FILED
United States Court of Appeals
Tenth Circuit

September 30, 2024

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

PEDRO PABLO FUENTES,

Petitioner - Appellant,

v.

STEVEN HARPE,

Respondent - Appellee.

No. 24-6094
(D.C. No. 5:23-CV-00355-J)
(W.D. Okla.)

ORDER DENYING CERTIFICATE OF APPEALABILITY*

Before **HARTZ**, **BALDOCK**, and **MORITZ**, Circuit Judges.

Pedro Fuentes, an Oklahoma prisoner proceeding pro se,[1] seeks a certificate of appealability (COA) to challenge the district court's order denying his 28 U.S.C. § 2254 petition. For the reasons explained below, we deny a COA and dismiss the matter.

In 2016, law enforcement investigated Fuentes for methamphetamine trafficking and secured a GPS-tracking warrant for his car. The GPS showed the car driving to Phoenix for a suspected drug pick up. When the car returned to Oklahoma, a law-enforcement officer pulled Fuentes over for speeding and tailgating. The officer thought

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* This order is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel. But it may be cited for its persuasive value. *See* Fed. R. App. P. 32.1(a); 10th Cir. R. 32.1(A).

[1] We liberally construe Fuentes's pro se filings, "but we will not act as his advocate." *James v. Wadas*, 724 F.3d 1312, 1315 (10th Cir. 2013).

Appendix "A"

Fuentes seemed nervous, and, while the officer conducted a warrant check and wrote the ticket, he summoned a K-9 officer to the scene. When the officer returned to give Fuentes the ticket, he questioned Fuentes for a few minutes about drugs and ultimately told Fuentes he was going to have the K-9 run around the vehicle. Fuentes asked for the ticket, pointed at it, and claimed he was free to leave. But the officer placed Fuentes in the patrol car while officers searched his vehicle. The search uncovered nearly ten pounds of methamphetamine.

In the ensuing state criminal proceedings, Fuentes challenged the legality of the search and seizure in a motion to suppress, arguing that the officers violated his Fourth Amendment rights because they lacked reasonable suspicion to extend the traffic stop beyond the time needed to issue a ticket. Following an evidentiary hearing, the trial court denied Fuentes's motion. Fuentes later sought reconsideration in light of new evidence, but after conducting a second evidentiary hearing, the trial court denied reconsideration. Following a bench trial, the trial court found Fuentes guilty of aggravated drug trafficking and imposed a 35-year prison sentence.

The Oklahoma Court of Criminal Appeals (OCCA) affirmed, finding no error in the trial court's denial of the motion to suppress. *Fuentes v. State*, 517 P.3d 971, 976 (Okla. Crim. App. 2021). The state district court then denied Fuentes's pro se application for postconviction relief, including his claim that trial and appellate counsel were ineffective in arguing the suppression issue, and the OCCA dismissed his attempted appeal as untimely.

Fuentes then sought federal habeas relief. His operative § 2254 petition asserted one ground for relief: that the trial court erred in denying his motion to suppress. The magistrate judge concluded that the Supreme Court's decision in *Stone v. Powell*, 428 U.S. 465 (1976), barred Fuentes's claim. *Stone* held that as long as the state "provided [the petitioner with] an opportunity for full and fair litigation of a Fourth Amendment claim," a federal court may not grant habeas relief on such a claim. 428 U.S. at 494. After explaining that *Stone* barred Fuentes's claim because he was able to pursue the claim both before his trial and on appeal, the magistrate judge recommended that the district court deny Fuentes's § 2254 petition.

The district court overruled Fuentes's objections and adopted the magistrate judge's report and recommendation in full, concluding that Fuentes "was provided an opportunity for full and fair litigation of his Fourth Amendment claims prior to trial and on appeal and, therefore, is not entitled to federal habeas corpus relief." R. vol. 1, 83–84. The district court thus denied Fuentes's petition and denied him a COA.

Fuentes now seeks to appeal the district court's decision. To do so, he must first secure a COA. *See* 28 U.S.C. § 2253(c)(1)(A); *Miller-El v. Cockrell*, 537 U.S. 322, 335–36 (2003) (describing COA as "jurisdictional prerequisite"). We will grant Fuentes a COA if "reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

The district court concluded that *Stone* barred Fuentes's Fourth Amendment claim because he had an opportunity to fully and fairly litigate that claim in the state courts. The phrase "full and fair litigation" means (1) "the procedural opportunity to raise or

otherwise present a Fourth Amendment claim," (2) a "full and fair evidentiary hearing," and (3) "recognition and at least colorable application of the correct Fourth Amendment constitutional standards." *Gamble v. Oklahoma*, 583 F.2d 1161, 1165 (10th Cir. 1978); *see also United States v. Lee Vang Lor*, 706 F.3d 1252, 1257–58 (10th Cir. 2013) (explaining standards for Fourth Amendment claims brought in habeas proceedings). And despite continuing to press the merits of his Fourth Amendment claims in his COA application before this court, Fuentes does not dispute that the Oklahoma courts gave him a full and fair opportunity to litigate those claims. Nor could he. He received several procedural opportunities to present his Fourth Amendment claims, including before trial, on direct appeal, and in a postconviction proceeding. He also received multiple evidentiary hearings, and he does not challenge the fullness or fairness of those hearings. And both the trial court and the OCCA recognized and colorably applied the governing Fourth Amendment standards. *See Fuentes*, 517 P.3d at 975–76.

Because reasonable jurists could not find the district court's conclusion debatable or wrong, we deny a COA, dismiss this matter, and deny Fuentes's pending motion for stay as moot. Further, we conclude that Fuentes has not demonstrated the existence of a reasoned, nonfrivolous argument on appeal, so we deny his motion to proceed in forma pauperis. *See DeBardeleben v. Quinlan*, 937 F.2d 502, 505 (10th Cir. 1991).

Entered for the Court

Nancy L. Moritz
Circuit Judge

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. 1). United States District Judge Bernard M. Jones has referred the matter to the undersigned magistrate judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B)-(C). In accordance with Rule 4 of the Rules Governing Section 2254 Cases, the undersigned has examined the Petition and taken judicial notice of various state court records.[1] After review, the undersigned recommends that the Court **DISMISS** the Petition in its entirety because it includes exhausted and unexhausted claims. However, the undersigned also recommends that if Mr. Fuentes files an Amended Petition including only the exhausted claim, the Court grant the amendment and allow the case to proceed on that claim.

