

No. _____

IN THE
Supreme Court of the United States

ALONZO MILLER,
Petitioner,

v.

UNITED STATES,
Respondent.

**On Petition for a Writ of Certiorari
To the United States Court of Appeals for the Eighth Circuit**

APPENDIX

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Appendix A – Court of Appeals decision

Appendix B – District Court Order

Appendix C – Magistrate Judge Report and Recommendation

Appendix D – Order denying rehearing

United States Court of Appeals
For the Eighth Circuit

No. 24-2831

United States of America

Plaintiff - Appellee

v.

Alonzo Miller

Defendant - Appellant

Appeal from United States District Court
for the Western District of Missouri - Kansas City

Submitted: September 17, 2025

Filed: December 1, 2025

Before SMITH, GRUENDER, and SHEPHERD, Circuit Judges.

SMITH, Circuit Judge.

Alonzo Miller entered a conditional guilty plea after the district court¹ denied his motion to suppress the fruits of a lawful traffic stop and subsequent search of his person and vehicle. He now appeals that denial, arguing that the officers unlawfully

¹The Honorable Brian C. Wimes, United States District Judge for the Western District of Missouri.

extended the stop and that the subsequent frisk was not supported by reasonable suspicion. We affirm.

I. Background

Late in the evening on January 10, 2022, Kansas City, Missouri Police Officers Stephen Justin and Daniel Trainor noticed a pickup truck with a broken headlight and an expired license plate and initiated a lawful traffic stop. The officers approached the vehicle and spoke with the driver, Alonzo Miller, and a female passenger. Miller provided his name and told Officer Justin that he was not the truck's owner. Miller disclosed the owner's name, which Officer Justin recognized from previous traffic stops.

As the stop continued, Miller answered questions and provided his driver's license, but he could not provide proof of insurance. Miller disclosed where he began driving. The officers recognized the location as an area that frequently generated service calls. It had a reputation for unlawful activities such as prostitution, drug-related incidents, and trafficking of stolen property. Specifically, the officers knew a potential drug dealer either at the exact address or one nearby. However, they could not recall whether that individual was still dealing drugs, and they had never caught the dealer selling drugs from the address. During this conversation, Officer Justin noticed signs of nervousness from Miller. These included widened eyes, dilated pupils, trembling hands, frequent scans of the truck, and dropping ash on himself from a cigarette that he was smoking.

The officers then returned to their car and performed a computer check on Miller and the passenger. This check revealed that neither occupant had any arrest warrants, but that Miller was under probation supervision and on parole for a second-degree felony assault, coupled with a firearm-related offense linked to the same incident. During the computer check, the officers discussed their perception of an obvious age difference between Miller and his female passenger. The age difference, in conjunction with the time of night and the area, made them suspect potential illicit sexual activity.

While running the searches, the officers decided to request consent to search the vehicle. Officer Justin admitted that he did not believe that he had probable cause at this point to search the vehicle, but he believed that he had reasonable suspicion of potential criminal activity to continue the stop. Officer Justin returned to the truck and revealed to Miller the computer search results. He advised Miller that the vehicle's tags were not valid but that he was willing to give him only a warning for both the lack of proof of insurance and the expired tags. Officer Justin then asked Miller if there was "anything illegal in the car or anything I should know about," and Miller responded curiously, stating "something under there," while pointing to indicate that there was an item under the front seat. R. Doc. 47, at ¶ 20. While still in possession of Miller's driver's license, Officer Justin asked Miller whether "it would be okay if I took a look around." *Id.* Miller responded affirmatively. Miller thereby gave consent to search the truck approximately eight and a half minutes into the stop.

As Officer Justin opened the vehicle door, he attempted to direct Miller toward the truck bed along the driver's side by leaving an open passage toward the bed. Rather than take the hint, Miller instead attempted to maneuver toward the front of the truck and behind Officer Justin. The officers found Miller's exit strategy odd, prompting Officer Justin to become suspicious of Miller's motives in doing so. Such motives could have included gaining an advantage for either fighting or fleeing. Rather than allow Miller to the front of the truck, Officer Justin guided Miller to the truck bed. The officer directed Miller to place his hands on the sides of the truck bed and asked him, "[D]o you have anything on you, anything that's going to poke, prick, or stab me?" *Id.* at ¶ 24. Miller again pointed toward the front passenger seat and answered, "Ugh, I got, look up under the seat." *Id.* Officer Justin found Miller's behavior strange and requested that Miller place his hands behind his back.

Concerned for the safety of himself and others present, Officer Justin concluded that he should frisk Miller to ensure that Miller did not possess something potentially dangerous. Officer Justin emphasized that Miller was not under arrest, but only being briefly detained. Miller started to make his left hand available for

Officer Justin to handcuff, but then Miller tensed up and pulled it away. Miller again indicated that something illegal was under the seat, moved his right hand from the truck bed, and put it in his right coat pocket. Immediately, the officers heard a loud pop that they believed to be a gunshot. Miller had a firearm in his right coat pocket that discharged.

Upon the discharge of the firearm, the officers arrested Miller. Officer Justin believed that Miller was not compliant and kept attempting to pull away. After his arrest, Miller claimed that the gun belonged to his niece who had left it in the truck. He stated that he was on his way to return it when the officers stopped him. The officers issued Miller tickets for operating a vehicle without a license and failure to provide insurance and then took Miller into custody.

Miller was subsequently indicted on one count of being a felon in possession of a firearm. Miller moved to suppress the evidence obtained during the traffic stop and his arrest on the grounds that (1) the officers unlawfully prolonged the stop and extended the scope, rendering any consent provided involuntary; and (2) the officers lacked reasonable suspicion to believe that he was armed and dangerous, making a search or frisk unlawful.

The magistrate judge recommended that the motion be denied. The magistrate judge found that (1) the stop was lawful and facts developed during the stop indicated that Miller may be a threat or that additional criminal activity was present, providing reasonable suspicion to extend the stop and pat down Miller; (2) Miller knowingly and voluntarily consented to the vehicle search, thereby consenting to the extension of the traffic stop; and (3) Miller's resistance to arrest committed a new and separate offense, establishing lawful grounds for the search and recovery of the weapon and other incriminating information. As relevant here, in finding reasonable suspicion, the magistrate judge provided the following reasoning:

Considering the facts collectively, this situation arose out of a nighttime traffic stop. When questioned about the presence of anything

dangerous or illegal within the vehicle, Defendant on several occasions alluded to an item beneath the seat. Further, the vehicle was registered to another individual. Once Officer Justin learned Defendant's identity and was able to run it through MULES, he knew that Defendant was on probation and parole for a violent felony (assault in the second degree) and a related gun offense. These factors contributed to Officer Justin and Officer Trainor's suspicion that criminal activity was afoot, and Defendant might be armed, presenting a threat to officer safety.

