No. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2026

WILLIAM J. BROWN

Petitioner

v.

UNITED STATES OF AMERICA

Respondent

On Petition for Writ of Certiorari To the United States Court of Appeals for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

Stan Schwieger
LAW OFFICE OF STAN SCHWIEGER
COUNSEL OF RECORD FOR PETITIONER

600 Austin Avenue, Suite 12
Waco, Texas 76701
(254) 752-5678
(254) 752-7792—Facsimile
State Bar No. 17880500
E-mail: wacocrimatty@yahoo.com

November 16, 2026

QUESTION PRESENTED

1. When an officer defers routine traffic checks to pursue a drug investigation, does the Fourth Amendment permit a dog sniff based on the brevity of the sniff and the fact that the traffic checks remain pending, or does the officer need independent reasonable suspicion once the traffic mission reasonably should have ended?

2. When an officer prolongs a traffic stop to investigate drug activity, does the Fourth Amendment permit continued detention based on circumstances that, even taken together, provide only a generalized basis for suspicion, or must those circumstances provide a particularized, objective basis for suspecting the driver of criminal activity?

PARTIES TO THE PROCEEDING

A list of all parties to the proceeding in the court whose judgment is the subject of this petition is provided below. If a party is a corporation with a stock ticker symbol, that symbol is also included.

1. William J. Brown, Jr.. . . . . Appellant

2. United States of America. . . . . Appellee

RELATED PROCEEDINGS

United States v. Brown, No. 6:23-CR-177-1, United States District Court, Western District of Texas, Waco Division. (Aug. 28, 2025).

United States v. Brown, No. 25-50728 (5th Cir. August 17, 2026) (per curiam) (unpublished).

TABLE OF CONTENTS

Questions Presented. ii

1. When an officer defers routine traffic checks to pursue a drug investigation, does the Fourth Amendment permit a dog sniff based on the brevity of the sniff and the fact that the traffic checks remain pending, or does the officer need independent reasonable suspicion once the traffic mission reasonably should have ended?

2. When an officer prolongs a traffic stop to investigate drug activity, does the Fourth Amendment permit continued detention based on circumstances that, even taken together, provide only a generalized basis for suspicion, or must those circumstances provide a particularized, objective basis for suspecting the driver of criminal activity?

Parties to the Proceeding. iii

Related Proceedings. iv

Table of Contents. v

Index to Appendices. vii

Table of Authorities. viii

Opinion Below. x

Jurisdiction. x

Constitutional and Statutes Involved. 1

Statement of Case. 2

Reasons for Granting the Petition.. 5

Question 1.. 5

When an officer defers routine traffic checks to pursue a drug investigation, does the Fourth Amendment permit a dog sniff based on the brevity of the sniff and the fact that the traffic checks remain pending, or does the officer need independent reasonable suspicion once the traffic mission reasonably should have ended?

A. Under the strict diligence approach, an officer unlawfully prolongs a stop whenever an unrelated inquiry interrupts traffic tasks and delays their completion.. 6

B. The authorities divide over whether brief investigative detours add constitutionally significant time. 7

C. Brown's case provides a vehicle to resolve whether pausing unfinished traffic work for a brief investigation violates the Fourth Amendment. 9

Question 2. 10

When an officer prolongs a traffic stop to investigate drug activity, does the Fourth Amendment permit continued detention based on circumstances that, even taken together, provide only a generalized basis for suspicion, or must those circumstances provide a particularized, objective basis for suspecting the driver of criminal activity?

INDEX TO APPENDICES

Opinion, *United States v. Brown*, No. 25-50728 (5th Cir. Aug. 17, 2026) (per curiam).. . . . . A

Judgment of the United States District Court for the Western District of Texas, Waco Division. . . . . B

Order Adopting the Magistrate Judge's Report and Recommendation and Denying the Motion to Suppress, *United States v. Brown*, No. 6:23-CR-177-1 (W.D. Tex. Dec. 10, 2024). C

Magistrate Judge's Report and Recommendation on the Motion to Suppress, *United States v. Brown*, No. 6:23-CR-177-1 (W.D. Tex. Sept. 9, 2024). . . . . D

TABLE OF AUTHORITIES

Federal Cases

Rodriguez v. United States,
575 U.S. 348 (2015). 6, 9

Sibron v. New York,
392 U.S. 40 (1968). 12

United States v. Arvizu,
534 U.S. 266 (2002). 10, 12

United States v. Baker,
108 F.4th 1241 (10th Cir. 2024). 6

United States v. Bohman,
683 F.3d 861 (7th Cir. 2012). 11

United States v. Brown,
No. 25-50728 (5th Cir. Aug. 17, 2026) (per curiam)
. . . . . vii, viii, 2, 3, 4, 5, 6, 9, 11

United States v. Brown,
No. 6:23-CR-177-1 (W.D. Tex.). vii

United States v. Campbell,
26 F.4th 860 (11th Cir. 2022) (en banc). 5, 6, 7, 9

United States v. Cortez,
449 U.S. 411 (1981). 10, 11, 12

United States v. Di Re,
332 U.S. 581 (1948). 11, 12

United States v. Hurtt,
31 F.4th 152 (3d Cir. 2022). 7

United States v. McKinney,
980 F.3d 485 (5th Cir. 2020). 12

United States v. Puckett,
139 F.4th 730 (8th Cir. 2025). 5, 6, 7, 8

United States v. Ross,
151 F.4th 487 (3d Cir. 2025). 8

Ybarra v. Illinois,
444 U.S. 85 (1979). 11

State Cases

Commonwealth v. Smith,
542 S.W.3d 276 (Ky. 2018). 7

State v. Doughty,
239 P.3d 573 (Wash. 2010). 11

Constitutional Provision

U.S. Const. amend. IV. 1

Federal Statute

28 U.S.C. § 1254(1). x

Rule

Sup. Ct. R. 10(c). 5, 9, 10, 12

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

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

OPINIONS BELOW

The opinion of the United States court of appeals appears at Appendix A. The opinion is reported at *United States v. Brown*, No. 25-50728 (5th Cir. Aug. 17, 2026) (per curiam).

JURISDICTION

The district court exercised original jurisdiction under 18 U.S.C. § 3231. The judgment under review was entered on August 17, 2026. Slip op. at 1. Jurisdiction to review that judgment by writ of certiorari rests on the statute authorizing review of federal appellate judgments. 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. CONST. amend. IV.

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

STATEMENT OF THE CASE

The case turns on the constitutional limits of prolonging a traffic stop and the requirement that reasonable suspicion remain particularized to the individual detained.[1]

Law enforcement conducted surveillance of a Killeen, Texas residence after an informant reported an expected narcotics delivery. Slip op. at 2. A detective knew the two residents of the apartment had histories of selling narcotics and saw several brief visits. Slip op. at 2. During the surveillance, a departing driver was arrested for possessing methamphetamine. Slip op. at 2. Petitioner was seen entering carrying a backpack and left a few minutes later. Slip op. at 2.