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[1] *See United States v. Pursley*, 577 F.3d 1204, 1214 n.6 (10th Cir. 2009) (exercising discretion "to take judicial notice of publicly-filed records in [this] court and certain other courts concerning matters that bear directly upon the disposition of the case at hand").

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. PROCEDURAL BACKGROUND

On January 28, 2020, in Canadian County District Court Case No. CF-2016-560, Mr. Fuentes was convicted of aggravated trafficking in illegal drugs. *See* ECF No. 1:1; State Court Docket Sheet, *State of Oklahoma v. Mason*, Case No, CF-2016-560 (Canadian Co. Dist. Ct. Jan. 28, 2020). Petitioner appealed the conviction, raising one proposition of error—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* Brief of Appellant, *Fuentes v. State of Oklahoma*, Case No. F-2020-115 (Okla. Ct. Crim. App. Aug. 13, 2020). On July 15, 2021, the Oklahoma Court of Criminal Appeals (OCCA) affirmed Mr. Fuentes' conviction. *Fuentes v. State of Oklahoma*, Case No. F-2020-115 (Okla. Ct. Crim. App. July 15, 2021).

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. 3-1:3-7. On January 12, 2023, the

district court denied the application and Mr. Fuentes filed an appeal in the OCCA. *See id.*; State Court Docket Sheet, *Fuentes v. State of Oklahoma*, Case No. PC-2023-218 (Okla. Ct. Crim. App. Mar. 13, 2023). Ultimately, the OCCA declined jurisdiction and dismissed Petitioner's appeal as untimely. *See* Order Declining Jurisdiction and Dismissing Appeal, *Fuentes v. State of Oklahoma*, Case No. PC-2023-218 (Mar. 21, 2023). 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).

III. EXHAUSTION

"A threshold question that must be addressed in every habeas case is that of exhaustion." *Harris v. Champion*, 15 F.3d 1538, 1554 (10th Cir. 1994). "A state prisoner generally must exhaust available state-court remedies before a federal court can consider a habeas corpus petition." *Bland v. Sirmons*, 459 F.3d 999, 1011 (10th Cir. 2006). This doctrine began as a judicially created prudential principle based on federal-state comity before its 1948 codification in the habeas statutes. *Rose v. Lundy*, 455 U.S. 509, 515–16,

(1982); *see* 28 U.S.C. § 2254(b)(1). "Although the exhaustion rule is not jurisdictional, it creates a 'strong presumption in favor of requiring the prisoner to pursue his available state remedies.' " *Bear v. Boone*, 173 F.3d 782, 784 (10th Cir. 1999) (quoting *Granberry v. Greer*, 481 U.S. 129, 131 (1987)). "The exhaustion requirement is designed to avoid the unseemly result of a federal court upsetting a state court conviction without first according the state courts an opportunity to correct a constitutional violation." *Davila v. Davis*, —— U.S. ——, 137 S. Ct. 2058, 2064 (2017) (internal quotation marks omitted) (quoting *Rose*, 455 U.S. at 518).

"To exhaust a claim, a state prisoner must pursue it through 'one complete round of the State's established appellate review process,' giving the state courts a 'full and fair opportunity' to correct alleged constitutional errors." *Selsor v. Workman*, 644 F.3d 984, 1026 (10th Cir. 2011) (quoting *O'Sullivan v. Boerckel*, 526 U.S. 838, 845 (1999)). "A claim has been exhausted when it has been 'fairly presented' to the state court." *Bland*, 459 F.3d at 1011 (quoting *Picard v. Connor*, 404 U.S. 270, 275, (1971)); *see generally Grant v. Royal*, 886 F.3d 874, 890–92 (10th Cir. 2018) (analyzing what amounts to "fair presentation"). "[T]he crucial inquiry is whether the 'substance' of the petitioner's claim has been presented to the state courts in a manner sufficient to put the courts on notice of the federal constitutional claim." *Prendergast v. Clements*, 699 F.3d 1182, 1184 (10th Cir. 2012) (quoting *Picard*, 404 U.S. at 278).

IV. ANALYSIS

As stated, Mr. Fuentes has presented four grounds for habeas relief. *See supra.* Of these grounds, only Ground Two has been exhausted. *Compare* ECF No. 1:6-7 & 3:4-8 *with* Brief of Appellant, *Fuentes v. State of Oklahoma*, Case No, F-2020-115 (Aug. 13, 2020). As a result, Mr. Fuentes has presented what is referred to as a "mixed" petition. *See Pliler v. Ford* 542 U.S. 225, 225 (U.S. 2004) (noting that "mixed" federal habeas petitions [are] those containing both unexhausted and exhausted claims.").

A district court confronted with a mixed petition may either "(1) dismiss the entire petition without prejudice in order to permit exhaustion of state remedies, or (2) deny the entire petition on the merits." *Moore v. Schoeman*, 288 F.3d 1231, 1235 (10th Cir. 2002). The court may also permit the petitioner to delete the unexhausted grounds for relief from his petition and proceed only on the exhausted grounds for relief, *Rose v. Lundy*, 455 U.S. 509, 510 (1982), or, if the equities favor such an approach, it may stay the federal habeas petition and hold it in abeyance while the petitioner returns to state court to exhaust the previously unexhausted claims. *Rhines v. Weber*, 544 U.S. 269, 279 (2005).

Under *Rhines*, however, the court will not stay a mixed petition pending total exhaustion unless the applicant shows: good cause for his failure to exhaust his federal claims in the state court; that his unexhausted claims are not "plainly meritless;" and that he has not engaged in abusive litigation tactics or intentional delay. *Rhines*, 544 U.S. at 277–78. Here, Petitioner has not requested this Court to stay this action, and having

considered the factors set forth in *Rhines*, the undersigned does not recommend staying the case.