These factors are assessed in connection with Defendant's noticeable signs of nervousness, the location from which Defendant's vehicle had come, the location of the stop, the late night hour and cold weather, the suspicion of the passenger being a possible prostitute, the failure to present insurance, Defendant's odd exit from the vehicle, Defendant's indication of something dangerous within the vehicle, and Defendant's resistance while being asked to put his hands on the truck bed.

R. Doc. 47, at 16–17 (citation modified). The district court agreed with the report and recommendation and adopted the magistrate judge's findings of fact and conclusions of law, denying Miller's motion to suppress. Miller conditionally pleaded guilty. This appeal followed.

II. Discussion

Miller argues that the officers lacked reasonable suspicion to extend the scope of the stop, search the truck, or search his person. “When reviewing the denial of a motion to suppress evidence, we review legal conclusions de novo and factual findings for clear error.” *United States v. Puckett*, 139 F.4th 730, 737 (8th Cir. 2025) (quoting *United States v. Magallon*, 984 F.3d 1263, 1276 (8th Cir. 2021)).

“A traffic stop is . . . subject to the Fourth and Fourteenth Amendments' protections against unreasonable searches and seizures.” *United States v. Chartier*, 772 F.3d 539, 543 (8th Cir. 2014). “A seizure that is justified solely by the interest in issuing a warning ticket to the driver can become unlawful if it is prolonged beyond the time reasonably required to complete that mission.” *Illinois v. Caballes*,

543 U.S. 405, 407 (2005). Upon the completion of the initial mission, further detention of the driver “would be unreasonable, ‘unless something that occurred during the traffic stop generated the necessary reasonable suspicion to justify a further detention’ or unless the continued encounter is consensual.” *United States v. Flores*, 474 F.3d 1100, 1103 (8th Cir. 2007) (quoting *United States v. Jones*, 269 F.3d 919, 925 (8th Cir. 2001)); *see also United States v. Allen*, 43 F.4th 901, 907 (8th Cir. 2022) (“The officers may, however, extend the stop if they develop reasonable suspicion of criminal activity.”).

“Reasonable suspicion ‘requires less than probable cause of criminal activity, but the suspicion cannot be based on an “inarticulate hunch[.]”’” *United States v. Lowry*, 935 F.3d 638, 641 (8th Cir. 2019) (alteration in original) (quoting *United States v. Horton*, 611 F.3d 936, 940 (8th Cir. 2010)). While reasonable suspicion may be based on “time of day or night, location of the suspect parties, and the parties’ behavior when they become aware of the officer’s presence,” *United States v. Dawdy*, 46 F.3d 1427, 1429 (8th Cir. 1995), “facts that are ‘shared by countless, wholly innocent persons’ cannot give rise on their own to reasonable suspicion.” *Lowry*, 935 F.3d at 641 (quoting *United States v. Jones*, 606 F.3d 964, 967 (8th Cir. 2010)). “We review the totality of the circumstances to determine if an officer had reasonable suspicion to extend a traffic stop.” *Allen*, 43 F.4th at 908.

Miller challenges the magistrate judge’s finding of reasonable suspicion, taking particular issue with its reliance on factors occurring after the officers extended the stop. The magistrate judge based its finding of reasonable suspicion upon Miller’s odd exit from the vehicle, his reference to something dangerous in the vehicle, and his resistance to detention. These three facts occurred after the request to search the vehicle, but these facts are part of a larger totality of circumstances relied on by the magistrate judge. Miller argues that these circumstantial facts were largely innocent and not suspicions. In support, Miller cites various cases,² finding

²*See Jones*, 269 F.3d at 928 (refusing to find reasonable suspicion based only on nervousness and an inconsistent answer); *United States v. Freeman*, 735 F.3d 92, 101 (2d Cir. 2013) (declining to find reasonable suspicion for an initial stop based

certain of these facts do not rise to reasonable suspicion when only a few of the factors were present at a time. Miller’s attempt to isolate each fact and find them innocent ignores our requirement to review reasonable suspicion under the totality of the circumstances. *United States v. Brown*, 60 F.4th 1179, 1183 (8th Cir. 2023) (“[T]he totality-of-the-circumstances test precludes the sort of divide-and-conquer analysis that [the defendant] attempts” (citation modified)).

First, looking at the totality of the circumstances, the officers had reasonable suspicion to ask Miller about whether there was anything dangerous in the vehicle. Their reasonable suspicion was supported by the following: (1) the vehicle was registered to another individual, (2) Miller was on probation and parole for a gun-related offense and violent felony, (3) Miller could not produce insurance, (4) Miller was driving on a side street rather than a more populated street, (5) Miller’s nervousness, (6) Miller had left a high-crime area, (6) the stop occurred late on a cold evening, and (7) the officers had sex-offense concerns related to Miller’s female passenger. We have previously upheld many of these facts as factors giving rise to reasonable suspicion. *See, e.g., United States v. Lemons*, 84 F.4th 766, 770 (8th Cir. 2023) (after-midnight encounter with defendant); *United States v. Campbell-Martin*, 17 F.4th 807, 814 (8th Cir. 2021) (defendant was “nervous and fidgety”); *United States v. Sanchez*, 955 F.3d 669, 675 (8th Cir. 2020) (vehicle owner lending vehicle to individual without license when vehicle has expired tags and driver is out of state in the middle of the night); *United States v. Stewart*, 631 F.3d 453, 457 (8th Cir. 2011) (prior felony conviction and some history involving drugs and violent behavior); *Illinois v. Wardlow*, 528 U.S. 119, 124 (2000) (high-crime area); *Dawdy*, 46 F.3d at 1429 (“time of day or night, location of the suspect parties, and the parties’

solely on the fact that it was late at night and in a “high crime area”); *United States v. Gray*, 213 F.3d 998, 1001 (8th Cir. 2000) (holding no reasonable suspicion when the defendant was in a high-crime area before 10:00 p.m. in cold weather near prostitutes but not speaking to them); *Lowry*, 935 F.3d at 641 (holding no reasonable suspicion when the initial questioning was based only on the defendant waiting at a bus stop in a high-crime area, wearing heavy clothes, and making eye contact with an officer then walking behind the bus shelter).

behavior when they become aware of the officer’s presence”). Thus, while these “factors . . . individually may be consistent with innocent behavior, when taken together, can give rise to reasonable suspicion.” *Stewart*, 631 F.3d at 457.

Second, the officers had reasonable suspicion to search the truck and ask Miller to exit it. Miller’s affirmative answer when asked about anything illegal in the pickup provided a valid basis for removing Miller from the truck and to search it.

Third, the officers had reasonable suspicion to frisk Miller. In addition to the facts justifying the officers’ suspicion to extend the stop and Miller’s answer that there might be something illegal in the truck, Miller exited the truck in a way that made Officer Justin concerned that Miller was trying to get behind him. Miller also then resisted while being asked to put his hands on the truck bed. These events led Officer Justin to believe that a frisk of Miller was necessary for officer safety and for the safety of others present.³

III. *Conclusion*

For the foregoing reasons, we affirm the district court’s decision.