An officer stopped Brown for a traffic violation. Slip op. at 2–3. Before the vehicle came to a stop, the officer observed Brown reach toward the passenger seat. ROA.272. Petitioner produced his license almost immediately after the officer approached. ROA.296. At approximately 3:50 on the body-camera counter, the officer asked Brown to step out, with the license check still unrequested and no plate return received. ROA.298. By approximately 6:56, Brown was outside, and the officer had not requested

[1] The district court exercised original jurisdiction under 18 U.S.C. § 3231.

the outstanding checks. ROA.302. About two minutes later, the officer acknowledged making no attempt to request those checks because the officer and Brown had been talking. ROA.303. At approximately 10:10, Brown showed the officer insurance information on his phone. ROA.303. By approximately 12:33, when the officer announced the dog sniff, the plate, registration, and warrant checks remained undone. ROA.309–10. The officer explained that, when an investigation has a narcotics focus, the checks follow the investigation. ROA.310. The dog alerted within one minute. Slip op. at 3. The search produced a revolver from Brown's backpack. ROA.277.

As a result, Brown faced a charge of possessing a firearm after a felony conviction. Slip op. at 3. The district judge denied suppression. Slip op. at 3. Brown entered a conditional guilty plea and received a 120-month sentence. Slip op. at 3.

The Fifth Circuit panel affirmed the conviction. Slip op. at 5. The Fifth Circuit affirmed the conviction on two independent grounds. Slip op. at 5. First, the officer diligently pursued the traffic investigation without prolonging the stop. Slip op. at 5. The record shows a prompt request for identifying documents and questions concerning Brown's out-of-date

license. Slip op. at 5. All delay preceding the sniff stemmed from Brown's small talk, argument, and inability to locate proof of insurance, rather than any officer inaction or delay. Slip op. at 5. Furthermore, the sniff did not measurably extend the detention because the dog was already at the scene and alerted within one minute. Slip op. at 5. Consequently, the stop lasted no longer than necessary to accomplish its traffic purpose. Slip op. at 5.

Second, the panel found that reasonable suspicion of additional criminal activity independently justified the dog sniff. Slip op. at 5. The officer knew that colleagues were investigating a residence associated with narcotics trafficking, that Brown entered carrying a backpack and left after a few minutes, and that Brown reached toward the passenger seat while pulling over. Slip op. at 5. Although those circumstances might appear innocent individually, their combined force supplied a particularized, objective basis for suspecting criminal activity. Slip op. at 5. That alternative holding sustains the detention for the drug investigation even if the sniff extended the traffic stop. Slip op. at 5.

REASONS FOR GRANTING THE PETITION

Question 1:

When an officer defers routine traffic checks to pursue a drug investigation, does the Fourth Amendment permit a dog sniff based on the brevity of the sniff and the fact that the traffic checks remain pending, or does the officer need independent reasonable suspicion once the traffic mission reasonably should have ended?

Review is warranted to resolve competing interpretations of this Court's constitutional limits on unrelated investigative activity during a traffic stop. Sup. Ct. R. 10(c). One approach treats an unrelated inquiry as added detention when the inquiry interrupts traffic work and delays its completion. *See United States v. Campbell*, 26 F.4th 860, 884–85 (11th Cir. 2022) (en banc). Another line of cases permit brief inquiries within the time attributed to completing traffic tasks that remain unfinished. *United States v. Puckett*, 139 F.4th 730, 738–39 (8th Cir. 2025).

The panel found that the officer diligently pursued the traffic investigation and that the dog sniff did not prolong the stop. Slip op. at 5. Yet the license, registration, and warrant checks remained undone when the sniff began. ROA.309–10. Nonetheless, the lower court relied upon the dog's presence and quick alert without determining when reasonably diligent completion of the traffic tasks would have ended the detention.

Slip op. at 5. This leaves this Nation's courts split on how to determine when traffic tasks reasonably should have been completed. *See*, *e.g.*, *Puckett*, 139 F.4th at 738–39; *Campbell*, 26 F.4th at 884–85.

A. Under the strict diligence approach, an officer unlawfully prolongs a stop whenever an unrelated inquiry interrupts traffic tasks and delays their completion.

This Court has required that traffic tasks be completed with reasonable diligence, meaning accounting for the time lost when an officer interrupts those tasks to investigate another crime. *Rodriguez v. United States*, 575 U.S. 348, 354–57 (2015); *see also United States v. Baker,* 108 F.4th 1241, 1248 (10th Cir. 2024) ("[W]hen a dog sniff is conducted contemporaneously with an officer's 'reasonably diligent pursuit' of the traffic stop's mission—*i.e.*, while traffic-related tasks are ongoing—the search does not add time to the traffic stop."). Lower courts have focused on whether the traffic work would have been completed sooner without the interruption. *See Campbell*, 26 F.4th at 884–85. Unfinished traffic tasks do not themselves supply time for an unrelated inquiry. *Id.*

Applying that rule, appellate courts across the country have consistently held that any detour from the traffic mission prolongs the

stop, regardless of how early it occurs or how brief it lasts. Officers must continuously pursue the traffic mission, and even a brief investigative departure cannot justify additional detention without independent reasonable suspicion. *United States v. Hurtt*, 31 F.4th 152, 159–63 (3d Cir. 2022). For instance, halting citation paperwork to conduct a dog sniff unlawfully prolongs the encounter even when the interruption is brief and takes place early in the stop. *Commonwealth v. Smith*, 542 S.W.3d 276, 281–82 (Ky. 2018). Even 25 seconds of unrelated questioning constitutes an impermissible extension the moment it adds time to the traffic stop. *Campbell*, 26 F.4th at 884–85.

B. The authorities divide over whether brief investigative detours add constitutionally significant time.

The competing approach asks only whether the stop lasted longer than the total time reasonably needed for the traffic mission. *Puckett*, 139 F.4th at 738–39. Under this rule, a brief interruption is permissible because unfinished traffic tasks would have kept the driver detained anyway. *Id.* Unfinished traffic work thus gives officers free time to pursue unrelated investigations while the traffic mission waits. *Id.*

This approach asks only whether the stop lasted longer than the total time reasonably needed for the traffic mission. *Id.* Under this rule, a brief interruption is permissible because unfinished traffic tasks would have kept the driver detained anyway. *Id.* Twenty seconds of unrelated questioning were permitted because issuing a warning or citation and returning the driver to the vehicle still required time. *Id.* at 737–39. Unfinished traffic work thus gives officers a buffer to pursue unrelated investigations while the traffic mission waits. *Id.* at 738–39. Other authority gives decisive weight to the brevity of the detour, noting that questioning lasting only seconds ordinarily does not measurably prolong a stop. *United States v. Ross*, 151 F.4th 487, 495–96 (3d Cir. 2025). That analysis asks whether the interruption meaningfully extended the detention rather than whether it delayed the traffic work. *Id.* Although the judgment ultimately rested on officer safety, the reasoning illustrates how courts discount brief detours lasting only seconds so long as the overall stop remains within a reasonable timeframe. *Id.* at 495–99.