Thus, Mr. Fuentes is left with two options. First, he could move to file an Amended Petition raising only the specific claim that has been exhausted—Ground Two. To avoid dismissal, Petitioner must state his claim with precision exactly as it was considered by the OCCA on direct appeal. Petitioner is reminded that he may be barred from raising any omitted claims in a second or successive petition. Alternatively, this Court could dismiss Petitioner's premature habeas petition without prejudice so he can attempt to exhaust state remedies on the remaining claims. Petitioner is cautioned, however, that if he chooses this option, he will have a limited period of time on which to file a new habeas petition based on the statute of limitations period as set forth in 28 U.S.C. § 2244(d).

V. RECOMMENDATION AND NOTICE OF RIGHT TO OBJECT

Based on the foregoing findings, it is recommended that the Petition for Writ of Habeas Corpus be dismissed without prejudice as a mixed petition. If, however, Petitioner moves to file an Amended Petition raising only the exhausted claim as presented in Ground Two, it is recommended that such amendment be granted. Additionally, Petitioner is instructed that if he files an Amended Petition, he may also file a brief in support thereof as any Amended Petition would supersede and replace his current Petition and Brief and Support (ECF Nos. 1 & 3).

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 **June 19, 2023**. *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).

VI. 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 June 2, 2023.

Shon T. Erwin

SHON T. ERWIN
UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

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

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

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
FOR THE WESTERN DISTRICT OF OKLAHOMA

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

REPLY BRIEF OF PETITIONER

Pedro Pablo Fuentes
Pro-Se
Lawton Correctional Rehabilitation Facility
8607 S.E. Flower Mound Rd.
Lawton, OK.73501

Appendix "B"

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

PEDRO PABLO FUENTES,	)	
PETITIONER,	)	
	)	
	)	**Case No. CIV-23-355-J**
v.	)	
	)	
STEVEN HARPE,		
RESPONDENT,		

RESPONSE IN OPPOSITION TO RESPONDENT'S RESPONSE

Here comes Pedro Pablo Fuentes, Pro-se in response to the Respondent's response for the Petitioner, Petition for Writ of Habeas Corpus.

1. *The Respondent, States that, relief is barred by Stone v. Powell) that federal habeas corpus review is foreclosed under Stone v. Powell. Stone, 428 U. S. at 482.*

[428 US 482]

where the State has provided an opportunity for full and fair litigation of a Fourth Amendment claim, the Constitution **does not require t**hat a state prisoner be granted federal habeas corpus relief on the ground that evidence obtained in an unconstitutional search or seizure was introduced at his trial

*What this, States is the Constitution does not require that a state prisoner be granted federal habeas corpus, it does not state, that a state prisoner **does not** get relief. There a lot of things the Constitution does not require.*

2. The Respondent, refers to Under the Antiterrorism and Effective Death Penalty Act, hereinafter referred to as the AEDPA , a petition for writ of habeas corpus will not be granted with respect to any claim that was adjudicated on the merits in state court unless the adjudication of the claim:

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the Unites States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

3. The Respondent, refers to **The Collective Knowledge Doctrine** State v. Iven, 2014 OK CR 8, 10, 335 P.3d 264, 268:

Meaning of Collective Knowledge Doctrine

The Collective Knowledge Doctrine essentrilly proved that when one officer know sufficient information to justify an arrest of a target if he for request that another officer is attributed to the second officer for purpose of determining whether there was probable cause for a arrest. United State v. Massenburg 654, F.3.d 480 (4th Cir 2011)

4. Petitioner Fuentes. Petitioner will be referred to as the State or the prosecution. Numbers in parentheses refer to page citations in the Original Record (O.R), the transcripts of the September 4, 2019, Preliminary Hearing (P.H.); the December 19, 2019, hearing on the Motion to Suppress (M. Tr. I); and transcript of the motion hearing held on January 6, 2020 (M. Tr. II); and the transcript of the non- jury trial held on January 28, 2020 (Tr.). Copies of exhibits introduced by the State at trial are provided under separate cover and will be cited as (S. Exh. #).

STANDARD OF REVIEW

Under the Antiterrorism and Effective Death Penalty Act, hereinafter referred to as the AEDPA , a petition for writ of habeas corpus will not be granted with respect to any claim that was adjudicated on the merits in state court unless the adjudication of the claim:

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the Unites States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

Sections 2254 (d) and (e) (1):

In Miller- El v. Cockkrell, 537 U.S 322 (2003, seven members of the Court joined by Justice Scalia in a separate concurring opinion and over a solitary dissent by Justice Thomas rejected the 5th Circuit attempt to consolidate two separate provisions of AEDPA (sections 2254(d)(2 and (e) (10 to require habeas corpus petitioners to prove that the state court decision was objectively unreasonable by clear and convincing evidence Id. At 341. This was too demanding a standard, the Court declared, on more than one level. It was incorrect for the Court of Appeals, when looking at the merits, to merge the independent requirements of §§ 2254(d) and (e) (1). AEDPA does not require petitioner to prove that a decision is objectively unreasonable by clear and convincing evidence. The clear and convincing evidence standard is found in § 2254(e)(1), but that subsection pertains only to state-court determinations of factual issues, [and does not apply to ultimate state court} decisions. Subsection (d) (2) contains the unreasonable requirement and applies to the granting of habeas relief. Id. At 341 42. The Court also took the opportunity in Miller- El to underscore the federal courts obligation on federal habeas corpus review to scrutinize state court judgments carefully and grant relief where appropriate. Addressing federal habeas corpus review of factual determinations by state court, where AEDPA Sections 2254(d)(2) and (e)(1) call for certain forms of deference to state determinations (see infra § 20. 2c), the Court instructed that deference does not imply. Abandonment of abdication of judicial review. Deference does not by definition preclude relief. A federal court can disagree with a state court credibility determination and when guided by AEDPA, conclude the decision was unreasonable or that the factual premises was incorrect by clear convincing evidence. Id. At 340