³Miller also contends that the officers unlawfully extended the traffic stop, that he did not knowingly and voluntarily consent, and that the district court’s application of the attenuation doctrine was improper. Because the officers had reasonable suspicion to lawfully extend Miller’s stop, we decline to address whether they also required reasonable suspicion to question Miller about contraband or weapons in the truck. Further, the officers’ reasonable suspicion also negates his lack-of-consent and attenuation-doctrine arguments.

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Case No. 4:22-CR-00080-BCW
)	
)	
ALONZO MILLER,)	
)	
Defendant.)	

ORDER

Before the Court is Magistrate Judge Morris’s Report and Recommendation (Doc. #47) denying Defendant’s motion to suppress all evidence and incriminating statements obtained as a result of his alleged illegal detention and subsequent arrest. (Doc. #22).

On September 15, 2023, Judge Morris held an evidentiary hearing on the motion to suppress. (Doc. #42). On November 2, 2023, Judge Morris issued the instant Report and Recommendation denying Defendant’s motion. (Doc. #47). On November 22, 2023, after receiving an extension of time by the Court, Defendant filed objections to the Report and Recommendation (Doc. #53).

After an independent review of the record, the applicable law, and the parties’ arguments, the Court adopts Magistrate Judge Morris’s findings of fact and conclusions of law. Accordingly, it is hereby

ORDERED for the reasons stated in the Report and Recommendation (Doc. #47), Defendant’s motion to suppress (Doc. #22) is DENIED. It is further

ORDERED that Magistrate Judge Morris's Report and Recommendation be attached to and made part of this Order.

IT IS SO ORDERED.

DATED: December 1, 2023

/s/ Brian C. Wimes
JUDGE BRIAN C. WIMES
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) Case No. 22-CR-00080-BCW
)
 ALONZO MILLER,)
)
 Defendant.)

**REPORT AND RECOMMENDATION TO
DENY DEFENDANT’S MOTION TO SUPPRESS**

Before the Court is Defendant’s Motion to Suppress all evidence and incriminating statements obtained as a result of his alleged illegal detention and subsequent arrest which took place on January 10, 2022. (Doc. 22) For the reasons discussed below, Defendant’s motion should be denied.

I. INTRODUCTION

On April 5, 2022, the Grand Jury returned an Indictment charging Defendant with one count of being a felon in possession of a firearm, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). (Doc. 1) On August 4, 2023, Defendant filed the instant motion to suppress. (Doc. 22) The Government filed its suggestions in opposition on August 18, 2023. (Doc. 25) Defendant replied on September 1, 2023. (Doc. 26) The Government filed a supplemental brief in opposition on September 11, 2023. (Doc. 37) Defendant replied on September 14, 2023. (Doc. 39) An evidentiary hearing was held on September 15, 2023, with all parties and counsel appearing in person. The Government appeared by Assistant United States Attorney William Alford, III. Defendant was present, represented by Angela Williams and Marc Ermine, Assistant Federal

Public Defenders. The Government called Officers Stephen Justin and Daniel Trainor of the Kansas City, Missouri, Police Department, to testify. The following exhibits were admitted into evidence:

- Government's Exhibit 1: Officer Stephen Justin's entire body camera video of the traffic stop of the defendant on 01/10/22 [MILL_00000390];
- Government's Exhibit 2: Excerpts of Officer Stephen Justin's body camera video of the traffic stop of the defendant on 01/10/22 [MILL_00000390];
- Government's Exhibit 3: Officer Daniel Trainor's entire body camera video of the traffic stop of the defendant on 01/10/22 [MILL_00000479];
- Government's Exhibit 4: Excerpts of Officer Daniel Trainor's body camera video of the traffic stop of the defendant on 01/10/22 [MILL_00000479];
- Government's Exhibit 5: Entire dash camera video from the patrol vehicle during the traffic stop of the defendant on 01/10/22 [MILL_00000149];
- Government's Exhibit 6: Excerpt of dash camera video from the patrol vehicle during the traffic stop of the defendant on 01/10/22 [MILL_00000149];
- Government's Exhibit 7: Traffic citations related to the traffic stop of the defendant on 01/10/22; and
- Government's Exhibit 8: The defendant's conditions of parole that were in effect on 01/10/22.

II. FINDINGS OF FACT

On the basis of the evidence presented at the suppression hearing, the undersigned submits the following proposed findings of fact:

1. Stephen Justin is a patrol officer with the Kansas City, Missouri, Police Department. (Tr. at 7-8) In his capacity as a patrol officer, Officer Justin responds to emergency and non-emergency 911 calls and engages in self-initiated proactive work. (Tr. at 8)
2. Officer Justin's partner is Officer Daniel Trainor. (Tr. at 11) Daniel Trainor is a patrol officer with the Kansas City, Missouri, Police Department. (Tr. at 44, 94-95) As a patrol officer, Officer Trainor answers calls for service and conducts stops. (Tr. at 94)

3. On the night of January 10, 2022, at approximately 12:25 a.m., Officers Justin and Trainor, while on duty, initiated contact with Defendant as part of a traffic stop of an older model black Dodge Dakota. (Tr. at 8, 11, 95-97; Govt. Exh. 1 at 00:45) Upon observing the vehicle's nonfunctioning front headlight, Officer Justin, operating a marked patrol vehicle equipped with emergency lights and sirens, activated these lights to signal Defendant's vehicle to pull over. (Tr. at 11, 39) The stop took place at the intersection of 13th and Indiana, situated within a residential neighborhood with minimal traffic, in Kansas City, Missouri, in the Western District of Missouri. (Tr. at 10, 96-97) The Officers also observed that the vehicle's tags were expired. (Tr. at 11, 97)

4. Officer Justin exited his vehicle, approached the vehicle, and established contact with the driver. (Tr. at 11-12; Gov. Exh. 1 at 1:38) Officer Justin introduced himself, disclosed his law enforcement agency, and explained the basis for the traffic stop. (Tr. at 12; Gov. Exh. 1 at 1:39) The vehicle contained two occupants, the driver and the passenger. (Tr. at 12, 97) As the cover officer, Officer Trainor positioned himself on the opposite side of the vehicle, engaging with the passenger. (Tr. at 12, 97-98)

5. Following Officer Justin's initial identification, Defendant conveyed that the vehicle belonged to Cedric Woods. (Tr. at 13, 44; Gov. Exh. 1 at 1:46-1:51) Officer Justin recognized the name, as he had encountered Mr. Woods during one or two previous traffic stops in the vicinity of Independence. (Tr. at 13)

