing Exhibit 3. This is 23½ minutes after Trooper Peterson had his initial contact with Rederick at Rederick’s vehicle. Id. This is also approximately 8½ minutes after Trooper Peterson stated that he was done with the warning. Id.

Rex completed his pass around the vehicle and the video objectively shows no behavior that would be either an alert or indication of any controlled substances present. App. 31. (“The [district] court agrees with Rederick’s statement that it is not “objectively viewable” that Rex is wagging his tail faster than normal near the trunk of the sedan.”). It should also be noted that the officer allowed Rex to lead around the vehicle and does not visibly touch the vehicle in any area. Id. Trooper Jansen testified that Rex did not alert near the trailer or trunk on the first pass. MT 157:6-11. Despite the lack of any alert or indication behavior, Jansen takes Rex around both the trailer and the vehicles again. App. 51-52; Suppression Hearing Exhibit 3. All of Rex’s search coincidentally is not captured on the videos that have been provided to Rederick, despite the presence of other officers besides Troopers Jansen and Peterson. Id. That said, the entirety of the Rex passing around the trunk of the vehicle on the trailer can be seen. Id.

On Trooper Jansen and Rex's second pass around the vehicles and the trailer, Jansen begins to put his hand on the vehicles and on the vehicle on the trailer. Suppression Exhibit 3. It is only after Jansen puts his hand on the vehicles that Rex rose up on to the vehicles, especially on the vehicle on the trailer. Id. Such conduct can be seen on video from 25:56 - 26:10. Id. Although only part of Rex is visible, his tail can be seen. As Rex went around the passenger door of the vehicle on the trailer there was no objective indication by the speed of his tail at 26:10. Id.

Trooper Jansen informed Trooper Peterson that Rex had alerted and indicated, and that this provided probable cause to search the vehicles. APP. 53; MT at 142. In the trunk of the sedan, Troopers found several baggies of a substance that appeared to be methamphetamine and that field tested positive for methamphetamine. APP. 17. After Agent Pennock learned that Trooper Jansen discovered methamphetamine in the sedan, he applied for and received search warrants for Rederick's residence and phone. Id. A search of Rederick's residence turned up drug paraphernalia. Id.

Rederick filed a Motion to Suppress, which, in part, challenged the search of the vehicle on the trailer. APP 2. At the hearing, although it is not objectively noticeable on the video, Trooper Jansen testified that he observed Rex's alert behaviors on the driver's side of the truck, on the trunk of the sedan that was on the trailer, and on the passenger side door of the truck. APP. at 16. "Alert behaviors" as testified to by Trooper Jansen, are innate behaviors that a dog displays when detecting a drug odor, and according to Trooper Jansen, Rex's alert behaviors

include wagging his tail faster than normal, doing head checks, and breathing fast “like an air compressor.” Id. Rex then “indicated” by sitting down at the truck’s passenger side door, which means that the dog thinks that is the source of the drug odor. Id.

Trooper Jansen testified that it is the job of the trainer to learn the dog’s alert behaviors. APP 32. When Trooper Jansen was asked if a reasonable person would be able to tell the difference when Rex was wagging his tail faster on an alert behavior or whether it’s wagging faster for any other reason, Trooper Jansen stated, “You wouldn’t be able to tell, you wouldn’t know.” MT 149:11-14. Trooper Jansen further testified that a reasonable person who knows what they are looking for would be able to identify Rex’s change in body posture when alert. MT 152:13-22.

United States Magistrate Judge Veronica L. Duffy issued a Report and Recommendation which recommended granting a portion of the motion to suppress that is not subject to this appeal but denying the motion as it relates to the issues raised in this appeal. APP. 10. The Report and Recommendation was adopted by the district court. R. Doc. 38.

The jury returned a verdict of guilty on both counts of the superseding indictment. APP 3. The evidence procured from this search was presented at trial, and was key evidence presented by the Government. In fact, it was relied on by the district court in denying a motion for judgment of acquittal. R. Doc. 120. On April 4, 2022, Rederick was sentenced to 180 months of custody. APP 3.