In Brumfield v. Cain, 135 S. Ct. 2269 (2015), the Court held under section 2254(d)(2) that a state court decision denying a death-row inmate an opportunity to prove he was intellectually disabled and thus exempt from capital punishment under Atkins v. Virginia,536 U.S. 304 (2002), was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding. Id. At 2273. The Court found that the state court had unreasonably views Brumfield IA test score 75 as belying the claim that Brumfield was intellectually disabled when in fact this evidence was entirely consistent with intellectual disability once the margin of error for IQ tests was considered, and there was no evidence of any higher IQ test score that could render the state court determination reasonable. Id. At 2277 78. The state court also unreasonably found that the record failed to raise any question as to Brumfield impairment in adaptive skill. Id. At 2279. As the Court explained, the evidence in the state court record provided substantial grounds to question Brumfiekd adaptive functioning Id. At 2280. Although other evidence in the record before the state court may have cut against Brumfierld claim of intellectual disability needed only to raise a reasonable doubt as to his intellectual capacity to be entitled to an evidentiary hearing on his Atkins claim, and none of the countervailing evidence could be said to foreclose all reasonable doubt. Id. At 2280,81. Accordingly, the Court held, Brumfield was entitled to have his Atkins claim considered on the merits in federal court. Id. At 22733. The Court observed once again, as it had in Miller-El v. Cockrell, 537 U.S. at 340, that even in the context of federal habeas, deference does not imply abandonment or abdication of judicial reviews, and does nowt by definition preclude relief. Id. 2277.

§ 32.4. Rules for applying section 2254(d)(2)

AEDPA amended section 2254(d) provides that a state prisoner habeas corpus application shall not be granted with respect to any claim that was adjudicated on the merit in State court proceedings unless the adjudication of the claim

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, asdetermined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.1

STATEMENT OF THE FACTS

As Petitioner Fuentes's vehicle approached Morgan Road in Canadian County, Oklahoma City Police Officer John Ricketts observed it speeding, and changing lanes without signaling, (Tr.43; S. Exh. #2). At approximately 9:00 P.M. , Officer Ricketts initiated a traffic stop of Petitioner Fuentes's, vehicle.

Officer Ricketts, made contact with Petitioner Fuentes, asked him for his license, and informed him of the traffic violations for which he was being stopped. (Tr. 44) Officer Ricketts thought Petitioner Fuentes, was nervous and agitated during the traffic stop. (Tr.45) Officer Ricketts then directed Petitioner Fuentes, to exit his vehicle. (Tr.46) Petitioner Fuentes, was the only occupant of the vehicle. (Tr.58

As he and Petitioner Fuentes, stood outside the vehicle, Officer Ricketts, issued a traffic citation. (Tr.47) As Officer Ricketts, was writing the ticket, he paused to ask that a k-9 unit be dispatched to the location of the Traffic stop. (Tr.47) Oklahoma County Sheriff's Deputy Cody McDaniel arrived on the scene with his drug dog approximately two minutes later. (Tr> 49, 80-83; See O.R. 67; S. Exh # 2) The dog alerted on the vehicle. (Tr.50) After Petitioner Fuentes was place in patrol after he denied permission to search the vehicle. restrains him from his freedom to walk away. (Tr 50) The officers found a duffal bag containing multiple bundles of methamphetamine. (Tr. 50) The total weight of methamphetamine found, as agreed to in the stipulation, was approximately 4,441.51 grams.

Ricketts' testified the decision to call the drug dog and search the vehicle were based on information he learned prior to the traffic stop. Petitioner Fuentes, vehicle was being tracked by law

enforcement, based on information received by a confidential informant. (Tr. 10-13) That information had bee provided to a court in order to get approval for a GPS tracker on Petitioner Fuentes's, vehicle. (Tr. 13) Law enforcement, including Officer Ricketts, were aware of the informant's claims regarding Petitioner Fuentes's, drug activity, and were aware when he was traveling from the west into Oklahoma City. (Tr 16-170 Ricketts' testimony established that officers were on the lookout for Petitioner Fuentes, vehicle, looking for a reason to make a traffic stop and then search the search the vehicle. (Tr. 47) Officer Ricketts told Petitioner Fuentes, that a drug dog would be run around his vehicle because he was acting nervous. (S.Exh. #2) The evidence in the case shows that the decision to search his vehicle had already been made.

ARGUMENT AND AUTHORITY

In Respondent's, response argument which Petitioner will refer to number one and number two. The Respondent's stated that Petitioner raised this claim on direct appeal and the OCCA denied it on the merits (Exhibit 1 at 4-12; Exhibit 3 at 6-13). Because Petitioner had the opportunity to fully and fairly litigate this issue in state court, and took full advantage of that opportunity, his claim is not cognizable in this Federal habeas Corpus Proceeding. Refering to Stone v. Powell, 428 U.S. 481 482, 494 (1976) and Thornton v. Goodrich, NO. 17-1369, 808 Fed. A- x. 651, 654-55 (10th Cir. Apr. 6,2020).

The Respondent, States that, relief is barred by Stone v. Powell) that federal habeas corpus review is foreclosed under Stone v. Powell. Stone, 428 U. S. at 482.

[428 US 482]

where the State has provided an opportunity for full and fair litigation of a Fourth Amendment claim, the Constitution **does not require** that a state prisoner be granted federal habeas corpus relief on the ground that evidence obtained in an unconstitutional search or seizure was introduced at his trial

What this States is the Constitution does not require that a state prisoner be granted federal habeas corpus, it does not state, that a state prisoner does not get relief. There a lot of things the Constitution does not require.

Petitioner bears the burden of rebutting the state court's factual findings "by clear and convincing evidence." Under the Antiterrorism and Effective Death Penalty Act, hereinafter referred to as the AEDPA , a petition for writ of habeas corpus will not be granted with respect to any claim that was adjudicated on the merits in state court unless the adjudication of the claim:

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the Unites States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

Petitioner, has met burden by using Rodriguez v. United State, 575 U.S. 448 (2015) and stating the District Court error in denying his motion to suppress evidence, and for the OCCA denying Petitioner's direct appeal. Their decision was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the **Unites States; Rodriguez v. United State, 575 U.S. 448 (2015)**. Every case the State or Respondent, has referred to is contrary to Rodriguez v. United State, 575 U.S. 448 (2015).