6. Officer Justin requested the driver's license, proof of insurance, and ownership information pertaining to the vehicle. (Tr. at 12; Gov. Exh. 1 at 1:57) The driver presented his driver's license, but he was unable to furnish proof of insurance. (Tr. at 12, 16) He again stated that he did not own the vehicle. (Tr. at 12) The driver's license provided to Officer Justin bore the

name of Alonzo Miller, who is the defendant in this case. (Tr. at 12)

7. Officer Justin testified that while interacting with Defendant, Defendant displayed noticeable signs of nervousness. (Tr. at 13, 33, 80) These signs included widened eyes and dilated pupils. (Tr. at 13) Defendant's hands also trembled, he frequently scanned the interior of the car, and he ashed on himself while smoking a cigarette. (Tr. at 13, 33; Gov. Exh. 1 at 2:01:07-2:38) Officer Justin testified that such behavior is a potential indicator of illegal activities. (Tr. at 13, 80-81)

8. Officer Justin inquired about Defendant's point of origin. (Tr. at 13-14; Gov. Exh. 1 at 2:38) Defendant disclosed that he had come from 3214 St. John Avenue, located in Kansas City, Missouri. (Tr. at 13-14; Gov. Exh. 1 at 2:39) Both Officer Justin and Officer Trainor possessed firsthand knowledge of this address, having responded to multiple service calls at that location and the adjacent apartment complexes. (Tr. at 14, 103, 112) Office Justin testified that this address had garnered a reputation for being associated with various unlawful activities, including but not limited to acts of violence, prostitution, drug-related incidents, and the trafficking of stolen property. (Tr. at 14, 82) Defendant's association with this particular address held significant investigative relevance to the officers, given that individuals departing from such a location may be participating in these illegal activities. (Tr. at 14, 82-83, 111)

9. The late hour and chilly weather were also of investigative significance to Officer Justin because, typically in such frigid and late-night conditions, the majority of individuals would be indoors or engaged in activities more fitting for that time and it was uncommon for people to be outside under such cold and late circumstances. (Tr. at 14-15)

10. The passenger of the vehicle was a female. (Tr. at 15) Officer Justin testified that

based on his training and experience, combined with Defendant's originating location, the time of night, prevailing weather conditions, and the sizeable age difference, he suspected the passenger may be involved in prostitution. (Tr. at 15, 81-82) Officer Justin further testified that encounters with individuals engaged in prostitution frequently revealed compensation methods involving either money or drugs. (Tr. at 15-16, 84) Officer Justin did not mention this suspicion to others later. (Tr. at 59, 84-85)

11. Following this initial encounter, Officer Justin and Officer Trainor returned to their patrol vehicle to perform a computer check on both Defendant and the passenger to ascertain the validity of Defendant's driving status and to confirm the vehicle's legal ownership status. (Tr. at 16-17, 103, 121; Gov. Exh. 2 at 2:17) They executed this by querying the Vehicle Identification Number (VIN) against the MULES database. (Tr. at 16-17) The MULES database encompasses Department of Revenue records, revealing essential information on warrants, individual drivers licenses and other pertinent details. (Tr. at 16-17, 104-105)

12. During this period, Officer Trainor relayed to Officer Justin (but not to others later) that he believed the person in the passenger seat was a prostitute, which was consistent with what Officer Justin had believed about the passenger. (Tr. at 17, 99, 103-104, 122-123, 127-128, 131; Gov. Exh. 1 at 3:38)

13. The MULES database did not yield any pertinent information regarding the passenger's criminal background. (Tr. at 17) However, the MULES query did yield results concerning Defendant, revealing that Defendant was currently under probation and parole supervision for a serious violent offense, specifically, a second-degree assault felony, coupled with a firearm-related offense linked to the same incident. (Tr. at 17-18, 104; Gov. Exh. 8)

14. Officer Justin's testimony emphasized the importance of the MULES results in conjunction with Defendant's evident nervousness and interactions, the area Defendant came from, the area where he was pulled over, the weather, and the late-night context. (Tr. at 17-18, 85) Based on these factors, Officer Justin developed the belief that Defendant might be in possession of a weapon within the vehicle or potentially carrying illegal substances, such as drugs. (Tr. at 17-18, 85)

15. Based upon Officer Justin's training and experience, he believed that Defendant's demeanor, particularly the presence of dilated pupils, aligned with the behavior typically exhibited by individuals under the influence of a controlled substance. (Tr. at 18)

16. After receiving the MULES database results, Officer Justin and Officer Trainor discussed their plan for interacting with Defendant. (Tr. at 18-19; Gov. Exhs. 1, 2, 3, 4) Officer Justin informed Officer Trainor of the address provided by Defendant. (Tr. at 18-19, 103, 111, 112; Gov. Exh. 1 at 3:38)

17. Officer Justin testified that he shared this information because both he and Officer Trainor were acquainted with a previous drug dealer associated with that address or one of the nearby apartment buildings. (Tr. at 19, 37, 103, 111-112) At the time, there was uncertainty regarding whether this dealer was still conducting illicit activities in that area. (Tr. at 19) Officer Justin also attested that he harbored suspicions that either Defendant or the passenger might have connections to this drug dealer. (Tr. at 19, 37)

18. Following the Officers' discussion about the address, the decision to request consent to search the vehicle was reached. (Tr. at 19, 60, 63) Officer Justin testified that while he did not have probable cause at this point to search the vehicle, he believed he had reasonable suspicion of

criminal activity so as to continue the investigation. (Tr. at 85-86) Subsequently, Officer Justin and Officer Trainor returned to the vehicle and engaged with both the passenger and Defendant. (Tr. at 19, 104; Gov. Exhs. 1, 2, 3, 4) Officer Trainor positioned himself on the passenger side of the vehicle, while Officer Justin stood on the driver's side, engaging with Defendant. (Tr. at 19-20, 105)

19. Officer Justin conveyed to Defendant that he had no active warrants but was aware of Defendant's probation and parole status, signifying that Defendant was currently "on paper". (Tr. at 20, 64-65) Being "on paper" denoted that the individual was under probation and parole monitoring. (Tr. at 20) Officer Justin also told Defendant that his driver's license was valid, but the truck was "not valid" because the tags were expired. (Gov. Exh. 1 at 8:09) Officer Justin said he was "willing to kind of" give Defendant a warning on the lack of insurance and expired tags issues. (Tr. at 64; Gov. Exh. 1 at 8:11) Officer Justin held Defendant's driver's license in his hand but did not give it back to him. (Tr. at 64, Gov. Exh. 1 at 8:15) Defendant was not free to go at this point. (Tr. at 64, Gov. Exh. 1 at 8:15) In response, Defendant acknowledged his parole status, disclosing that he had approximately ninety-two days remaining under this supervision. (Tr. at 20)