C. Brown's case provides a vehicle to resolve whether pausing unfinished traffic work for a brief investigation violates the Fourth Amendment.

The outcome here turns entirely on which rule governs. Under strict diligence, pausing the plate, registration, and warrant checks to conduct the dog sniff unlawfully prolonged the detention. *Campbell*, 26 F.4th at 884–85; ROA.309–10. Yet, under the permissive approach, those unfinished checks shielded the brief sniff from Fourth Amendment scrutiny because the traffic mission was not yet complete. *See* Slip op. at 5. Instead, this Court must resolve that conflict. Otherwise, Fourth Amendment protection during routine traffic stops will continue to depend on geography rather than constitutional commands. *Rodriguez*, 575 U.S. at 354–57; Sup. Ct. R. 10(c).

Question 2:

When an officer prolongs a traffic stop to investigate drug activity, does the Fourth Amendment permit continued detention based on circumstances that, even taken together, provide only a generalized basis for suspicion, or must those circumstances provide a particularized, objective basis for suspecting the driver of criminal activity?

Review is warranted because the decision permits an unparticularized hunch to satisfy the requirement of suspicion particularized to Brown. The decision also warrants review because considering the circumstances together cannot substitute for determining whether their combined force supplies an objective basis for suspecting Brown personally of criminal activity. Sup. Ct. R. 10(c); *United States v. Cortez*, 449 U.S. 411, 417–18 (1981).

The Fourth Amendment requires officers to possess an objective, particularized basis for suspecting the specific person detained of criminal activity. *Cortez*, 449 U.S. at 417–18. Evaluating the totality of the circumstances not only requires assessing the whole picture, but those inferences must connect the individual to the suspected wrongdoing. *United States v. Arvizu*, 534 U.S. 266, 273–77 (2002); *Cortez*, 449 U.S. at 417–18.

To uphold Brown's continued detention, the decision below considered: (1) the expected narcotics delivery to the residence, (2) residents at the apartment with drug histories, (3) brief visits by others,(4) an earlier departing driver arrested with methamphetamine, and (5) Brown's own brief visit with a backpack followed by a reach toward the passenger seat. Slip op. at 2, 5.

The investigation supplied substantial information about suspected activity at the residence, but no particularized details about Petitioner's participation. Slip op. at 2, 5. Probable cause to search premises and a suspected offender does not transfer to others who are merely present. *Ybarra v. Illinois*, 444 U.S. 85, 90–94 (1979). The same protection applies here: grounds to investigate drug sales at the surveilled location could not substitute for an objective basis to suspect Petitioner's own involvement. *Id.*; *Cortez*, 449 U.S. at 417–18.[2]

Moreover, another person's criminal conduct cannot substitute for an objective basis to suspect Brown's own participation in criminal activity. *Cortez*, 449 U.S. at 417–18; *United States v. Di Re*, 332 U.S. 581, 592–94

[2] Other decisions show why suspicion of a drug house does not establish reasonable suspicion of a person who visits it. *See, e.g., United States v. Bohman*, 683 F.3d 861, 864–66 (7th Cir. 2012); *State v. Doughty*, 239 P.3d 573, 575–77 (Wash. 2010).

(1948). As such, the possession of methamphetamine by another person who had left the residence could not substitute for an objective basis to particularize reasonable suspicion to Brown. *Cortez*, 449 U.S. at 417–18; *Di Re*, 332 U.S. at 592–94. Nor did Brown's association with the residents who were "selling narcotics" establish Brown's participation in drug activity. *Sibron v. New York*, 392 U.S. 40, 62–64 (1968). Finally, Brown's backpack did not provide an objective basis to suspect drug activity. A backpack's many innocent uses limit the inference that carrying one connects its owner to a suspected crime. *United States v. McKinney*, 980 F.3d 485, 494–95 (5th Cir. 2020).

Under this Court's holdings, Brown's brief visit, backpack must be assessed together with that investigative background. *Arvizu*, 534 U.S. at 274–77. Even evaluated together supplied nothing more than unparticularized hunch about Brown's involvement. *Arvizu*, 534 U.S. at 273–77; *Cortez*, 449 U.S. at 417–18. Review is warranted because the decision authorizes Brown's continued detention on the forbidden basis of an unparticularized hunch. Sup. Ct. R. 10(c); *Arvizu*, 534 U.S. at 273; *Cortez*, 449 U.S. at 417–18.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

LAW OFFICE OF STAN SCHWIEGER



Stan Schwieger
600 Austin Avenue, Suite 12
Waco, Texas 76701
(254) 752-5678
(254) 752-7792–Facsimile
State Bar No. 17880500
ATTORNEY FOR PETITIONER
Date: November 16, 2026

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
August 17, 2026
Lyle W. Cayce
Clerk

No. 25-50728
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

WILLIAM JEFFERSON BROWN, JR.,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 6:23-CR-177-1

Before CLEMENT, HAYNES, and RAMIREZ, *Circuit Judges*.[†]

PER CURIAM:[*]

William Jefferson Brown Jr. appeals his conviction for possessing a firearm as a convicted felon in violation of 18 U.S.C. § 922(g)(1). He argues that the district court should have suppressed evidence of the firearm

[†] Judge Haynes concurs in the judgment only.

[*] This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

because it was seized during an unconstitutionally prolonged traffic stop. Finding no error, we AFFIRM.

I

Brown was arrested after a traffic stop that arose from a narcotics surveillance operation. A detective received a tip from a confidential informant that narcotics were going to be delivered to and sold from a residence in Killeen, Texas, so the detective surveilled the residence. The detective learned that two brothers with extensive criminal history in selling narcotics lived at the residence. The informant had told the detective that he would leave the residence via rideshare because the informant was not allowed to be in the residence during narcotics deliveries. When the detective arrived at the residence, he observed the informant leave in a rideshare. Soon after, the detective watched several people park at the residence, walk into the house, stay for a minute or two, and then drive away. Based on his experience, the detective believed this behavior was indicative of narcotics sales.