Now the Respondent, is referring to Thornton v. Goodrich, NO. 17-1369, 808 Fed. A—x. 651, 654-55 (10th cir. Apr. 6, 2020)

Thornton presented his Fourth Amendment claim in state court by filing a motion to suppress evidence which included a claim that the length of his detention was unreasonable. At the evidentiary hearing on the motion, defense counsel cross-examined the stopping officer concerning the stop of Thornton's vehicle and specifically complained{2020 U.S. App. LEXIS 4} about the 45-minute delay before the dog sniff. Moreover, during his closing argument, counsel argued that the actual video recording of the stop established Thornton to have been detained for 45 minutes and sought to downplay the officer's reasons for detaining Thornton after he had cleared the vehicle's license plates. In denying the motion to suppress, the state trial judge applied the appropriate constitutional standards governing traffic stops. Although the trial judge reviewed the corrected video, not the video of the full stop, the corrected video showed that the stop was initiated at 20:42 and the dog sniff occurred at 21:26 (about 45 minutes later). Moreover, while the length of the detention is certainly an important factor in the reasonableness equation, other factors are also relevant, and the trial court considered those factors

in making its decision. The record also reflected Thornton filed a motion to reconsider the denial of the motion to suppress. The trial judge denied the motion because Thornton had not provided any new evidence warranting reconsideration. Although Thornton could have argued at that time that the corrected video was incomplete, he did not.

Finally,{2020 U.S. App. LEXIS 5} Thornton filed a direct appeal and specifically directed the appellate court to evidence in the record showing 45 minutes elapsed between the vehicle stop and dog sniff. In its decision, the appellate court misstated that duration as 20 minutes.4 Nevertheless, that temporal mistake did not undermine the fact that Thornton was provided a full and fair opportunity to litigate his claim in state court. The district judge concluded:

On this case the Officer had not written the Citation before the dog-sniff accord. In case of Petitioner, the Officer had written the citation and gave it to the Petitioner before placing the Petitioner in the back seat of the patrol vehicle (Tr.50). Plus Thornton fail to demonstrate a case contradicting the state ruling, but Thornton's, case did get over reversed.

[645 Fed. Appx. 666] ORDER AND JUDGMENT

Petitioner Richard Thornton appeals the district court's denial of a 2254 habeas petition in which he challenged his conviction for two drug-related crimes.

In his federal habeas petition, Petitioner raised a single claim for relief, which was based on the state court' rejection of his motion to suppress evidence obtained as the result of a traffic stop and search of hes vehicle. The federal district court rejected this claim pursuant to Stone v. Powell, 428 U.S. 465, 96 S. Ct. 3337, 49 L. Ed. 2d. 1067 (19760, which holds that "where the State has provided an opportunity for full and fair litigation for a Fourth Amendment claim, a state prisoner may nor be granted federal habeas corpus {2016 U.S. App. LEXIS 2} relief on the ground that evidence obtained in an unconstitutional search or seizure was introduced at his trial.' Id. At 494 (footnote omitted).Base on this rule, the district court handled his Fourth Amendment claim in such away that he cannot be considered to have received a 'full and fair' opportunity to litigate his claim.

A judge of this court concluded that Petitioner's allegation were sufficient to raise a reasonable debatable question as to whether Petitioner received a full and fair opportunity to litigate his Fourth Amendment claim. The judge accordingly granted Petitioner's request for a certificate of appealability and ordered Respondents to {645 Fed. Appx. 667} file a response brief addressing this question.

Respondents have now filed a response brief, in which they suggest that the case should be remanded for the district court to address the Stone issue after reviewing the state court record, which was not considered by the district court before and is not included in the record before us on appeal. We agree {2016 U.S. App. LEXIS 3} that this would be the most appropriate course of action. We will

accordingly remand this case for the district court to consider this issue with the benefit of the state court record and full briefing from both parties.

Petitioner has filed several motion with this court, including a motion for an evidentiary hearing and for the appointment of counsel to represent him on appeal, a motion for an extension for time to file a reply brief a motion to replace lost files, and a motion to expand the record. Because we are remanding this case for further consideration by the district court, none of the requested relief is necessary to our resolution of this appeal. We will therefore deny all of these motions. As necessary, appropriate motions may be filed in district court proceedings on remand.

The district court's dismissal of Petitioner's 2254 habeas petition is REVERSED and REMANDED for further consideration. WE GRANT Petitioner's motion to proceed in forma pauperis on appeal. All other pending motions are DENIED.

The Respondent, refers to **The Collective Knowledge Doctrine** State v. Iven, 2014 OK CR 8, 10, 335 P.3d 264, 268:

Meaning of Collective Knowledge Doctrine

The Collective Knowledge Doctrine essentrilly proved that when one officer know sufficient information to justify an arrest of a target if he for request that another officer is attributed to the second officer for purpose of determining whether there was probable cause for a arrest. United State v. Massenburg 654, F.3.d 480 (4th Cir 2011)

In the case of *State v. Iven, 2014 OK, CR 8, 10, 335 P.3d 264, 268,* Deputy Craig Smith of the Blaine County Sheriff Department was dispatched to a call of domestic dispute. Deputy Smith arrived at area and located the alleged victim, B.H. hiding in a trash trailer near the airport. The victim visibly shaken and crying, B.H. Described being involved in an altercation with Iven. Deputy Smith observed recent physical injuries to B.H. Including blood on her nose and under her eyes welling to the left side of her mouth, and bruises and abrasions on her arms and legs. Deputy Smith made a request to Deputy Spiva based on information known to him. Further investigation after the arrest led to additional chargers.

In the case of Petitioner Fuentes, there was no domestic call. In the of Iven's, B.H. bare the marks on her face that Iven, might allegedly might of beat her up. In the case of Applicant's Fuentes, Petitioner, was just suspected of drug trafficking, no prove of any drug trafficking on Petitioner, like the face of B.H. . In in the case of Iven, Deputy Craig Smith, made a requested for a arrest on suspected

Iven, for allegedly beating B.H.. In the case of Applicant's Fuentes, Detective Chad Cook, requested that an Oklahoma City Officer, stop the vehicle once it was in Oklahoma Country if any traffic violations were observed. (Tr. 17, 32-33, 62, 75-76*)* Detective Chad Cook never requested an arrest of Petitioner Fuentes, like Deputy Craig Smith, requested on Iven. In the case of Petitioner Fuentes, the arrest came after the Petitioner rights were violated.

Iven, case is irrelevant to Petitioner Fuentes, case and really can not be and should not be relate to Petitioner Fuentes, case because the case against Petitioner Fuentes, was a Aggravated Trafficking and not a domestic like Iven, case and plus no one seen Petitioner Fuentes, buying or selling drugs, but this other case, is more relevant to Applicant Fuentes, case, "as one will see".