20. Officer Justin then asked Defendant if there was "anything illegal in the car or anything I should know about", to which Defendant mentioned "something under there" pointing to the front seat and indicating an item beneath the front seat. (Tr. at 19, 20-21, 34-35, 86-87, 89; Gov. Exh. 1 at 8:25, 8:26) This was not noted in any report but is in the video. (Tr. at 66, 86-87) Officer Justin believed at this point that he had probable cause to search the vehicle, yet still asked for and received consent. (Tr. at 87) Following this exchange, Officer Justin asked if "it would be okay if I took a look around" the vehicle, which Defendant granted by stating "yeah". (Tr. at 21,

107; Gov. Exh. 1 at 8:28-8:30) Defendant had given consent to search the vehicle, not his body. (Tr. at 73)

21. Officer Justin proceeded to open the truck door for Defendant and positioned his body to direct Defendant toward the truck's bed, specifically along the driver's side. (Tr. at 21, 69; Gov. Exh. 1 at 8:40) Officer Justin testified that he deliberately positioned himself in a way that left a narrower exit on his left side, while the right side offered a more open passage, aligning with his intended direction for Defendant. (Tr. at 21, 71)

22. Defendant, contrary to Officer Justin's instruction, proceeded to the left side, the opposite direction from where Officer Justin had indicated for him to go. (Tr. at 21-22, 70; Gov. Exhs. 1 at 8:41, 5 at 12:34:10-12:34:25) Officer Justin and Officer Trainor found this behavior unusual, given their experience in typical traffic stops where individuals usually respond to non-verbal cues following the officers' physical direction to a specific area of the vehicle. (Tr. at 22, 88, 106) Officer Justin estimated having conducted over one hundred, possibly up to two hundred traffic stops, and he recalled no previous instance where an individual exited a vehicle in the manner Defendant did. (Tr. at 22) Officer Trainor estimated having conducted over a thousand traffic stops and could not recall any previous instance of an individual exiting a vehicle in that manner. (Tr. at 106, 107)

23. In response, Officer Justin used his left hand and left arm to grasp the crook of Defendant's elbow, simultaneously placing his right hand on Defendant's back in order to direct him towards the truck's bed. (Tr. at 22; Gov. Exh. 1 at 8:45) During his testimony, Officer Justin conveyed his belief that Defendant's unorthodox exit from the vehicle suggested an intention to either elude him or position himself behind the officer. (Tr. at 22, 88)

24. While guiding Defendant towards the rear of the truck, Officer Justin instructed Defendant to position both of his hands on the sides of the truck bed. (Tr. at 23; Gov. Exh. 1 at 8:43) Subsequently, Officer Justin asked Defendant “do you have anything on you, anything that’s going to poke, prick, or stab me?” (Tr. at 23, 24, 38, 107-108, 109, 113; Gov. Exh. 1 at 8:48, 8:50) Defendant responded, “Ugh, I got, look up under the seat”, again indicating the presence of something beneath the seat while gesturing towards it. (Gov Exh. 1 at 8:51-8:54) Officer Justin responded by attempting to maneuver Defendant, and Defendant again stated “look up under the seat” while he gestured toward the lower half of the truck’s cabin. (Tr. at 23-24, 38, 107-108, 109, 113; Gov. Exh. 1 at 8:56) Finding this behavior strange, Officer Justin requested that Defendant place his hands behind his back. (Tr. at 23)

25. Defendant initially extended his left hand, prompting Officer Justin to make an effort to position it behind Defendant’s back. (Tr. at 23; Gov. Exh. 1 at 8:58) However, Officer Justin testified that Defendant’s tenseness impeded the smooth application of handcuffs. (Tr. at 23) While emphasizing that Defendant was not under arrest but rather being detained, Officer Justin persisted in his attempts to maneuver Defendant’s left hand behind his back and to secure his right hand in the same manner. (Tr. at 23; Gov. Exh. 1 at 8:58-9:12)

26. Officer Justin determined that it was necessary to conduct a frisk of Defendant. (Tr. at 25) He testified that this decision was rooted in the concern for the safety of all individuals present, as he harbored suspicions that Defendant might be carrying something on or near him that posed a physical threat. (Tr. at 25, 88-89, 91-92) Officer Justin explained that Defendant’s unusual exit from the vehicle and his lack of responsiveness to instructions factored into the determination that a frisk was warranted. (Tr. at 25) Officer Justin further explained that by the time of the frisk,

Defendant had indicated more than once that he had something illegal under the seat. (Tr. at 89) Officer Justin testified he said, “I had no idea he had a gun.” (Tr. at 91; Gov Exh. 5 at 12:44)

27. At this time, Defendant released his grip on the truck’s bed using his right hand and began pulling it in the direction of Officer Justin. (Tr. at 23-24; Gov. Exh. 1 at 9:10) Defendant’s hand then entered his right coat pocket. (Tr. at 22; Gov. Exhs. 1 at 9:11, 3 at 9:12) The officers heard a loud pop, which based on training and experience, they believed to be a gunshot. (Tr. at 24, 26, 35-36, 38, 108-109; Gov. Exhs. 1 at 9:13, 3 at 9:13)

28. After the firearm in Defendant’s jacket was discharged, Officer Justin moved to arrest Defendant, and Officer Trainor—who had left the passenger’s side of the vehicle—assisted Officer Justin in restraining Defendant. (Tr. 26, 108; Gov. Exh. 4 at 4:24) They successfully handcuffed Defendant and removed the weapon from his right jacket pocket. (Tr. at 26, 109; Gov. Exh. 4 at 4:56) Officer Justin testified that Defendant was not compliant while the officers were trying to handcuff him; Defendant continued to physically tense up, would not put his hands behind his back, and attempted to pull away. (Tr. at 26)

29. During this, Defendant stated, “it just went off” and denied trying to shoot the officers. (Gov. Exh. 5 at 12:35:46) He stated that the gun belonged to his niece, she had left it in the truck, and he was on his way to return the gun to her when he was stopped by the officers. (Tr. at 39; Gov. Exh. 6 at 12:36:08)

30. Officer Justin testified about the various offenses committed by Defendant during their interaction, all of which warranted Defendant’s arrest. (Tr. at 27, 29) These offenses included failure to comply with a lawful order, physically resisting being placed into handcuffs, discharging a weapon within the city limits of Kansas City, Missouri (a municipal ordinance violation),

unlawful possession of a firearm as a convicted felon, violation of probation and parole conditions requiring compliance with city, state, and federal ordinances, and assault against a police officer. (Tr. at 27, 29, 104) Defendant was issued two tickets: one for operating a vehicle without a valid license, the other for failure to provide insurance. (Tr. at 30, 40-41; Gov. Exh. 7)

31. After taking Defendant into custody, the officers requested law enforcement backup. (Tr. at 28-29) Subsequently, additional law enforcement officers arrived at the scene. (Tr. at 29) Once backup arrived, Officer Justin's role shifted to ensuring the well-being of Defendant, the passenger, and the other officer involved in the incident. (Tr. at 29) This included verifying that none of them had sustained injuries. (Tr. at 29) After confirming their safety, Officer Justin's active involvement in investigating the shooting incident ended. (Tr. at 29)