As part of the operation, the detective dispatched officers to follow vehicles leaving the residence and stop them if they observed a traffic offense. The first driver officers stopped after leaving the residence was arrested for possession of methamphetamine. Shortly after that driver left the residence, the detective observed Brown park at the residence, exit his vehicle carrying a backpack, enter the residence, and leave after a few minutes. As Brown drove off, the detective radioed another officer, who followed Brown in an unmarked vehicle. That officer saw Brown fail to stop before a stop line and crosswalk. *See* TEX. TRANSP. CODE ANN. § 544.010(c). The officer then relayed that information to Officer Justin Asmus, a canine officer who was driving a marked vehicle.

Officer Asmus initiated a traffic stop. When Officer Asmus asked for Brown's license and proof of insurance, Brown immediately handed over his license, but he had to call his wife for the insurance information. Officer Asmus then asked Brown to step out of the vehicle and move to the sidewalk to talk. Brown initially refused, but he eventually exited the vehicle after calling his wife and arguing with Office Asmus for three minutes. Once out of the vehicle, Brown engaged Officer Asmus in unrelated conversation for two minutes while Officer Asmus conducted the traffic stop. Brown's wife then sent him proof of insurance, which Brown showed to Officer Asmus. Officer Asmus asked for consent to search Brown's vehicle; Brown declined.

Officer Asmus immediately informed Brown that he was going to conduct a dog sniff. Officer Asmus's dog alerted to the driver's side door of Brown's vehicle within one minute. Officer Asmus then searched Brown's vehicle, in which he found a revolver in Brown's backpack, but no narcotics. In all, fourteen minutes elapsed from the time Officer Asmus stopped Brown's vehicle to the moment the dog alerted.

Brown, who had previously been convicted of three felonies, was charged with unlawfully possessing a firearm in violation of 18 U.S.C. § 922(g)(1). Brown moved to suppress the firearm, arguing, in part, that it was seized in violation of the Fourth Amendment because Officer Asmus unreasonably prolonged the traffic stop. After a hearing, the magistrate judge recommended that the district court deny the motion. The district court adopted the recommendation over Brown's objection and denied the motion. Brown entered a conditional plea agreement, and the district court sentenced him to 120 months of imprisonment. Brown timely appealed.

II

On appeal, Brown argues that the district court erred in denying his motion to suppress because Officer Asmus did not diligently pursue, or

otherwise unreasonably prolonged, the traffic stop. We review the district court's findings of fact for clear error and its conclusions of law de novo. *United States v. Reyes*, 963 F.3d 482, 487 (5th Cir. 2020).

Traffic stops are seizures subject to the Fourth Amendment's protection "against unreasonable searches and seizures." U.S. CONST. amend. IV. We assess the reasonableness of a traffic stop under *Terry v. Ohio*, 392 U.S. 1 (1968), meaning we must determine if the stop was "justified at its inception" and "whether it was reasonably related in scope to the circumstances which justified the [stop] in the first place." *Id.* at 20; *see United States v. Andres*, 703 F.3d 828, 832 (5th Cir. 2013). Brown does not challenge the initial stop of his vehicle, so we must decide only whether the duration of the traffic stop was reasonable.

The purpose of a traffic stop is to address a traffic violation, so a stop "may last no longer than is necessary to effectuate that purpose." *Rodriguez v. United States*, 575 U.S. 348, 354 (2015) (cleaned up). "Authority for the seizure thus ends when tasks tied to the traffic infraction are—or reasonably should have been—completed." *Id.* Such tasks often include "checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance." *Id.* at 355. At bottom, "officers must diligently pursue the investigation of the traffic violation." *Reyes*, 963 F.3d at 487.

That said, an officer may take additional investigative steps unrelated to the purpose of the traffic stop, but "he may not do so in a way that prolongs the stop, absent the reasonable suspicion ordinarily demanded to justify detaining an individual." *Rodriguez*, 575 U.S. at 354. "If the officer develops reasonable suspicion of [additional criminal] activity 'in the course of the stop and before the initial purpose of the stop has been fulfilled, then the detention may continue until the new reasonable suspicion has been dispelled

or confirmed.'" *Reyes*, 963 F.3d at 487–88 (quoting *United States v. Banuelos-Romero*, 597 F.3d 763, 767 (5th Cir. 2010)).

Here, Officer Asmus did not prolong the traffic stop, and he diligently pursued his investigation of Brown's alleged traffic violation. Officer Asmus promptly requested Brown's license and registration, and he questioned Brown about his out-of-date driver's license. Before Officer Asmus initiated the dog sniff, any delays in the traffic stop were attributable to Brown's small talk, arguing, and inability to locate his proof of insurance, not Officer Asmus's inaction or delay. And the dog sniff did not "measurably extend the duration of the stop" because Officer Asmus's dog was already on the scene and alerted within one minute. *Rodriguez*, 575 U.S. at 355 (quoting *Arizona v. Johnson*, 555 U.S. 323, 333 (2009)). Thus, the stop lasted no longer than necessary to effectuate its purpose. *See id.* at 354.

Moreover, the dog sniff was independently justified because it was "supported by reasonable suspicion of additional criminal activity." *Reyes*, 963 F.3d at 487. Officer Asmus knew that his colleagues were investigating a residence associated with narcotics trafficking. He also knew that Brown had entered the residence carrying a backpack, stayed for a few minutes, and drove away. When Officer Asmus pulled Brown over, he saw Brown reach over to secure something in the passenger seat. These factors "by themselves may appear innocent," but "in the aggregate," they provided Officer Asmus "a particularized and objective basis for suspecting criminal activity." *Id.* at 488 (quoting *United States v. Ibarra-Sanchez*, 199 F.3d 753, 759 (5th Cir. 1999)).

III

Officer Asmus did not violate the Fourth Amendment because he did not unreasonably prolong the traffic stop, and the dog sniff was supported by reasonable suspicion. We AFFIRM.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

August 17, 2026

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing or Rehearing En Banc

No. 25-50728 USA v. Brown
USDC No. 6:23-CR-177-1

Enclosed is a copy of the court's decision. The court has entered judgment under Fed. R. App. P. 36. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

Fed. R. App. P. 39 through 41, and Fed. R. App. P. 39, 40, and 41 govern costs, rehearings, and mandates. **Fed. R. App. P. 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order.** Please read carefully the Internal Operating Procedures (IOP's) following Fed. R. App. P. 40 for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

Direct Criminal Appeals. Fed. R. App. P. 41 provides that a motion for a stay of mandate under Fed. R. App. P. 41 will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under Fed. R. App. P. 41. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Court Appointed Counsel. Court appointed counsel is responsible for filing petition(s) for rehearing(s) (panel and/or en banc) and writ(s) of certiorari to the U.S. Supreme Court, unless relieved of your obligation by court order. If it is your intention to file a motion to withdraw as counsel, you should notify your client promptly, **and advise them of the time limits for filing for rehearing and certiorari**. Additionally, you MUST confirm that this information was given to your client, within the body of your motion to withdraw as counsel.