Guandong v. State, 2022 WY 83

In the case of Mr. Guandong, Guandong, the defendant was stopped by one Officer, because, earlier in the day, other Officer, stopped another vehicle and had collected evidence that suggested that the defendant was trafficking drug in his vehicle (See *Guandong 3-12).* Trooper Kirlin, pull over Mr. Guandong's, vehicle because the information he had obtain from another Officer. When Trooper Kirlin, stop Guandong, he explain to Mr. Guandong the reason he pull him over then Trooper Kirlin, had another officer prepare the written warning so that he could run the drug dog around the car (Mr. Guandong did not challenged the fact of the drug dog sniff or any delays caused by the drug dog sniff.)

The Wyoming supreme Court affirmed the denial of the motion to suppress on the basis that the "Collective Knowledge" doctrine gave Trooper Kirlin, sufficient ground to make the initial stop. Chief Justice Fox, writing for the unamimous court, concluded as follows.

"On consideration [the] fact in light of his training and experience Trooper Kirlin, concluded that the driver of the Corolla was transporting drugs and, based on the totality of the circumstances, we will defer to his ability to distinguish between, innocent and suspicious actions" Guandong, 2 (quoting Feency v. State, 2009 WY 67, 13, 208 P3.d 50, 54 (WYO 2009)

In the case of Guandong, Trooper Kinlin, had another officer prepare the written warning, so that he could run the drug dog around the vehicle of Mr. Guandong. In the case of Petitioner Fuentes, Officer Rickett had written the citation and gave the citation to Petitioner, before he place Petitioner, in the back seat of his patrol vehicle, and then had Officer McDaniel run his K-9 sniff around Petitioner's, vehicle. The Officer, choose to run the K-9 around Petitioner's, vehicle after the issue of the citation, and not when Officer McDaniel, got to the scene which is a violated of the Petitioner, "Fourth Amendment Rights". In the case of Guandong, Mr. Guandong, did not challenged the fact of the drug dog sniff or of any delays caused by the drug dog sniff. In the case of Petitioner Fuentes, Petitioner, did challenged the delayed caused by the K-9 sniff. His complaint, got him place in the back seat of the patrol vehicle while the officers run the K-9 around, Petitioner's, vehicle because he did not want the K-9 to go around his vehicle.

Fact to the matter, the case against Mr. Guandong, is a true **Collective Knowledge Doctrine.** Trooper Kinlin, had collective knowledge by another Officer, that Mr. Guandong, might be trafficking illegal drugs and pull over Mr. Guandong, for traffic violations. Trooper Kinlin, decided to run the K-9 drug sniff around the suspected's vehicle before issuing the citation. Plus (Mr. Guandong did not challenged the fact of the drug dog sniff or any delays caused by the drug dog sniff). Fact of the matter, the case of Petitioner Fuentes, is similar to Mr. Guandong, case, but the deference is that Officer Ricketts, and Officer McDaniel, choose to run the K-9 sniff around the vehicle after writing the citation plus Officer Ricketts gave the citation to Petitioner Fuentes and place Petitioner Fuentes, in the back of the patrol vehicle violating Petitioner constitution rights in according to

FOOTNOTES

10

1 The "seizure" at issue in Terry v Ohio, was the actual physical restraint imposed on the suspect. 392 US, at 19, 20 L Ed 2d 889, 88 S Ct 1868, 44 Ohio Ops 2d 3831. The Court assumed that the officer's

initial approach and questioning of the suspect did not amount to a "seizure." Id., at 19, n 16, 20 L Ed 2d 889, 88 S Ct 1868, 44 Ohio Ops 2d 3831. The Court acknowledged, however, that "seizures" may occur irrespective of the imposition of actual physical restraint. The Court stated that "[i]t must be recognized that whenever a police officer accosts an individual and restrains his freedom to walk away, he has 'seized' that person." Id., at 16, 20 L Ed 2d 889, 88 S Ct 1868, 44 Ohio Ops 2d 3831..

When the Officers Ricketts, and McDaniel, choose to physical restraint Petitioner Fuentes, they violated Petitioner Fuentes, constitutional rights and four amendment rights to be able to walk away after the citation was issue and given to Petitioner Fuentes.

CONCLUSION

The fact of matter is that the Respondent, has not demonstrate, a case that show the Officers had the right to restrains Petitioner freedom to walk away, after the issue of citation even if the Petitioner was under investigating. In according to Miller- El v. Cockkrell, 537 U.S 322 (2003) A federal court can disagree with a state court credibility determination and when guided by AEDPA, conclude the decision was unreasonable or that the factual premises was incorrect by clear convincing evidence. Id. At 340. The fact is the State Court , and the O.C.C.A. error when denying Petitioner Motion to Suppress Evidence and directed appeal. Petitioner is stating that his rights violated when he got seize for the purpose to run a K-9 sniff around his vehicle that was unreasonable and unconstitutional under the Fourth Amendment of the United States Constitution, under Article ll, and Article II § 7 and § 20 of the Oklahoma Constitution. Applicant ask this court to reverse his conviction and remand the matter to the District Court of Canadian County with instructions to dismiss it.

Respectfully Submitted

Pedro Pablo Fuentes, #414597
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8607 S.E. Flower Mound Rd.
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VERIFICATION

I state under penalty under the laws of Oklahoma that the foregoing is true and correct. Title 12 O.S. .Supp. 2004, § 426. Executed by the Applicant at the Lawton Correctional Rehabilitation Facility, 8607 S.E. Flower Mound Rd. Lawton, OK. 73501, on the date of September 25,2023.

Pedro Fuentes (Print Name of Applicant)

(Applicant Signature)

CERTIFICATE OF SERVICE

This is to certify that on this 25h, day of September, 2023, a true and correct copy of the above was mailed for filing to Keeley L. Miller,OBA # 18389 Assistant Attorney General 313 N.E. 21st Oklahoma City, OK.73105

Pedro P. Fuentes ((Print Name of Applicant)

(Applicant Signature)

Appendix "C"

A. At the time, it was a white Acura.

MR. MURREY: Approach, Your Honor?