32. Officer Trainor testified that issuing a written warning for a routine traffic violation takes about fifteen to twenty minutes. (Tr. at 115-116) Officer Justin testified that it takes about five to seven minutes to issue a written warning. (Tr. at 30)

33. From the time the vehicle was stopped, and the Officers were able to handcuff Defendant, ten minutes had passed. (Gov. Exh. 1 at 00:00-10:00) Officer Justin asked for consent to search the vehicle eight and a half minutes into the traffic stop. (Gov. Exh. 1 at 8:28) The vehicle was later searched, specifically under the seat Defendant had indicated held something, and no weapon was found. (Tr. at 27)

III. DISCUSSION

Defendant challenges the traffic stop and his subsequent arrest, which occurred on January 10, 2022. He moves to suppress all evidence, including the firearm, ammunition, clothing, and any self-incriminating statements made to law enforcement, on the grounds of a Fourth Amendment

violation. Defendant's contentions are twofold. First, he argues that the officers unlawfully prolonged the stop, rendering any consent provided involuntary. Second, he asserts that the officers lacked reasonable suspicion to believe he was armed and dangerous, thus making any search or frisk unlawful.

The Government contends that Officers Justin and Trainor acted justifiably when they questioned Defendant about potential illegal items in the vehicle and sought his consent to search it. Alternatively, if the Court deems the traffic stop as having been extended unlawfully, the Government argues that the officers had reasonable suspicion of ongoing criminal activity, justifying any extension. Finally, if the Court determines that the initial detention of Defendant was invalid, the Government maintains that Defendant committed separate, new crimes, which would have given the officers legal cause to conduct a search of Defendant.

For the reasons explained below, the Court finds that Defendant was lawfully stopped for a front headlight being out; facts developed during the course of the stop indicated Defendant may have something on or near him posing a threat and possible criminal activity was afoot, justifying the pat-down; and Defendant knowingly and voluntarily consented to the vehicle search, thus necessarily consenting to an extension of the traffic stop. Additionally, the Court finds that Defendant committed a new and separate offense, thereby establishing lawful grounds for the search and recovery of the weapon and any other incriminating information.

A. Scope and Duration of the Traffic Stop

Defendant contends that all evidence stemming from the traffic stop should be suppressed due to the officers' improper extension of both the duration and scope of the stop. (Doc. 22) A traffic stop is a seizure subject to the Fourth and Fourteenth Amendments protections against

unreasonable searches and seizures. *United States v. Chartier*, 772 F.3d 539, 543 (8th Cir. 2014). Thus, a vehicle’s passenger, as well as its driver, is seized during a valid traffic stop. *United States v. Oliver*, 550 F.3d 734, 737 (8th Cir. 2008). The traffic stop’s tolerable duration is determined by the seizure’s “mission,” which is to address the traffic violation that warranted the stop and attend to related safety concerns. *Illinois v. Caballes*, 543 U.S. 405, 407 (2005). After making a routine traffic stop, an officer may detain the vehicle occupants while he or she completes the “routine tasks related to the traffic violation, such as writing a citation and completing computerized checks of a driver’s license, vehicle registration, and criminal history.” *United States v. Lyons*, 486 F.3d 367, 371 (8th Cir. 2007).

Where a seizure of a person is based on probable cause to believe that a traffic violation was committed, an officer does not violate the Fourth Amendment by asking a few questions about matters unrelated to the traffic violation, even if this conversation briefly extends the length of the detention. *United States v. Olivera-Mendez*, 484 F.3d 505, 510 (8th Cir. 2007). Once this initial investigation is finished, however, the purpose of the traffic stop is complete and further detention of the driver or vehicle would be unreasonable, ““unless something that occurred during the traffic stop generated the necessary reasonable suspicion to justify a further detention”” or unless the continued encounter is consensual. *United States v. Flores*, 474 F.3d 1100, 1103 (8th Cir. 2007) (quoting *United States v. Jones*, 269 F.3d 919, 925 (8th Cir. 2001)). Once an officer has decided to permit a routine traffic offender to depart with a ticket, a warning, or an all clear, the Fourth Amendment applies to limit any subsequent detention or search. *United States v. Peralez*, 526 F.3d 1115, 1120 (8th Cir. 2008). If the encounter becomes consensual, it is not a seizure, “the Fourth Amendment is not implicated, and the officer is not prohibited from asking questions unrelated to

the traffic stop or seeking consent to search the vehicle.” *Id.*

Additionally, if an officer’s suspicions become heightened during the course of such routine traffic stop, the officer may be justified in expanding the scope of the investigation. *United States v. Coleman*, 700 F.3d 329, 335 (8th Cir. 2012) (“[I]f the officer develops reasonable suspicion that other criminal activity is afoot, the officer may expand the scope of the encounter to address that suspicion.”). An officer’s suspicion of criminal activity may reasonably grow over the course of a traffic stop as the circumstances unfold and more suspicious facts are uncovered. *United States v. Linkous*, 285 F.3d 716, 719 (8th Cir. 2002). An officer cannot detain a motorist for reasons beyond the purpose of the stop unless the officer has “a reasonably articulable suspicion for believing that criminal activity is afoot.” *Lyons*, 486 F.3d at 371.

Because “[t]raffic stops are ‘especially fraught with danger to police officers,’” officers are also permitted “to take certain negligibly burdensome precautions in order to complete [the] mission safely.” *Rodriguez v. United States*, 575 U.S. 348, 356 (2015) (quoting *Arizona v. Johnson*, 555 U.S. 323, 330 (2009)). During a valid traffic stop, both the driver and passenger may be ordered to exit the vehicle in the interests of officer safety. *Oliver*, 550 F.3d 734, 737. For example, police officers may order out of a vehicle both the driver and any passengers and perform a pat-down search of a driver and any passengers upon reasonable suspicion that they may be armed and dangerous. *Id.*

Reasonable suspicion that a defendant is armed and dangerous, as required to support a pat-down search of a defendant, exists even if the police officer is not absolutely certain that the defendant is armed; the issue is whether a reasonably prudent person in the circumstances would be warranted in the belief that his safety or that of others was in danger. *Terry v. Ohio*, 392 U.S. 1,

27 (1968). Officers may conduct a protective pat-down search for weapons during a valid stop—whether a traffic stop, an investigative *Terry* stop, or a consensual stop—when they have objectively reasonable suspicion that a person with whom they are dealing “might be armed and presently dangerous and criminal activity might be afoot.” *United States v. Robinson*, 664 F.3d 701, 704 (8th Cir. 2011) (quoting *United States v. Davis*, 202 F.3d 1060, 1063 (8th Cir. 2000)). In determining whether reasonable suspicion exists, courts consider the totality of the circumstances in light of the officers’ experience and specialized training. *United States v. Davis*, 457 F.3d 817, 822 (8th Cir. 2006). “In examining the relevant facts and inferences, we must keep in mind that ‘minimally intrusive weapons searches’ at traffic stops will more likely be reasonable because of the ‘inherent danger’ of traffic stops.” *United States v. Shranklen*, 315 F.3d 959, 962 (8th Cir. 2003) (quoting *United States v. Menard*, 95 F.3d 9, 11 (8th Cir. 1996)).

