IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

PEDRO PABLO FUENTES,	)	
	)	
Petitioner,	)	
	)	
v.	)	**No. CIV-23-355-J**
	)	
STEVEN HARPE,	)	
	)	
Respondent.	)	

REPORT AND RECOMMENDATION

Petitioner, a state prisoner appearing *pro se*, seeks a writ of habeas corpus under 28 U.S.C. § 2254. (ECF No. 15). Mr. Harpe has filed his Response to the Petition for Writ of Habeas Corpus and Petitioner has filed a Reply (ECF Nos. 19 & 22). For the reasons set forth below, it is recommended that the Petition be **DENIED**.

I. SCREENING REQUIREMENT

The Court is required to review habeas petitions promptly and to "summarily dismiss [a] petition without ordering a responsive pleading," *Mayle v. Felix*, 545 U.S. 644, 656 (2005), "[i]f it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court." *See* R. 4, R. Governing § 2254 Cases in U.S. Dist. Ct.

II. FACTUAL AND PROCEDURAL BACKGROUND

The relevant facts, according to Petitioner are as follows:

> On July 16, 2016, Pedro Fuentes was pulled over on Interstate 40 by Officer John Ricketts. The stop was captured on video through Officer Rickett's dash camera. After making the stop, Officer Ricketts approaches the vehicle. Mr.

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> Fuentes hands the officer his license, Officer Ricketts then informs Mr. Fuentes that the reason for the stop is that he was speeding and tailgating. Officer Ricketts attempted to engage Mr. Fuentes in conversation, however Mr. Fuentes asks for his citation so he can he on his way. Officer Ricketts agreed to write him the citation but asks Mr. Fuentes to step out of the vehicle to wait on his citation.
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> Officer Ricketts then returns to his patrol car to run Mr. Fuentes information. At this time, he calls K-9 Officer McDaniel to come to the scene. This occurs approximately three minutes into the stop. Officer McDaniel arrives a minute later. Officer Ricketts tells Officer McDaniel that something is up with Mr. Fuentes and that he pulled him out of this vehicle because he was acting nervous.
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> After completing a warrant check, Officer Ricketts exits his vehicle to issue Mr. Fuentes a speeding ticket. This occurs approximately thirteen minutes into the stop. Officer Ricketts explains that he is giving Mr. Fuentes a speeding ticket and has Mr. Fuentes sign the citation. At this point, Officer Ricketts is holding the signed citation and tells Mr. Fuentes that he has some more questions for him. He begins to ask Mr. Fuentes is there are any drugs in the vehicle. After another two minutes of questioning where Mr. Fuentes continually denied that there was anything illegal in the car, Officer Ricketts gets frustrated and tells Mr. Fuentes that he is going to have Officer McDaniel run his K-9 around the vehicle. Mr. Fuentes is given the option to either watch from the sidewalk or from Officer Ricketts' vehicle. Mr. Fuentes then asks for his citation again, pointing to the signed ticket, and says he is free to leave. Mr. Fuentes is eventually placed in the patrol car while his vehicle is searched. From the time Officer Ricketts makes contact with Mr. Fuentes until he is placed in the patrol vehicle is approximately sixteen minutes.

Motion to Suppress Evidence with Brief in Support, *State of Oklahoma v. Fuentes*, Case No. CF-2016-560 (Canadian County Dist. Ct. Dec. 10, 2019) (Motion to Suppress) (internal citations omitted). On July 21, 2016, in Canadian County District Court Case No. CF-2016-560, Mr. Fuentes was charged with Aggravated Trafficking in Illegal Drugs After Former Conviction of Two or More Felonies in violation of 63 O.S.Supp.2015 § 2-415.

During the course of the criminal proceedings, on December 19, 2019, Petitioner filed a Motion to Suppress Evidence with Brief in Support, arguing that the traffic stop "was extended beyond the time necessary to effectuate the purpose of the stop," and

that "no reasonable suspicion existed to extend the duration of the stop." Motion to Suppress at 1. The Court held a hearing on the issue and although the Judge stated that "the stop was extended longer than it should have been," he also stated that the officer had "reasonable suspicion to prolong the stop and bring the [K-9 Officer] in and run the dog." (ECF No. 19-4:4-5). As a result, the trial court overruled Mr. Fuentes' Motion to Suppress.