THE COURT: You may.

Q. (By Mr. Murrey) I'm showing you now what I've marked State's Exhibit Number 3. Is that the vehicle you're describing?

A. Yes, sir.

Q. And why were you conducting the stop on that vehicle?

A. For traffic violations. Number 1, at the time, it was speeding. I had paced it. And also observed a number of lane changes where they failed to signal.

Q. What speed did you estimate he was driving at?

A. I believe that's in my report. I have him traveling at 75 in a 65 mile an hour zone.

Q. And you said there were lane changes that caught your attention.

A. Yes, sir.

Q. Was the signal used improperly or not used at all?

A. Not used at all.

Q. Did you have other reason to have focused your attention on this Acura?

A. Yes, sir.

Q. And what was that?

A. We received information from officers in the Special Projects Unit that they had a tracker on a vehicle that was

coming in that would be carrying a load of dope. And we had the name of the defendant and also what he would be driving. And also I had the tracker pulled up on my iPad.

Q. Okay. So, if I understand you, you're saying you had access to or you had been informed of the, like, color, make, model of the vehicle.

A. Yes.

Q. The name of the driver.

A. Yes, sir.

Q. What name were you given to look for?

A. Pedro Fuentes.

Q. And you had actually accessed the tracker through software on your iPad?

A. Yes.

Q. Okay.

A. It was US Fleet Tracking.

Q. Thank you. What were you informed may be the criminal activity being investigated?

A. That he had gone -- he had gone out of state and picked up a load of narcotics and was on his way back.

Q. Okay. Did the car actually come to a stop for you?

A. Yes, it did.

Q. And how did you proceed with your enforcement?

A. I made contact with the driver, asked him for his license, informed him of his traffic violation.

Q. And what were your initial observations of Mr. Fuentes?
A. All those characteristics that I described before. He was nervous. He was agitated. He was sweating profusely even though the vehicle was air conditioned and the windows were up, initially. Like I said, his behavior was quite nervous and just constantly fidgeting and moving inside the vehicle.
Q. Before I get too far from your initial encounter, how did you confirm the identity of the driver?
A. With his license.
Q. Picture ID?
A. Yes, sir.
Q. And who did you find him to be?
A. Mr. Pedro Fuentes, the defendant.
Q. The person who you know as Pedro Fuentes, do you see him today?
A. Yes, sir.
Q. Can you please tell the Judge where he's sitting and what he's wearing?
A. Sitting at the defendant's desk and he's wearing his white and orange jumpsuit.
MR. MURREY: I ask the record to reflect identification.
THE COURT: The record will so reflect.

Q. (By Mr. Murrey) Did you conduct the traffic enforcement right there at his car, or did you take any actions to remove him from there?
A. It was conducted at the car.
Q. And did you leave him there, or did you ask him to step out of the car?
A. I actually had him step outside the vehicle.
Q. Was he compliant?
A. At first he hesitated and was very non-compliant. I tried to explain I had him step out because he was fidgeting in the car. He felt like I was violating his rights. Eventually, when I got on the radio to ask for another unit to come by my stop, it was at that point that he was like, "Why you calling somebody else?" And then he ended up getting out of the vehicle voluntarily.
Q. I know that you are not an attorney, but you do operate pursuant to the law; correct?
A. Yes, sir.
Q. And, to your best understanding, are you authorized to have motorists step out of the car on a traffic stop?
A. Yes, sir.
Q. Were you trying to have him do anything else at that point?
A. No, sir.
Q. Do you sometimes have motorists step out of the car

during traffic stops?
A. Yes, sir, quite often.
Q. Based on what you observed and interacted up to that point, how did you proceed?
A. We end up having him stand outside that vehicle. I issue a citation. At that point, I got on the radio and made contact with one of our K9 units to come assist me with the stop. At that point, I knew -- he was -- we were going to run the dog on the vehicle.
Q. Explain "the dog."
A. It was a drug dog. A certified K9 that specifically looks for narcotics inside vehicles.
Q. And why was that your decision?
A. Because we already had all of the information that I had mentioned. The tracker on the vehicle. He was identified. The vehicle that he was in. And we believed that he was going to be carrying a load of methamphetamine.
Q. Did the car match the information you were given to look for?
A. Yes, sir.
Q. And the driver matched the information you were given to look for?
A. Yes, sir.
Q. And did the tracking software you were observing, did that correspond with the arrival of that car in your area?

A. Yes, sir.
Q. Thank you.
You've described the symptoms of having ingested methamphetamine. You've described some of the things you observed about Mr. Fuentes.
A. Yes, sir.
Q. Had you begun to form an opinion, at that time, about whether he may be operating under the influence of anything?
A. Yes, sir, I believed he was. And the other problem that I had with him too, just with all of his movements inside the vehicle, I didn't -- a lot of times, guys that are trafficking in narcotics have weapons inside the car. So just distance him from any weapon that he possibly has inside the vehicle, bring him to the backside of the vehicle where I can handle him on my own.
Q. Okay. And, right now, you're describing why you had him step out.
A. Yes, sir.
Q. Okay. So your testimony is, you believed he may be under the influence of something?
A. Yes, sir.
Q. If you had had to narrow down what it may be, at that time, what would you have thought?
A. Some kind of amphetamine.

Q. Okay. And is it a basis to detain and/or arrest someone to be under the influence of a narcotic out in public?
A. Yes, it is.
Q. Or driving a car?
A. Yes, sir.
Q. Who did you contact to run the K9?
A. The K9 unit that I made contact with was Cody McDaniel. He worked for Oklahoma County but also on the COMIT Unit.
Q. And did he come to your location?
A. Yes, sir.
Q. And did he deploy his dog?
A. Yes, he did.
Q. Did he inform you of the results of that?
A. Yes.
Q. And what did he tell you?
MS. DUNCAN: Objection, Your Honor. May we approach for just a short moment?
THE COURT: You may.
MS. DUNCAN: Your Honor is aware of our motion to suppress in this case. And I would like to put on the record during this trial a continuing motion to suppress. We argued that any evidence of drugs found in the car was illegally obtained. And I would just like Your Honor to

note a continuing objection.

THE COURT: I will note that for the record. We did have a hearing on that. And I'll show your continuing objection.