Sincerely,

LYLE W. CAYCE, Clerk

By: _____
Melissa B. Courseault, Deputy Clerk
504-310-7701

Enclosure(s)

Mr. Alan M. Buie
Mr. Zachary Carl Richter
Mr. Stanley Lee Schwieger

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION

UNITED STATES OF AMERICA

v.

Case Number: 6:23-CR-00177(1)- ADA
USM Number: 20391-509

William Jefferson Brown Jr.

Defendant.

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

The defendant, William Jefferson Brown Jr., was represented by Alexander L. Calhoun (CJA Appointed).

The defendant pled guilty to Count(s) One (1) of the Indictment on March 18, 2025. Accordingly, the defendant is adjudged guilty of such Count(s), involving the following offense(s):

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. §§ 922(g)(1) and 924(a)(8)	Possession of a Firearm by a Convicted Felon	September 7, 2023	One (1)

As pronounced on August 27, 2025, the defendant is sentenced as provided in pages 2 through 6 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the Court and United States Attorney of material changes in economic circumstances.

Signed this 28th day of August, 2025.

ALAN D. ALBRIGHT
United States District Judge

APPENDIX "B"

DEFENDANT: William Jefferson Brown Jr.
CASE NUMBER: 6:23-CR-00177(1)-ADA

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of **ONE HUNDRED AND TWENTY (120) MONTHS as to count One (1).**

The Court makes the following recommendation to the Bureau of Prisons:

That the defendant serve this sentence at the F. C. I., in Fort Worth, Texas.

That the defendant serve this sentence consecutively to the sentence imposed in revocation in TXWD case 6:20-CR-148.

RETURN

I have executed this judgment as follows:

_____

_____

_____

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

_____

UNITED STATES MARSHAL

_____

By
DEPUTY UNITED STATES MARSHAL

DEFENDANT: William Jefferson Brown Jr.
CASE NUMBER: 6:23-CR-00177(1)-ADA

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **THREE (3) YEARS as to count One (1).**

While on supervised release, the defendant shall comply with the mandatory, standard and if applicable, the special conditions that have been adopted by this Court, and shall comply with the following additional conditions:

__X__ The defendant shall submit his or her person, property, house, residence, vehicle, papers, computers (as defined in 18 U.S.C. §1030(e)(1)), other electronic communications or data storage devices or media, or office, to a search conducted by a United States probation officer. Failure to submit to a search may be grounds for revocation of release. The defendant shall warn any other occupants that the premises may be subject to searches pursuant to this condition. The probation officer may conduct a search under this condition only when reasonable suspicion exists that the defendant has violated a condition of supervision and that the areas to be searched contain evidence of this violation. Any search shall be conducted at a reasonable time and in a reasonable manner.

__X__ The defendant shall submit to substance abuse testing to determine if the defendant has used a prohibited substance. The defendant shall not attempt to obstruct or tamper with the testing methods. The defendant shall pay the costs of testing if financially able.

__X__ The defendant shall participate in a mental health treatment program and follow the rules and regulations of that program. The probation officer, in consultation with the treatment provider, shall supervise participation in the program (provider, location, modality, duration, intensity, etc.). The defendant shall pay the costs of such treatment if financially able.

__X__ The defendant shall take all mental health medications that are prescribed by the treating physician, as prescribed.

__X__ The defendant shall not communicate, or otherwise interact, with any known member of the **Gangster Disciples** gang, without first obtaining the permission through The Court.

__X__ The defendant shall reside in a residential reentry center for a term of up to six (6) months. The defendant shall follow the rules and regulations of the center. Further, once employed the defendant shall pay 25% of his/her weekly gross as long as it does not exceed the contract rate.

DEFENDANT: William Jefferson Brown Jr.
CASE NUMBER: 6:23-CR-00177(1)-ADA

CONDITIONS OF SUPERVISION

Mandatory Conditions:

[1] The defendant shall not commit another federal, state, or local crime during the term of supervision.

[2] The defendant shall not unlawfully possess a controlled substance.

[3] The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release on probation or supervised release and at least two periodic drug tests thereafter (as determined by the court), but the condition stated in this paragraph may be ameliorated or suspended by the court if the defendant's presentence report or other reliable sentencing information indicates low risk of future substance abuse by the defendant.

[4] The defendant shall cooperate in the collection of DNA as instructed by the probation officer, if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. § 14135a).

[5] If applicable, the defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et. seq.*) as instructed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which the defendant resides, works, is a student, or was convicted of a qualifying offense.

[6] If convicted of a domestic violence crime as defined in 18 U.S.C. § 3561(b), the defendant shall participate in an approved program for domestic violence.

[7] If the judgment imposes a fine or restitution, it is a condition of supervision that the defendant pay in accordance with the Schedule of Payments sheet of the judgment.

[8] The defendant shall pay the assessment imposed in accordance with 18 U.S.C. § 3013.

[9] The defendant shall notify the court of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay restitution, fines or special assessments.

Standard Conditions:

[1] The defendant shall report to the probation office in the federal judicial district where he or she is authorized to reside within 72 hours of release from imprisonment, unless the probation officer instructs the defendant to report to a different probation office or within a different time frame.

[2] After initially reporting to the probation office, the defendant will receive instructions from the court or the probation officer about how and when to report to the probation officer, and the defendant shall report to the probation officer as instructed.

[3] The defendant shall not knowingly leave the federal judicial district where he or she is authorized to reside without first getting permission from the court or the probation officer.

[4] The defendant shall answer truthfully the questions asked by the probation officer.

[5] The defendant shall live at a place approved by the probation officer. If the defendant plans to change where he or she lives or anything about his or her living arrangements (such as the people the defendant lives with), the defendant shall notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, the defendant shall notify the probation officer within 72 hours of becoming aware of a change or expected change

[6] The defendant shall allow the probation officer to visit the defendant at any time at his or her home or elsewhere, and the defendant shall permit the probation officer to take any items prohibited by the conditions of the defendant's supervision that are observed in plain view.

DEFENDANT: William Jefferson Brown Jr.
CASE NUMBER: 6:23-CR-00177(1)-ADA

[7] The defendant shall work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses the defendant from doing so. If the defendant does not have full-time employment, he or she shall try to find full-time employment, unless the probation officer excuses the defendant from doing so. If the defendant plans to change where the defendant works or anything about his or her work (such as the position or job responsibilities), the defendant shall notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, the defendant shall notify the probation officer within 72 hours of becoming aware of a change or expected change.

[8] The defendant shall not communicate or interact with someone the defendant knows is engaged in criminal activity. If the defendant knows someone has been convicted of a felony, the defendant shall not knowingly communicate or interact with that person without first getting the permission of the probation officer.