Defendant argues that once the officers learned that he had no outstanding warrants, they had no basis to detain him beyond the time necessary to give him warnings or citations for the lack of insurance and expired tags. (Doc. 22) Thus, Defendant argues that the officers did not have reasonable suspicion to extend the stop, as the officers encountered no legitimate complications or unusual circumstances in completing the routine tasks associated with a traffic stop. (Doc. 22) This argument has three flaws. First, it ignores other relevant facts, such as testimony given by Officer Justin and Officer Trainor. Second, focusing on the Officers’ perception alone would transform this objective test into a subjective one, contrary to precedent. Third, in determining whether reasonable suspicion existed, courts examine the facts collectively rather than asking if each fact individually establishes reasonable suspicion. *See United States v. Arvizu*, 534 U.S. 266, 274 (2002); *United States v. Stachowiak*, 521 F.3d 852, 856 (8th Cir. 2008) (citation omitted)

(discussing reasonable suspicion in the context of a *Terry* stop). When considered collectively and objectively, the circumstances in this case provided sufficient reasonable suspicion to warrant a pat-down of Defendant, thus justifying the scope and duration of the stop. (See Fact Nos. 3, 5-10, 12-18, 20-22, 24-26, 33)

Considering the facts collectively, this situation arose out of a nighttime traffic stop. (Fact No. 3) See *Shranklen*, 315 F.3d at 962 (noting the inherent danger of traffic stops); *United States v. Roggeman*, 279 F.3d 573, 578 (8th Cir. 2002) (holding that the fact that a traffic stop takes place at night goes to concerns about officer safety). When questioned about the presence of anything dangerous or illegal within the vehicle, Defendant on several occasions alluded to an item beneath the seat. (Fact Nos. 20, 24) Further, the vehicle was registered to another individual. (Fact Nos. 5, 6) See *United States v. Garcia*, 441 F.3d 596, 599 (8th Cir. 2006) (citing *Shranklen*, 315 F.3d at 963 (concluding that lack of proof of ownership and valid driver's license supported a finding of reasonable suspicion that defendant might be armed and dangerous)). Once Officer Justin learned Defendant's identity and was able to run it through MULES, he knew that Defendant was on probation and parole for a violent felony (assault in the second degree) and a related gun offense. (Fact Nos. 13, 19) See *Garcia*, 441 F.3d at 599 (holding that a prior drug conviction and driving a car owned by neither the passenger nor driver created reasonable suspicion); *United States v. Davis*, 471 F.3d 938, 945 (8th Cir. 2006) (holding that unspecified prior intelligence that defendant possessed firearms was one of several articulable facts creating reasonable suspicion). These factors contributed to Officer Justin and Officer Trainor's suspicion that criminal activity was afoot, and Defendant might be armed, presenting a threat to officer safety. (See generally, Fact Nos. 14, 18, 20)

These factors are assessed in connection with Defendant's noticeable signs of nervousness (Fact No. 7), the location from which Defendant's vehicle had come (Fact No. 9), the location of the stop (Fact No. 3), the late night hour and cold weather (Fact Nos. 3, 9), the suspicion of the passenger being a possible prostitute (Fact Nos. 10, 12), the failure to present insurance (Fact No. 6), Defendant's odd exit from the vehicle (Fact Nos. 21, 22, 23), Defendant's indication of something dangerous within the vehicle (Fact Nos. 20, 24), and Defendant's resistance while being asked to put his hands on the truck bed (Fact. Nos. 25, 26, 27). Based upon the totality of these circumstances, and taking into account the officers' deductions and rational inferences resulting from training and experience, there was a specific, reasonable, and articulable suspicion that their safety or that of others was in danger.

Finally, allowing Defendant, an occupant of the vehicle, to walk away unsearched would have posed a further threat to officer safety. *United States v. Preston*, 685 F.3d 685, 690 (8th Cir. 2012), as corrected (July 16, 2012). As noted in *Oliver*, a person who is allowed to walk away from a stop without a pat-down search could hypothetically turn around and shoot officers remaining at the scene. 550 F.3d at 738. Based on the above, the Court finds that the totality of the circumstances created an objectively reasonable suspicion that Defendant might be armed and dangerous. The pat-down search was therefore constitutionally permissible, and Defendant's traffic stop was not unlawfully extended. (Fact No. 33) *See Preston*, 685 F.3d 685, at 689–90. The Court recommends denial of Defendant's motion to suppress on this ground.

B. Consent

Defendant contends that the alleged unlawful detention invalidated any purported consent to the search of the truck. *See Florida v. Royer*, 460 U.S. 491, 507–508 (1983) (plurality opinion)

(“Because ... [the defendant] was being illegally detained when he consented to the search of his luggage, we agree that the consent was tainted by the illegality and was ineffective to justify the search.”). As previously discussed, Officer Justin’s pat-down search of Defendant was constitutionally permissible, and Defendant was not unlawfully detained. The request for consent to search the vehicle did not unreasonably prolong the traffic stop as there was reasonable suspicion to support the officer’s request. Additionally, when a defendant consents to a vehicle search, she or he is inherently consenting to an extension of the traffic stop for the duration of the search. *United States v. Rivera*, 570 F.3d 1009, 1013–1014 (8th Cir. 2009).

Moreover, Defendant knowingly and voluntarily provided consent to search the vehicle. (Fact No. 20; Gov. Exh. 1 at 8:30) Defendant does not contest that he provided consent and acknowledges in his motion that he acquiesced to the request by Officer Justin. (Fact No. 20) (Doc. 22, at p. 3) Law enforcement officers do not violate the Fourth Amendment by asking a person for consent to search or other types of cooperation, even when they have no reason to suspect that person, “provided they do not induce cooperation by coercive means.” *United States v. Yang*, 345 F.3d 650, 654 (8th Cir. 2003). Even if a law enforcement request for consent amounts to illegal detention, the illegality is purged by the Defendant’s voluntary consent to the search. *See United States v. Kreisel*, 210 F.3d 868, 869 (8th Cir.), *cert. denied*, 531 U.S. 916 (2000) (consent purges illegal taint).