MS. DUNCAN: Thank you, Judge.

Q. (By Mr. Murrey) What did then Deputy McDaniel tell you?

A. He said that the dog alerted on the vehicle.

Q. Have you worked with Deputy McDaniel before?

A. Yes, I have.

Q. As a K9 handler?

A. With him being a K9 handler, yes, sir.

Q. Based on that information, the dog had alerted, how did you proceed?

A. We placed the defendant -- we had him sit inside the vehicle, while we searched the vehicle, in the backseat of my Tahoe.

Q. Okay.

A. He was under investigative detention. We went ahead and searched the vehicle. Immediately found a duffle bag containing multiple bundles of methamphetamine.

MR. MURREY: Approach the witness, Your Honor?

THE COURT: You may.

Q. (By Mr. Murrey) I'm going to take you through a series of pictures here, Sergeant.

Q. You have him step outside the vehicle but not initially into your patrol car. You have him go and stand at the back of his car.
A. Yes, ma'am.
Q. Okay. And this isn't actually on the highway, it's off of an exit.
A. It's on Morgan Road.
Q. Okay. And it's at this time that you call for backup; is that right?
A. Yes.
Q. Okay. After he's already out of his car?
A. Yes, ma'am.
Q. Okay. And you specifically call for McDaniel; is that correct? Cody McDaniel.
A. Yes, ma'am.
Q. Is that because he has a drug dog with him?
A. Yes, ma'am.
Q. Okay. And about how long before Officer McDaniel arrives?
A. He arrived before I could complete the ticket, I believe.
Q. Okay. Do you have any idea about how long it is before he arrives?
A. No, ma'am, not offhand.
Q. Okay. When he does arrive, do you fill him in on

what's happening inside of your patrol car?
A. I do explain to him what was going on; that we're going to need to run the dog.
Q. And you note in your report that when this secondary officer shows up, you and him are issuing a citation. Or he's sitting with you while you're issuing the citation; correct?
A. No. I don't believe he was sitting in my car with me while I'm writing a citation. What I stated was he got there before I was able to actually finish the citation.
Q. Okay. So y'all are just standing outside the car.
A. I believe so. When he showed up, I got out of my vehicle.
Q. While you're writing the ticket?
A. No. I believe I hadn't completed it.
Q. While you're writing the ticket, so it's ongoing.
A. Yes, ma'am.
Q. And you do complete that; correct? And then you walk over and give it to Mr. Fuentes.
A. Yes, ma'am.
Q. Okay. And Mr. Fuentes, at this point, is still standing outside of his car.
A. I believe so, yes.
Q. Okay. At what point do you put him into the patrol car?

A. Once we're going to run the dog. I explained to him that we had reason to believe that there was narcotics in the vehicle. I told him that we were going to run the K9, the dog, on the vehicle. And for his protection, it would be better that he sat inside the vehicle, inside my scout car, ~~under investigative detention~~.

Q. When Officer McDaniel shows up, he doesn't initially run the drug dog; correct?

A. The drug dog is always with him. It's in his vehicle.

Q. Right, the drug dog is certainly with him. But he doesn't immediately get the dog out of the car and run it around Mr. Fuentes's car; correct?

A. No, ma'am.

Q. Is it before you issue the citation that you're checking Mr. Fuentes for warrants?

A. Honestly, I don't remember.

Q. There aren't any active warrants; correct?

A. I believe not.

Q. Okay. After a drug dog does make a hit -- well, where on the car does the drug dog make the hit?

A. I don't recall.

Q. Okay. After the hit, you immediately search the car. The two of you or just one of you?

A. The two of us.

Q. Okay.

while

A. I probably initiated the search while he's putting up the dog, and then he'll assist me with the search.
Q. Okay. And, at that point, you inform Mr. Fuentes that he's under arrest.
A. Once we located the bundles of methamphetamine in the backseat in that duffle bag, yes. We informed him that -- I went back to the scout car. He's placed in handcuffs and told he was under arrest for trafficking.
Q. About how long does the search of the car take?
A. I honestly don't remember. It wouldn't be that long.
Q. At least 10 minutes?
A. Yes, ma'am, 10 minutes.
Q. And Mr. Fuentes is seated in your patrol car with the doors locked at that point.
A. Yes, ma'am, under investigative detention.
Q. Okay. Is he handcuffed at that point --
A. No, ma'am.
Q. -- during the search?
A. No.
Q. The backseat of the patrol car is secured in a way that he can't get out; correct?
A. Yes, ma'am.
MS. DUNCAN: Your Honor, may I have just a moment?
THE COURT: You certainly may.

A. Uh-huh.
Q. Okay. And, then, after that moment, Mr. Fuentes, of course, wants to be done with you and move on; correct?
A. Yes, ma'am.
Q. Okay. But you tell him no. We're going to run the drug dog. You don't ask for his permission; correct?
A. No. I had -- no, I did not ask his permission.
Q. Because you don't necessarily need his permission to run the dog; right?
A. No, I don't.
Q. So you've made the determination, at that point, that you are having this K9 arrive at the scene and that you are going to do a search of the car.
A. Yes, ma'am.
Q. Assuming that the drug dog hits.
A. Yes, ma'am.
Q. [redacted]
A. Yes, ma'am.
Q. [redacted]
A. No, ma'am.
Q. Okay. Just one last question. I want to clarify that Detective Cook wasn't at that briefing that we spoke about

earlier; correct? He had just given that information to Castleberry, who gave it to --

A. To our supervisor, who forwarded it to us. And, then, later, I made contact with Detective Cook.

Q. Detective Cook is the one that was investigating Mr. Fuentes for weeks?

A. He would be the case agent that placed the tracker on his vehicle.

Q. Right.

A. Yes.

Q. So he had been -- he initially started this whole case; correct?

A. Yes, ma'am.

Q. Okay. Without him, it's very possible that you would not have pulled over this white Acura; correct?

A. Yes, ma'am.

Q. Okay. And so, fair to say that after this briefing in the afternoon, you are looking specifically for this white Acura to pull it over?

A. Yes, ma'am.

Q. Obviously.

A. Yes, ma'am. We were watching the tracker, waiting for it to show up.

Q. Okay. And it's more or less Detective Cook's case.

A. Yes, it is.