On January 2, 2020, Petitioner filed a Motion to Reconsider the denial of the Motion to Suppress. *See* Motion to Reconsider Defendant's Motion to Suppress Evidence in Light of New Evidence With Breif [sic] in Support, *State of Oklahoma v. Fuentes*, Case No. CF-2016-560 (Canadian County Dist. Ct. Jan. 2, 2020) (Motion for Reconsideration). The basis of the motion to reconsider was, again Petitioner's belief that the traffic stop was unreasonably extended in violation of the Fourth Amendment. *Id.* Following a hearing on January 6, 2020, the trial court overruled the Motion to Reconsider, finding that there was "still and maybe even a little more reasonable suspicion for the stop to have been extended in this matter." (ECF No. 19-14:52).

Following two failed attempts to have the evidence suppressed, on January 28, 2020, the Canadian County District Court convicted Mr. Fuentes of aggravated trafficking in illegal drugs. *See* ECF No. 15:1; State Court Docket Sheet, *State of Oklahoma v. Mason*, Case No, CF-2016-560 (Okla. Co. Dist. Ct. Jan. 28, 2020). Petitioner appealed the conviction, raising the one proposition of error previously raised in the Motion to Suppress and Motion for Reconsideration—that the traffic stop which led to the seizure of drugs in

Petitioner's vehicle was unreasonably extended for reasons unrelated to the traffic stop, in violation of the Fourth Amendment, and the trial court erred in failing to grant Mr. Fuentes' Motion to Suppress based on this theory. *See* ECF No. 19-1.

In a thorough and published opinion, the Oklahoma Court of Criminal Appeals (OCCA) affirmed Mr. Fuentes' conviction. (ECF No. 19-3). In doing so, the Court stated:

C. The Law

1. Constitutional Provisions on Search and Seizure

> Both the United States and Oklahoma constitutions protect one's right to be free from unreasonable searches and seizures. U.S. Const. amend. IV; Okla. Const. Article II, Section 30. It is well-established that a traffic stop is a seizure under the Fourth Amendment. *State v. Strawn*, 2018 OK CR 2, ¶ 21, 419 P.3d 249, 253 (quoting *Seabolt [v. State]*, 2006 OK CR 50, ¶ 6, 152 P.3d [235,] 237). To meet this requirement of reasonableness, the scope and duration of a traffic stop must be related to the purpose of the stop and must last no longer than is necessary to effectuate the stop, in this case to investigate the observed traffic violations. *Seabolt*, 2006 OK CR 50, ¶ 6, 152 P.3d at 237 (citing *Florida v. Royer*, 460 U.S. 491, 500 (1983); *Terry v. Ohio*, 392 U.S. 1, 20 (1968)). "If the length of the investigative detention goes beyond the time necessary to reasonably effectuate the reason for the stop, the Fourth Amendment requires reasonable suspicion that the person stopped has committed, is committing or is about to commit a crime." *Seabolt*, 2006 OK CR 50, ¶ 6, 152 P.3d at 237-38. It is the prosecution's burden to prove the reasonableness of an officer's suspicion. *United States v. Lopez*, 849 F.3d 921, 925 (10th Cir. 2017) (citing *United States v. Pettit*, 785 F.3d 1374, 1379 (10th Cir. 2015)[)]. "[R]easonable suspicion is not, and is not meant to be, an onerous standard." *Pettit*, 785 F.3d at 1379 (quoting *United States v. Kitchell*, 653 F.3d 1206, 1219 (10th Cir. 2011)). In determining the reasonableness of a detention under the Fourth Amendment, we employ the "totality of the circumstances" test. *State v. Bass*, 2013 OK CR 7, ¶ 12, 300 P.3d 1193, 1196-97. *See also United States v. Arvizu*, 534 U.S. 266, 273 (2002).
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> Fuentes notes that at the inception of the stop Sergeant Ricketts explained that the stop was for traffic violations. Sergeant Ricketts asked Fuentes for his driver's license and he kept it while he ran computer checks