REASONS FOR GRANTING THE PETITION

- I. THE PETITION SHOULD BE GRANTED BECAUSE THE EIGHTH CIRCUIT COURT OF APPEALS' DECISION AUTHORIZES UNREASONABLY PROLONGED TRAFFIC STOPS AND UNREASONABLE SEARCHING A SEPARATE VEHICLE WITHOUT PROBABLE CAUSE AS REQUIRED UNDER THE FOURTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

This Petition seeks that the Court issue a writ of certiorari to set the proper allowable prolongment of a law enforcement traffic stop, probable cause standards for canine drug detection, and the extent that probable cause to search extends beyond the vehicle where probable cause is established.

- a. *The Collective Knowledge Doctrine Does Not Apply to an Independent Traffic Stop.*

As recognized by the Circuit Court decision, 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.” *Rodriguez v. United States*, 575 U.S. 348, 350 (2015). In the case at hand, the Eighth Circuit found that the Troopers did not unreasonably prolong the traffic stop when waiting for a drug-dog to arrive and complete a search of the vehicles. Specifically, the Eighth Circuit reasoned:

Unlike in Rodriguez, the Troopers not only saw a traffic violation, but also had reasonable suspicion that Rederick was involved in drug-related activity. The Troopers testified that the purpose for stopping Rederick was to assist with the Agent's investigation, not for a traffic violation. The drug-dog search was therefore part of the Trooper's mission for conducting the traffic stop.

Rederick, 65 F.4th 961, 967-68 (8th Cir. 2023). Further the court reasoned that “here only 27 minutes passed from the stop until the dog's alert. This delay did not violate the Fourth Amendment because the Troopers acted diligently to pursue the mission of the stop...” Id. at 968.

First, the Circuit Court erred in finding that the purpose of the stop was to assist with a drug-related investigation, rather than a traffic violation, which is the only reason it was distinguished from *Rodriguez*. The key evidence to this question is the testimony of Trooper Peterson and Agent Pennock. Trooper Peterson testified, plainly, that the reason he pulled over Rederick was because of a traffic violation, not because of the reasonable suspicion of Agent Pennock. Specifically, Agent Pennock testified that:

I believed, based off information that we had, that Mr. Rederick was the one that was most likely transporting narcotics and I asked the South Dakota Highway Patrol to develop, if they could, their own probable cause for the stop. If not, that I would still like Mr. Rederick stopped.

MT 30:20-25. Asked about this further, Agent Pennock stated:

Q So you had said that you asked the troopers to develop their own probable cause. What does that mean?

A To develop their own reason for the traffic stop independent of what we already had.

Q What is the purpose of that?

A Honestly, it's a cleaner stop.

MT 31:17-22. And that is exactly what happened. Trooper Peterson stated he pulled over Rederick because “I observed that there was no license plate light on the trailer[.]” MT 64:20-23. In short, although it is arguable that the stop *could have* been an investigatory stop based on reasonable suspicion, there is no dispute that that was not the actual basis for the stop. The stop, by request of Agent Pennock, was an independent stop based on probable cause for a traffic violation.

After the fact, because the Government realized that it unlawfully prolonged the traffic stop, it attempts to argue that the stop could have been an investigatory

stop based on reasonable suspicion. However, this sort of revisionist history argument that the stop *could have been* based upon a finding of reasonable suspicion based upon the collective knowledge doctrine has never been adopted by this Court. Although the collective knowledge doctrine has certainly been applied to situations where an officer acted on a direct instruction to pull over a vehicle for an investigatory stop based on reasonable suspicion of criminal activity being afoot, *see United States v. Hensley*, 469 U.S. 221, 105 S. Ct. 675 (1985)), this Court has not expanded the collective knowledge doctrine to situations where an underlying stop was based on an independent finding of probable cause by the arresting officer for a separate and independent traffic violation from the offense being separately investigated, when that was directed to take place.