[9] If the defendant is arrested or questioned by a law enforcement officer, the defendant shall notify the probation officer within 72 hours.

[10] The defendant shall not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified, for the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).

[11] The defendant shall not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.

[12] If the probation officer determines that the defendant poses a risk to another person (including an organization), the probation officer may require the defendant to notify the person about the risk and the defendant shall comply with that instruction. The probation officer may contact the person and confirm that the defendant has notified the person about the risk.

[13] The defendant shall follow the instructions of the probation officer related to the conditions of supervision.

[14] If the judgment imposes other criminal monetary penalties, it is a condition of supervision that the defendant pay such penalties in accordance with the Schedule of Payments sheet of the judgment.

[15] If the judgment imposes a fine, special assessment, restitution, or other criminal monetary penalties, it is a condition of supervision that the defendant shall provide the probation officer access to any requested financial information.

[16] If the judgment imposes a fine, special assessment, restitution, or other criminal monetary penalties, it is a condition of supervision that the defendant shall not incur any new credit charges or open additional lines of credit without the approval of the probation officer, unless the defendant is in compliance with the payment schedule.

[17] If the defendant is excluded, deported, or removed upon release on probation or supervised release, the term of supervision shall be a non-reporting term of probation or supervised release. The defendant shall not illegally re-enter the United States. If the defendant is released from confinement or not deported, or lawfully re-enters the United States during the term of probation or supervised release, the defendant shall immediately report in person to the nearest U.S. Probation Office.

DEFENDANT: William Jefferson Brown Jr.
CASE NUMBER: 6:23-CR-00177(1)-ADA

CRIMINAL MONETARY PENALTIES/SCHEDULE

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth. Unless the Court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment.

Criminal Monetary Penalties, except those payments made through Federal Bureau of Prisons' Inmate Financial Responsibility Program, shall be paid through the Clerk, United States District Court, Attn: Mail Log, 800 Franklin, Suite 380, Waco, TX, 76701 or online by Debit (credit cards not accepted) or ACH payment (direct from Checking or Savings Account) through Pay.gov (link accessible on the landing page of the U.S. District Court's Website). **Your mail-in or online payment must include your case number in the exact format of DTXW623CR000177-001 to ensure proper application to your criminal monetary penalty**. The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

If the defendant is not now able to pay this indebtedness, the defendant shall cooperate fully with the office of the United States Attorney, the Federal Bureau of Prisons and/or the United States Probation Office to make payment in full as soon as possible, including during any period of incarceration. Any unpaid balance at the commencement of a term of probation or supervised release shall be paid on a schedule of monthly installments to be established by the U.S. Probation office and approved by the Court.

	Assessment	Fine	Restitution	AVAA Assessment*	JVTA Assessment**
TOTAL:	$100.00	$500.00	$0.00	$0.00	$0.00

Special Assessment

It is ordered that the defendant shall pay to the United States a special assessment of $100.00. The debt is incurred immediately.

Fine

The defendant shall pay a fine of $ 500.00. The Court finds the defendant has the present and future ability to pay a reduced fine. This is the total of the fines imposed on individual counts, as follows; $ 500.00 on Count One (1).

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column above. However, pursuant to 18 U.S.C. § 3664(i), all non-federal victims must be paid before the United States is paid.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. §3614.

The defendant shall pay interest on any fine or restitution of more than $2,500.00, unless the fine or restitution is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. §3612(f). All payment options may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. §3612(g).

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

UNITED STATES OF AMERICA, ***Plaintiff,***	§	
	§	
	§	**CASE NO. 6:23-CR-00177-ADA**
v.	§	**6:20-CR-00148-ADA**
	§	
WILLIAM JEFFERSON BROWN, ***Defendant***	§	
	§	
	§	

ORDER ADOPTING MAGISTRATE
JUDGE'S REPORT AND RECOMMENDATION

Before the Court is the Report and Recommendation of United States Magistrate Judge Derek T. Gilliland ECF No. 46 for Case No. 6:23-CR-00177 and ECF No. 77 for Case No. 6:20-CR-148 regarding Defendant's Motion to Suppress ECF No. 31 in Case No. 6:23-CR-00177 and ECF No. 61 in 6:20-CR-00148.The report recommends that the Defendant's Motion to Suppress be **DENIED**. The report and recommendation was filed on September 9, 2024.

A party may file specific, written objections to the proposed findings and recommendations of the magistrate judge within fourteen days after being served with a copy of the report and recommendation, thereby securing *de novo* review by the district court. 28 U.S.C. § 636(b); Fed. R. Civ. P. 72(b).

Defendant filed objections on September 30, 2024 and November 21, 2024. ECF No. 50 in Case No. 6:23-CR-00177, ECF No. 82 in Case No. 6:20-CR-00148. The Court has conducted a *de novo* review of the Defendant's Motion to Suppress, the responses, the report and recommendation, the objections to the report and recommendation, and the applicable laws. After that thorough review, the Court is persuaded that the Magistrate Judge's findings and recommendation should be adopted.

.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION

UNITED STATES OF AMERICA,	§	
	§	
Plaintiff,	§	
	§	
v.	§	**CASE NO. 6:23-CR-00177-ADA**
	§	**6:20-CR-00148-ADA**
(1) WILLIAM JEFFERSON BROWN JR.,	§	
	§	
	§	
Defendant.	§	

REPORT AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE

TO: THE HONORABLE ALAN D ALBRIGHT, UNITED STATES DISTRICT JUDGE

This Report and Recommendation is submitted to the Court pursuant to 28 U.S.C. § 636(b)(1)(c) and Rules 1(h) and 4(b) of Appendix C of the Local Rules of the United States District Court for the Western District of Texas, Local Rules for the Assignment of Duties to United States Magistrate Judges.

Before the Court is Defendant's Motion to Suppress. ECF No. 31 in Case No. 6:23-CR-00177 and ECF No. 61 in 6:20-CR-00148-ADA. The United States responded, and the Court heard oral arguments on Defendant's Motion on July 24, 2024. The Government called four witnesses: Detectives Roderick Mack, Detective Christopher Heeder, Officer Justin Asmus of the City of Killeen Police Department, and Officer Jeremy Stevens of the Baytown Police Department. The Court admitted four exhibits from the Government: Exhibit 1, body camera video footage from Officer Asmus; Exhibit 2, Killeen Police Department radio recording; Exhibit 3, Police Service Dog Certification Record from the National Narcotic Detector Dog Association Inc. ("NNDDA"); and Exhibit 4, Narcotics Certification Record from the NNDDA.

Defendant did not call any witnesses. For the reasons discussed below, the undersigned **RECOMMENDS** that Defendant's Motion to Suppress be **DENIED**.