and wrote the citation. During this time, Sergeant Ricketts also called for backup and requested the assistance of a drug sniffing dog, or K9 unit. After Sergeant Ricketts finished the computer check and writing the citation, he detained Fuentes longer, prohibiting him from leaving while a K9 officer walked the drug dog around Fuentes' car. This was done in spite of Fuentes' request that he be given the ticket and allowed to leave immediately without waiting while the drug dog screened his vehicle. It is Fuentes' position on appeal, as it was below, that Sergeant Ricketts did not have personal knowledge giving rise to a reasonable suspicion which would allow him to detain Fuentes past the time necessary to effectuate the purpose of the traffic stop. He complains that Sergeant Ricketts could not lawfully rely upon information from Detective Cook to justify prolonging the stop, but that Sergeant Ricketts could only extend the stop in reliance upon reasonable suspicion derived from the stop itself.

2. The Collective Knowledge Doctrine

In response, the State maintains that Sgt. Rickett's [sic] roadside detention was lawful based upon information known by Detective Cook and those assisting his investigation, under the Fellow Officer Rule or Collective Knowledge Doctrine. This legal rule, which imputes reasonable suspicion or probable cause possessed by one officer or group, to another officer who actually conducts a search or seizure, has a pedigree in this court nearly five decades old. "It is well settled that an agent may rely upon his fellow officers to supply the information which forms the basis of the arresting officer's reasonable grounds for believing that the law is being violated." *Holt v. State*, 1973 OK CR 38, ¶ 14, 506 P.2d 561, 566.

We examined it more recently and more in depth in *State v. Iven*, 2014 OK CR 8, ¶ 10, 335 P.3d 264, 268:

> The rule for imputing knowledge from one officer to another is known variously as the "collective-knowledge" doctrine or the "fellow-officer" rule. United States v. Chavez, 534 F.3d 1338, 1345 (10th Cir. 2008). Generally stated, the doctrine allows an officer to stop, arrest, or search a suspect in limited circumstances, even if the officer does not have firsthand knowledge of all of the facts that amount to reasonable suspicion or probable cause to justify the action. This principle derives from the recognition that law enforcement officers must be permitted to work collectively in the performance of

> their duties and act on directions and information given by one officer to another. *United States v. Duval*, 742 F.3d 246, 253 (6th Cir. 2014).
>
> The collective knowledge doctrine has both vertical and horizontal application. The vertical application, implicated here, occurs "when an officer having probable cause or reasonable suspicion instructs another officer to act, even without communicating all of the information necessary to justify the action." *United States v. Whitley*, 680 F.3d 1227, 1234 (10th Cir. 2012). The officer taking action does not need to personally be aware of all the facts justifying the detention because "officers, who must often act swiftly, cannot be expected to cross-examine their fellow officers about the foundation for the transmitted information." *United States v. Hensley*, 469 U.S. 221, 231 (1985) (quoting *United States v. Robinson*, 536 F.2d 1298, 1299 (9th Cir. 1976)). Fuentes' claim that extending the duration of a traffic stop is permissible based only upon factors observed personally by the officer during the traffic stop is simply not supported by the law. "[W]e reject respondent's argument that reasonable cause for a stop and frisk can only be based on the officer's personal observation, rather than on information supplied by another person." *Adams v. Williams*, 407 U.S. 143, 147 (1972).
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> **D. Conclusion**
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> In the present case, Detective Cook had reasonable suspicion to believe that Fuentes was trafficking drugs based upon information from two known reliable confidential informants and his own investigation. Under the collective knowledge doctrine, Detective Cook's reasonable suspicion was vertically imputed to Sergeant Ricketts since Detective Cook directed Ricketts to make the traffic stop. Thus, based upon Detective Cook's reasonable suspicion that Fuentes was engaged in illegal activity, Sergeant Ricketts was justified in extending the lawful traffic stop for a reasonable length of time while a drug dog was dispatched and walked around the vehicle. There was no Fourth Amendment violation here and the trial court did not abuse its discretion in denying Fuentes' motion to suppress. Relief is not required.