A traffic stop's tolerable duration is determined by the seizure's "mission," which is to address the traffic violation that warranted the stop. *Rodriguez v. United States*, 135 S. Ct. 1609, 1614 (2015) (*citing Illinois v. Caballes*, 543 U.S. 405, 407 (2005)). "Authority for the seizure thus ends when tasks tied to the traffic infraction are—or reasonably should have been— completed." *Id.* (*citing United States v. Sharpe*, 470 U.S. 675, 686 (1985)). In *Rodriguez*, there was a seven- or eight-minute delay between the conclusion of the "mission" of the traffic stop and the time the dog alerted to the presence of drugs. The district court found that this delay constituted only an acceptable de minimis intrusion upon *Rodriguez's* Fourth Amendment rights that was "not of constitutional significance," and this Court affirmed based on this same reasoning. *See id.* at 1613-14. The Supreme Court,

however, found that such an intrusion was impermissible despite its relatively short duration. It concluded that a traffic stop may only be extended past the time required to complete its mission when reasonable suspicion exists to justify the additional investigation. *Id.* at 1616.

Here, the stop was undisputedly based upon an independent finding of a traffic violation, even if it arguably could have been based on reasonable suspicion under the collective knowledge doctrine. Agent Pennock wanted a “cleaner stop.” However, the Government is required to take the bitter with the sweet. Once Trooper Peterson was directed to act independently to find a basis for the stop, then the collective knowledge doctrine no longer applies to create a *post hoc* revisionist basis to extend a stop. Therefore, under *Rodriguez*, as the traffic stop was illegally extended beyond the time reasonably needed to complete the stop, the subsequent search by the K9 and the officers of the Defendant’s vehicles was unconstitutional and must be suppressed as fruit of the poisonous tree.

b. Even if Collective Knowledge Doctrine Does Applies, this Court Should Grant the Petition because the Circuit Court Opinion is Contrary to Rodriguez v. United States.

In addition, even if the Court would expand the collective knowledge doctrine as found in the Circuit Court opinion, this Court is presented an alternative basis as to whether the Troopers unreasonably prolonged the stop by not having the canine unit prepared and waiting approximately 12 minutes to request the canine unit after the stop was initiated. Rederick submits that reversal is appropriate under the precedent of this Court as the Eighth Circuit’s decision here extends the

time to request a canine unit beyond other circuits. Reasonable prolongment has been found when officers “immediately” called another officer in United States v. Green, 897 F.3d 173, 177 (3rd Cir. 2018), after 6 minutes in United States v. Thompson, 783 Fed.Appx 360, 362 (5th Cir. 2019), before the driver was completely stopped in United States v. Lombard, No. 15-20008, 2016 Dist. LEXIS 152489, at *6 (D. Mich. November 3, 2019), after 5 minutes in United States v. Stewart, 902 F.3d 664, 669 (7th Cir. 2018), when the officer already had a canine in their vehicle in United States v. Easterly, No. 21-10482, 2021 U.S. App. LEXIS 36415, *4 (11th Cir. December 9, 2021), or when the canine unit arrived as the officer was approaching the vehicle in U.S. v. Woods, 351 Fed. Appx. 259, 261 (10th Cir. 2009).

It is unreasonable under the Fourth Amendment to the United States Constitution that the Troopers were not prepared with the canine unit nor did the Trooper request the unit immediately or before 12 minutes had passed. Trooper Peterson stated that he had probable cause separate from the traffic violation, yet waited to call another officer to assist. MT at 109. This logic follows the Court’s precedent that “[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.” Rodriguez v. United States, 575 U.S. 348, 550 (2015). Under the totality of the circumstances, Rederick’s stop was unreasonably prolonged for these reasons.

c. This Court Should Grant Certiorari To Provide Clarify Whether, in Analyzing Dog-Sniff Cases, Indictive Behavior or Alert Behavior is Required to Establish Probable Cause

The District Court of South Dakota adopted United States Magistrate Judge Veronica L. Duffy's Report and Recommendation. United States v. Rederick, No. 4:20-CR-40066-KES, 2021 U.S. Dist. LEXIS 197216, *2 (D.S.D. June 25, 2021). It determined that Rex alerted at the sedan and indicated at the truck. Judge Duffy also determined that an alert was enough to establish probable cause. *Id.* at 49-50 citing United States v. Tuton, 893 F.3d 562, 567-68 (8th Cir. 2018). Trooper Jansen testified that for a valid indication you need alert behavior. MT 136:8-11.