I. BACKGROUND

Brown is charged with the offense of being a felon in possession of a firearm, in violation of 18 U.S.C. Sections 922(g)(1) and 924(a)(8) in Case No. 6:23-CR-00177, and with a Motion to Revoke his Supervised Release in 6:20-CR-00148-ADA based on this same firearm charge. Those charges all stem from a traffic stop that occurred on September 7, 2023 and ended in the arrest of Defendant William Jefferson Brown, Jr. ECF No. 31 at 1.

At the suppression hearing, the Government heard the testimony of the Government's four witnesses. Detective Mack testified that earlier in the day on September 7, 2023, he received a call from a confidential informant stating that narcotics were to going to be delivered to and sold from a residence in Killeen. The confidential informant was in the residence at the time of call. Detective Mack set up surveillance of the residence with support from Detective Heeder and Officer Asmus. Detective Mack observed the vehicles parked at the residence, ran their license plates and residence information through the police databases, which came back showing the residence's owners being two brothers that had extensive criminal histories involving the sale of narcotics. Detective Mack also testified that the informant stated that he was at the residence but would be leaving by a rideshare before the narcotics were to arrive. Detective Mack observed the informant leave the residence in a vehicle that appeared to be a rideshare vehicle. Detective Mack testified that he then observed several people enter and leave the residence during an approximately two minutes period. Based on his training, Detective Mack believed the conduct had the hallmarks of narcotic sales. Detective Mack testified that the standard procedure for a

narcotics surveillance operation is to surveil vehicles after they leave the residence and, if they observe a traffic violation, use a marked police car to make a stop.

As a result of the surveillance, Defendant Brown was the second person stopped after visiting the residence. Detective Mack testified that another individual who had left the residence was stopped and arrested for possession of methamphetamine before Defendant Brown was stopped. Shortly after that individual left the residence, Detective Mack observed Defendant Brown arrive at the residence, get out of his vehicle carrying a backpack, and go into the residence. Detective Mack stated that the backpack was consistent with drug trafficking to occur in the house. After staying only a few minutes, Defendant Brown exited the residence, still carrying the backpack, and drove away. Detective Mack then radioed his colleague, Detective Heeter, and told him that Defendant Brown left the residence and gave him the description of Defendant Brown's vehicle.

Detective Heeter saw Defendant Brown commit a traffic violation. Detective Heeter testified that he followed Defendant Brown in an unmarked police vehicle. As he followed Defendant Brown, Detective Heeter saw Defendant Brown fail to stop at a designated stopping point at the intersection of Westcliff and 60th streets. Detective Heeter stated that Brown failed to stop before the crosswalk and the stop line, which is a violation of the Texas Traffic Code. Detective Heeter relayed the traffic violation by radio to K9 Officer Asmus.

After being told of the infraction, Officer Asmus stopped Defendant Brown. After Detective Heeter relayed the traffic violation to Officer Asmus, Officer Asmus initiated a traffic stop. He asked for Defendant Brown's driver's license and proof of insurance, but Brown could only provide the license. *See* Exhibit 1 (Asmus body cam footage) at 1:36. For the next two minutes, Officer Asmus asked Defendant Brown about his actual address and the address listed

on his driver's. Officer Asmus also continued to ask for proof of insurance. See Ex. 1 at 1:36-3:42. Defendant Brown said that he would need to text his wife to get proof of insurance. Officer Asmus asked Defendant Brown to exit the vehicle and move to the sidewalk area for safety purposes. Exhibit 1 at 3:43. Defendant Brown initially refused to step out of the vehicle, called his wife, and argued with Officer Asmus about whether he needed to exit the vehicle. *See* Ex. 1 at 3:43-6:37. Defendant Brown finally agreed to exit the vehicle about six and a half minutes into the traffic stop—at the 6:40 mark of the body cam footage. For the next two minutes, Defendant Brown engaged in a continuous conversation with Officer Asmus. Ex. 1 at 6:37-8:30. Defendant Brown then explained to Officer Asmus that he was reaching for a bag when he was initially pulled over, he then continued to engage Asmus in conversation, and about ten minutes into the stop—10:10 mark of the body cam footage—Brown's wife sent a screenshot of Brown's proof of insurance that was shown to Asmus. Ex 1 at 8:30-10:10.

Over the next few minutes, Officer Asmus conducted additional inquiries of Defendant Brown. He asked Defendant Brown if there were any weapons, narcotics, or cash in the vehicle, which Brown denied. Ex 1 at 10:10-12:13. About twelve minutes into the stop—at the 12:14 mark on the footage—Asmus asks for consent to search the vehicle, which Brown denies. Officer Asmus then tells Brown that he is going have his canine perform a free-air sniff of the car, which began approximately 13 minutes into the stop. Officer Asmus canine alerted on the driver's side door of the car approximately 14 minutes into the stop. Ex 1 at 14:01. Based on the alert, Officer Asmus searched the car and found a Colt Python .357 revolver in a backpack in the passenger side of the vehicle. Asmus then ran a driver's license check, warrant check, registration check, and criminal history check that showed that Defendant Brown was a convicted felon. Officer Asmus testified that he was unable to do the background searches before

the dog search occurred because he had been occupied with trying to get Defendant Brown out of the vehicle and obtaining proof of insurance. Officer Asmus testified that as a K-9 Officer, he runs the dog as part of a traffic stop and that he considered running the dog on Mr. Brown's car to be part of the traffic stop. He also testified that a great deal of the time spent on Defendant Brown's traffic stop was because of Defendant Brown's conduct as he was very talkative and took a while to get proof of insurance from his wife. .

The government proved up the narcotics dog's qualifications at the hearing. Officer Asmus testified to his dog's training and qualifications. Asmus testified that he and his dog, Lincy, had been together for 3 years. Officer Asmus and Linsy completed a 9 week handling academy training for both (1) narcotics detection and (2) general police service dog work, such as detecting objects and odors. Lincy was certified and recertified by the NNDDA in these areas. *See* Exhibits 3 and 4 (certification records). Officer Asmus testified that Linsy's reliability rating in 2022 was 78%, with 59 alerts that resulted in a find, compared to 13 without a find. The government also called Officer Stevens who testified that he certified Officer Asmus and Linsy, in 2021, recertified them in 2022, 2023, and 2024, and explained the certification tests in Exhibits 3 and 4.