“The question of whether a consent to search was in fact ‘voluntary’ or was the product of duress or coercion, expressed or implied, is a question of fact to be determined from the totality of all circumstances.” *Id.* (quoting *Schneckloth v. Bustamonte*, 412 U.S. 218, 227 (1973)). “The government bears the burden to prove by a preponderance of the evidence that consent to search

was freely given, but awareness of the right to refuse is not necessary for consent to be voluntary.” *United States v. Smith*, 260 F.3d 922, 924 (8th Cir. 2001) (citations omitted); *see also United States v. Martel-Martines*, 988 F.2d 855, 859 (8th Cir. 1993) (citing *Schneckloth*, 412 U.S. at 234). The Government does not satisfy its burden “by showing a mere submission to a claim of lawful authority.” *Royer*, 460 U.S. at 497 (citations omitted).

In assessing the voluntariness of a defendant’s consent, the defendant’s following characteristics are relevant: (1) his age; (2) his intelligence and education; (3) whether he was intoxicated or under the influence of drugs or alcohol; (4) whether he was informed of his *Miranda* rights; and (5) whether he had prior arrests and was thus aware of the protections that the legal system affords to suspected criminal. *United States v. Chaidez*, 906 F.2d 377, 381 (8th Cir. 1990). Additionally, the court also considers the environment in which the defendant consented, including: (1) the length of detention; (2) whether the police threatened, physically intimidated, or punished him; (3) whether the police made promises or misrepresentations; (4) whether he was in custody or under arrest when consent was given; (5) whether consent was given in a public or secluded place; and (6) whether defendant stood by silently as the search occurred. *Id.* “These factors should not be applied mechanically.” *Id.* (citing *United States v. Sokolow*, 490 U.S. 1 (1989)).

In *Chaidez*, the Eighth Circuit affirmed the district court’s denial of a defendant’s suppression motion where the totality of the circumstances showed that the defendant knowingly and voluntarily consented to the search of his vehicle. 906 F.2d at 382. The Eighth Circuit reasoned defendant was an adult who: (1) spoke and comprehended English such that he was able to give “informed, knowledgeable, and voluntary oral consent”; (2) consented while sitting in an officer’s car; (3) did not claim impaired judgment due to drugs or alcohol; (4) had a criminal history; (5) did

not allege that he was threatened, physically intimidated, or punished before he consented or that he relied on any promises or misrepresentations by law enforcement; and (6) opened the truck for the officer to search. *Id.* The Court noted that the fact that there was no indication that the defendant was informed of his right to refuse consent and that defendant testified that he thought he did not have the right to refuse consent was a “significant, but not determinative factor cutting against a finding of voluntariness.” *Id.*

Like *Chaidez*, here Defendant (1) speaks and understands English, such that he was able to give informed and voluntary consent to the vehicle search (Fact No. 20), (2) consented while seated in the vehicle he was operating, and was not under arrest (Fact Nos. 20-21), (3) does not claim impaired judgment due to drugs or alcohol, (4) has a criminal history (Fact No. 19), (5) does not claim he was threatened, physically intimidated, or punished before he consented, or that he relied on any promises or misrepresentations by law enforcement (Doc. 22), and (6) indicated to the Officer that there was something under the seat when asked about anything dangerous or illegal in the vehicle (Fact Nos. 20, 24). The request for consent to search came eight and a half minutes into the traffic stop (Fact No. 33), and although Officer Justin indicated he was willing to give a warning, he did not represent or promise that would be the case. (Fact No. 19)

While Defendant argues that his consent was essentially coerced due to Officer Justin still being in possession of his driver’s license, this argument is without merit. Officer Justin’s requested permission to conduct a search of the truck and Defendant’s resulting consent was not the product of coercion merely because Officer Justin had not finished his investigation or returned the driver’s license to Defendant. *See United States v. Fuller*, 374 F.3d 617, 622 (8th Cir. 2004) (concluding that the district court did not clearly err in finding voluntary consent to search where the officer

requesting consent was holding the individual's driver's license at the time and three armed police officers were present). Examining the totality of the circumstances, Defendant gave his consent to search less than eight minutes after being stopped; easily communicated with Officer Justin; did not object or withdraw his consent to the search at any time; and encountered Officer Justin on a public street. *See United States v. Siwek*, 453 F.3d 1079, 1084 (8th Cir. 2006). The totality of the circumstances show that Defendant knowingly and voluntarily consented to the search of the vehicle. The Court thus finds that the Government has shown by a preponderance of evidence that Defendant's consent was voluntary. The Court therefore recommends denial of Defendant's motion to suppress on this ground.

C. New Crime

As previously addressed, Defendant's detention was not unlawful, his consent was valid, and officers had reasonable suspicion to continue the stop, including a pat-down of Defendant. Moreover, Defendant committed a new and distinct crime during the detention, thus, the Fourth Amendment's exclusionary rule would not bar evidence of the new crime. (Fact No. 30) *United States v. Sledge*, 460 F.3d 963, 966 (8th Cir. 2006) (holding that regardless of the legality of the initial detention and pat-down search, the defendant's actions and resistance to the officers provided independent grounds to arrest him for resisting arrest). The Eighth Circuit has consistently held that a defendant's response to an arrest or *Terry* stop—even an invalid one—may constitute independent grounds for arrest. *See United States v. Flores-Lagonas*, 993 F.3d 550, 560 (8th Cir. 2021); *United States v. Smith*, 789 F.3d 923, 929 (8th Cir. 2015); *United States v. Blackmon*, 662 F.3d 981, 985–986 (8th Cir. 2011).

In this case, Defendant committed a multitude of different offenses when Officer Justin

attempted to frisk him. These offenses included resisting arrest, discharging a firearm, violating his conditions of parole, and knowingly being a felon in possession of a firearm. (Fact No. 30) Consequently, the officers had ample justification to arrest Defendant on multiple grounds. The search that followed Defendant's lawful arrest resulted in the retrieval of a firearm. (Fact No. 29) Thus, the admissibility of this firearm as evidence should remain intact, regardless of whether the officers had a reasonable basis for conducting a *Terry* stop in this particular case. To put it differently, Defendant's commission of new and separate offenses provided legitimate grounds for the officers to perform a search, even if the reviewing Court were to determine that the initial detention of Defendant was unlawful.

IV. CONCLUSION

For the reasons set forth above, it is

RECOMMENDED that the Court, after making an independent review of the record and the applicable law, enter an order denying Defendant's motion to suppress.

Counsel are advised that, pursuant to 28 U.S.C. § 636(b)(1), each has fourteen days from the date of this Report and Recommendation to file and serve specific objections to the same, unless an extension of time for good cause is obtained. Failure to file and serve timely specific objections may result in waiver of the right to appeal factual findings made in the report and recommendation which are accepted or adopted by the district judge except upon the ground of plain error or manifest injustice.

/s/ Jill A. Morris

JILL A. MORRIS
UNITED STATES MAGISTRATE JUDGE

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

No: 24-2831

United States of America

Appellee

v.

Alonzo Miller

Appellant

Appeal from U.S. District Court for the Western District of Missouri - Kansas City
(4:22-cr-00080-BCW-1)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

January 14, 2026

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Susan E. Bindler