The analysis in Tuton, however, does not apply to this case, the facts are too different. For instance, in Tuton, a dog alerted but did not indicate and the alert was said to be a “profound alert.” Tuton, 893 F.3d at 567. Here there has been no record of a profound alert. Tuton followed United States v. Holleman, 743 F.3d 1152, 1154, 1156 (8th Cir. 2014), where the Eighth Circuit concluded that a drug dog’s alert is enough and there is no need to indicate. Holleman, 743 F.3d at 1156-57. However, Holleman, is not compatible because there a drug dog was sent into the luggage compartment of a bus, and it was overwhelmed by the smells of illicit substances to the point where it was constantly alerting and could not indicate the direct location of the smell because it was completely surrounded. *Id.* at 1154, 1157. In summation, Holleman’s reasoning behind allowing an alert to establish probable cause is not compatible with Tuton or the present case. There are no reports that Rex was overwhelmed by smells and could not indicate properly.

Judge Duffy followed United States v. Parada, 577 F.3d 1275, 1282 (10th Cir. 2019) which opted to use a less strict standard to establish probable cause but this view is not universally shared in federal courtrooms. In United States v. Heir, 107 F.Supp.2d 1088, 1091 (D.Neb. 2000), the court explicitly differentiated between an alert and indication. Heir held that alert behavior described by the officer was too subjective and not objectively reasonable like an indication. Id. at 1091. There the dog's actions were said to be ambiguous. Id. at 1096. The court held in favor of the defendant that an alert alone would not establish probable cause to search. Id. at 1091.

In United States v. Barraza-Maldonado, 879 F.Supp. 2d 1022, 1036 (D. Minn. 2012), the court attempted to state that Heir was inconsistent with Eighth Circuit precedent. Barraza-Maldonado cites United States v. Carbajal, 449 Fed.Appx.551, 554 (8th Cir. 2012) which in turn cites United States v. Winters, 600 F.3d 963 (8th Cir. 2010). In Winters, the court said that an “alert or indication by a properly trained and reliable drug dog is itself sufficient to provide probably cause for the search of a vehicle, our inquiry is not so limited.” Winters, 600 F.3d at 967. This quote was used out of context and is a summation of multiple previous opinions that do not differentiate between an alert and indication. These opinions include United States v. Olivera-Mendez, 484 F.3d 505, 512 (8th Cir. 2007) which only stated an indication is sufficient, Rawlings v. Kentucky, 448 U.S. 98 (1980) did not mention indication or alert at all, United States v. Hogan, 539 F.3d 916, 921 (8th Cir. 2008) stated when the dog alerted there was probable cause (while citing Olivera-Mendez)

but does not define alert or indication, and United States v. Carrazo, 91 F.3d 65, 67 (8th Cir. 1996) only uses the word alert and not indication at all.

In summation, the terms alert and indicate are in a tangled web of definitions with no clear controlling authority. Judge Duffy followed case law that was misconstrued through multiple opinions where the terms alert and indications are used inconsistently and not as terms of art. Judge Duffy's June 25, 2021, opinion is the foundation for Judge Schreier's opinion and in turn the Eighth Circuit's opinion. It is a matter of public importance that this Court provide guidance to lower courts on the terms alert and indication so that law enforcement properly understands their burden when establishing probable cause. Without guidance from this Court, there is no reliable, constitutionally grounded standard that can protect Fourth Amendment rights from this harm.