(ECF No. 19-3:8-13) (paragraph numbers and footnote omitted).

On June 6, 2022, Petitioner filed an Application for Post-Conviction Relief in the Canadian County District Court, alleging ineffective assistance of trial and appellate

counsel and requesting a *Franks* hearing. *See* ECF No. 19-4. On January 17, 2023, the district court denied the application and Mr. Fuentes filed an appeal in the OCCA. (ECF Nos. 19-10 & 19-11). Ultimately, the OCCA declined jurisdiction and dismissed Petitioner's appeal as untimely. *See* ECF No. 19-12. On April 28, 2023, Mr. Fuentes filed a habeas Petition in this Court asserting four grounds for relief:

1. The trial court erred in denying the motion to suppress evidence which was obtained following an illegal search of Petitioner's vehicle because he did not consent to the search;

2. The trial court erred in denying the motion to suppress because the law enforcement officer who searched Petitioner's vehicle illegally extended the traffic stop for reasons unrelated to the stop in an effort to wait on a K-9 drug dog;

3. The OCCA erred in affirming his conviction on direct appeal; and

4. Error by the OCCA in declining jurisdiction over Petitioner's post-conviction appeal.

(ECF No. 1:5-10). The undersigned recommended dismissal of the Petition as mixed and the District Court agreed, dismissing the Petition without prejudice, on July 5, 2023. *See* ECF Nos. 9, 11, & 12). On July 20, 2023, Mr. Fuentes filed an Amended Petition and Mr. Harpe subsequently responded. *See* ECF Nos. 15 & 19. With the filing of Mr. Fuentes' reply,[1] the matter is now at issue.

III. DISMISSAL OF THE PETITION

The sole issue Petitioner alleges is that the trial court erred when it denied his motion to suppress evidence gained from Petitioner's vehicle following a traffic stop which

[1] *See* ECF No. 22.

was unlawfully extended for reasons unrelated to the traffic stop. *See* ECF Nos. 15 & 22. Because Mr. Rodriguez has been afforded a full and fair opportunity to litigate this issue in state court, the Court should deny his Petition for habeas relief.

In *Stone v. Powell,* 428 U.S. 465 (1976), the Supreme Court addressed the issue of whether, in a federal habeas proceeding, state prisoners may assert a violation of the Fourth Amendment with respect to seized evidence introduced at a trial. The Court reasoned that the "[e]vidence obtained by police officers in violation of the Fourth Amendment is excluded at trial in the hope that the frequency of future violations will decrease." *Id.* at 492. The purpose of this exclusionary rule is "to discourage law enforcement officials from violating the Fourth Amendment by removing the incentive to disregard it." *Id.* This goal would not be enhanced, the Court found, "if there were the further risk that a conviction obtained in state court and affirmed on direct review might be overturned in collateral proceedings often occurring years after the incarceration of the defendant." *Id.* at 492–493.

Further, the Supreme Court found in *Stone* that any benefit from allowing habeas review of a search-and-seizure claim would be outweighed by the costs to other values promoted by the criminal justice system. *Id.* at 493–494. Thus, the Court concluded that where a State has provided "an opportunity for full and fair litigation of a Fourth Amendment claim," a state prisoner may not obtain habeas relief on the ground that evidence obtained in an unconstitutional search or seizure was introduced at trial. *Id.* at 494.