The government has the burden of proof to show that probable cause exists to search the sedan. In her opinion, Judge Schreier plainly stated that the government had failed to show Rex objectively alerted or indicated on the sedan, "The court agrees with Rederick's Statement that it is not "objectively viewable" that Rex is wagging his tail faster than normal near the trunk of the sedan." Rederick, 2021 U.S. Dist. LEXIS 197216 at *28. This does not follow the standard that a drug dog's alert or indication be "objectively observable", "I agree that there must be an objectively observable 'indication' by the dog of the presence of drugs." Heir, 107 F.Supp.2d at 1091 citing United States v. Jacobs, 986 F.2d 1231 at 1234

(8th Cir. 1993). Testimony by Trooper Jansen that Rex's breathing rate increased cannot be seen or heard through any evidence recorded throughout the search.

d. This Court Should Grant Certiorari To Provide Clarity, in Analyzing Dog-Sniff Cases, What Standard Applies to Searching Vehicles In-Tow.

Even if the Court accepts that there was an alert or indication by Rex at the sedan, it should not be sufficient due to Trooper Jansen's potential cuing of Rex. After performing the free pass of the vehicles, Trooper Jansen began to "detail" the vehicles as Rex was passing. In his deposition, Trooper Jansen stated he would "point at that location. So if I want the dog to sniff right here, I'll point there to try to take his nose to that particular spot..." MT 125:22-25. This type of behavior by law enforcement is exactly the fear that this Court expressed in Florida v. Harris, "And even assuming a dog is generally reliable, circumstances surrounding a particular alert may undermine the case for probable cause--if, say, the officer cued the dog (consciously or not), or if the team was working under unfamiliar conditions." Florida v. Harris, 568 U.S. 237, 247 (2013). It is a matter of public importance that this Court set the appropriate standard so that cues by law enforcement are not an attributing factor in a drug dogs' detection.

Rederick argues that even if this Court concludes that Rex indicated at the truck, after the truck was searched and no drugs were found, the Troopers' probable cause dissipated. Therefore, there was no probable cause to search the sedan on the trailer. Rederick reaffirms the argument that the alleged alert on the sedan does not establish probable cause to search.

Although Rederick raised the issue in briefing, the Eighth Circuit did not directly discuss the question of whether the trailer/sedan were searchable as separate vehicles from the truck. In one fact pattern South Dakota Supreme Court concluded that because a dog alerted to a pickup cab that the attached camper was also searchable. State v. Overbey, 2010 SD 78, 790 N.W.2d 35, 42 citing United States v. Ortega-Ramos, No. 94-3803, 1995 U.S App. LEXIS 12703, *4-8 (6th Cir. May 23, 1995). The South Dakota Supreme Court and other courts have misapplied Ortega-Ramos to make this conclusion.

In Ortega-Ramos, a drug dog alerted to a truck, but no drugs were found in the truck following a search. Ortega-Ramos, 1995 U.S App. LEXIS 12703 at *4. Then, due to the direction of the wind, the court concluded that the dog's alert would also give probable cause to a search of an attached trailer. Id. at 5. The lack of docking information further supported probable cause for a search of the attached trailer. Id. at 3-4. Rederick asserts that this conclusion was based on the principle of following the totality of the circumstances; further that a drug dog's detection in one vehicle does not implicitly apply to trailers and separate vehicles.

This Court said in United States v. Ross, 456 U.S. 798, 825 (1982), that, "If probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search." However, the Court has not enumerated since what the "entire vehicle" entails. Rederick asserts in this case, if the indication of the truck was proper, the probable cause to search ended at the truck. Again, Rederick asserts there was no

indication or alert at the trailer/sedan as separate vehicles. It is a matter of public importance that this Court further protect Fourth Amendment rights by requiring law enforcement to establish probable cause to search what they search. In this case, the Troopers may have had probable cause to search the truck but not the sedan and trailer. For this reason, all evidence that came from the sedan and trailer should be suppressed upon remand.

CONCLUSION

For the foregoing reasons, Rederick respectfully requests that the petition for a writ of certiorari should be granted.

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