Here, the record shows that Petitioner was given an opportunity for full and fair consideration of his Fourth Amendment claims prior to trial and on appeal, and the trial and appellate courts applied relevant legal authority in reviewing those claims. The OCCA made copious factual findings in its decision in Petitioner's direct appeal and specifically addressed the merits of Petitioner's Fourth Amendment claim. Petitioner has not presented clear and convincing evidence sufficient to overcome the presumptively correct factual findings that appear in the OCCA's decision. 28 U.S.C. § 2254(e)(1). Accordingly, the Court should deny the habeas Petition. *See Thornton v. Goodrich*, 808 F. App'x 651, 654-55 (10th Cir. 2020) (denying a certificate of appealability on the petitioner's Fourth Amendment claim arising from a traffic stop and subsequent search of his vehicle because he had the opportunity to fully and fairly litigate it in state court, and it was therefore barred by *Stone v. Powell); see also Thomas v. Langford*, ___ F. App'x ____, No. 23-3118 (10th Cir. Jan. 11, 2024) (denying a certificate of appealability on the petitioner's Fourth Amendment claim because Petitioner was afforded a full and fair opportunity to litigate the claim in state court).

IV. RECOMMENDATION AND NOTICE OF RIGHT TO OBJECT

Based on the foregoing findings, it is recommended the Amended Petition for Writ of Habeas Corpus **(ECF No. 15)** be dismissed.

Plaintiff is hereby advised of his right to object to this Report and Recommendation. *See* 28 U.S.C. § 636. Any objection must be filed with the Clerk of the District Court by **February 23, 2024**. *See* 28 U.S.C. § 636(b)(1); and Fed. R. Civ. P.

72(b)(2). Failure to make timely objection to this Report and Recommendation waives the right to appellate review of both factual and legal questions contained herein. *Casanova v. Ulibarri*, 595 F.3d 1120, 1123 (10th Cir. 2010).

V. STATUS OF THE REFERRAL

This Report and Recommendation disposes of all issues currently referred to the undersigned magistrate judge in the captioned matter.

ENTERED on February 6, 2024.

Shon T. Erwin

SHON T. ERWIN
UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

PEDRO PABLO FUENTES, Petitioner, v. STEVEN HARPE, Respondent.	)	Case No. CIV-23-355-J

ORDER

Petitioner, a state prisoner appearing pro se, brings this action pursuant to 28 U.S.C. § 2254, seeking habeas relief from a state court conviction. The matter was referred to United States Magistrate Judge Shon T. Erwin for initial proceedings consistent with 28 U.S.C. § 636. [Doc. No. 5]. On February 6, 2024, Judge Erwin issued a Report and Recommendation recommending that the Petition for Writ of Habeas Corpus be denied. [Doc. No. 23]. Petitioner has filed an objection to the Report and Recommendation which triggers de novo review. [Doc. No. 29].

In this habeas action, Petitioner alleges that the state trial court erred when it denied his motion to suppress evidence gained from his vehicle following a traffic stop which he asserts was unlawfully extended for reasons unrelated to the traffic stop. Following his conviction, Petitioner appealed the denial of his motion to suppress evidence, and the Oklahoma Court of Criminal Appeals affirmed his conviction. *See* Report and Recommendation [Doc. No. 23]. "[W]here the State has provided an opportunity for full and fair litigation of a Fourth Amendment claim, a state prisoner may not be granted federal habeas corpus relief on the ground that evidence obtained in an unconstitutional search or seizure was introduced at his trial." *Stone v. Powell*, 428 U.S. 465, 494 (1976). Having reviewed the filings in this case, the Court concludes that Petitioner was provided an opportunity for full and fair litigation of his Fourth Amendment claims prior to trial

Appendix B

and on appeal and, therefore, is not entitled to federal habeas corpus relief. *See* Report and Recommendation [Doc. No. 23].

Accordingly, the Court ADOPTS the Report and Recommendation [Doc. No. 23] and DENIES Petitioner's Petition for Writ of Habeas Corpus [Doc. No. 15]. A certificate of appealability is DENIED, as the Court concludes Petitioner has not made "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

IT IS SO ORDERED this 29th day of April, 2024.

BERNARD M. JONES
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

PEDRO PABLO FUENTES,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No. CIV-23-355-J
	)	
STEVEN HARPE,	)	
	)	
Respondent.	)	

JUDGMENT

In accordance with the Court's order entered on this date, Petitioner's Petition for Writ of Habeas Corpus is denied, and a certificate of appealability is denied.

IT IS SO ORDERED this 29th day of April, 2024.

BERNARD M. JONES
UNITED STATES DISTRICT JUDGE