II. LEGAL STANDARD

This Motion involves the Fourth Amendment and its protection against unreasonable searches and seizures. The protection of the Fourth Amendment "extends to vehicle stops and temporary detainment of a vehicle's occupants." *United States v. Andres*, 703 F.3d 828, 832 (5th Cir. 2013). A traffic stop is more analogous to a *Terry* stop than to a formal arrest. *Rodriguez v. United States*, 575 U.S. 348, 354 (2015); *see also Terry v. Ohio*, 392 U.S. 1 (1968). Under the two-part *Terry* reasonable suspicion inquiry, Courts must determine whether the officer's action

was: (1) "justified at its inception"; and (2) "reasonably related in scope to the circumstances which justified the interference in the first place." *U.S. v. Lopez-Moreno*, 420 F.3d 420, 430 (5th Cir. 2005) (citing *Terry*, 392 U.S. at 19–20).

The length of a stop cannot be indefinite. As with *Terry* stops, "the tolerable duration of police inquiries in the traffic-stop context is determined by the seizure's 'mission'—to address the traffic violation that warranted the stop and attend to related safety concerns." *Rodriguez*, 575 U.S. at 354 (internal citations omitted). A traffic stop "may last no longer than necessary to address the traffic violation, and constitutional authority for the seizure 'ends when tasks tied to the traffic infraction are—or reasonably should have been—completed.'" *United States v. Reyes*, 963 F.3d 482, 487 (5th Cir. 2020) (quoting *Rodriguez*, 575 U.S. at 354). Those tasks include "checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance." *Rodriguez*, 575 U.S. at 355. "Officers may ask questions unrelated to the purpose of the stop while waiting for computer checks to process. But officers must diligently pursue the investigation of the traffic violation." *U.S. v. Reyes*, 963 F.3d 482, 487 (5th Cir. 2020) (internal citations omitted).

III. ARGUMENT

Defendant Brown argues the evidence should be suppressed for four reasons. First, he contends that the traffic stop lacked reasonable suspicion or probable cause. Second, he contends that the traffic stop was unreasonably prolonged beyond what was necessary. Third, he argues that the canine gave a positive alert to the presence of narcotics in the car, but no narcotics were found. Finally, Defendant Brown contends that the evidence should be suppressed as to his violation of supervised release and its revocation hearing. The Court takes each argument in turn.

A. The traffic stop did not lack reasonable suspicion or probable cause.

Defendant Brown first argues that "the traffic stop lacked reasonable suspicion or probable cause." ECF No. 61 at 2-3. Defendant Brown claims that Officer Asmus did not personally observe the alleged traffic infarction, the stop was pretextual, and an evidentiary hearing is needed to establish that there was reasonable suspicion. ECF No. 31 at 3-4. Defendant Brown's motion concedes, and the testimony and evidence at the hearing confirmed, that Defendant Brown was stopped only after Detective Heeter observed Brown failing to properly stop at an intersection. Detective Heeter relayed that traffic violation to Officer Asmus.

In light of the evidence and case law, the Court is convinced that Defendant Brown was stopped for a legitimate traffic infraction. "For a traffic stop to be justified at its inception, an officer must have an objectively reasonable suspicion that some sort of illegal activity, *such as a traffic violation*, occurred, or is about to occur, before stopping the vehicle." *U.S. v. Lopez-Moreno*, 420 F.3d 420, 430 (5th Cir. 2005) (emphasis added). The traffic stop was therefore justified. That Officer Asmus did not personally observe the traffic violation does not change that. Reasonable suspicion to stop a vehicle can be based on information relayed to Officer Asmus by another officer. ECF No. 61 at 3; citing *U.S. v. Zuniga*, 860 F.3d 276, 282 (5th Cir. 2017). Defendant Brown's argument that the traffic stop was pretextual does not change this result. *See e.g. U.S. v. Escalante*, 239 F.3d 678, 680–81 (5th Cir. 2001) ("a traffic stop, even if pretextual, does not violate the Fourth Amendment if the officer making the stop has 'probable cause to believe that a traffic violation has occurred.') (citing *Whren v. United States,* 517 U.S. 806 (1996)). The traffic stop was justified at its inception based on Detective Heeter's credible testimony that Brown failed to stop at the appropriate location.

B. The traffic stop was not unreasonably prolonged.

Brown next argues that "traffic stop was unreasonably prolonged beyond what was necessary to effectuate any legal basis for the stop." ECF No. 31 at 4. Relying on the Supreme Court's decision in *Rodriguez v. United States*, 575 U.S. 348, 355 (2015), Brown argues that the dog sniff "either delayed the stop or resulted from the officer's failure to expeditiously conduct the routine tasks permissible as part of a traffic violation." ECF No. 31 at 5.

The Supreme Court outlined the requirements for the length of a traffic stop in *Rodriguez*. It stated that a traffic stop may last no longer than necessary to address the traffic violation, and constitutional authority for the seizure "ends when tasks tied to the traffic infraction are—or reasonably should have been—completed." *Rodriguez v. United Stat*es, 575 U.S. 348, 354 (2015). Those tasks include "checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance." *Id.* at 355. By contrast, a dog sniff is not part of an ordinary traffic stop because it is directed not at traffic safety but "detecting evidence of ordinary criminal wrongdoing." *Id.* at 355–56.

That does not mean, however, that an officer is restricted from doing anything else during a traffic stop. During a traffic stop, officers may conduct additional investigations provided they diligently conduct the investigation of the traffic violation. *United States v. Reyes*, 963 F.3d 482, 487 (5th Cir. 2020). Officers cannot prolong a traffic stop just to conduct an additional investigation unrelated to the traffic violation, unless they have reasonable suspicion of other criminal conduct. *Id.* Where an "officer develops reasonable suspicion of [additional criminal] activity 'in the course of the stop and before the initial purpose of the stop has been fulfilled, then the detention may continue until the new reasonable suspicion has been dispelled or

confirmed.'" *Id.* at 487–88 (quoting *United States v. Banuelos-Romero*, 597 F.3d 763, 767 (5th Cir. 2010)).

Reasonable suspicion requires consideration of all the facts and circumstances. To have a reasonable suspicion, an "'officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.'" *Reyes*, 963 F.3d at 488 (quoting *Terry v. Ohio*, 392 U.S. 1, 21 (1968)). This standard "takes into account the totality of the circumstances—the whole picture." *Kansas v. Glover*, 140 S. Ct. 1183, 1191 (2020). The reasonable suspicion standard requires "considerably less than proof of wrongdoing by a preponderance of the evidence, and obviously less than is necessary for probable cause." *Id.* at 1187 (2020) (internal quotation marks omitted).

Defendant Brown's argument fails because he was not detained beyond what was necessary for the traffic violation. Officer Asmus's testimony, and the video evidence submitted at the suppression hearing, showed that Officer Asmus had not concluded his traffic stop investigation when the dog sniff occurred. The majority of time spent on the traffic stop was because of Defendant Brown's conduct—inability to locate proof of insurance and a great deal of talking by Defendant Brown. The video shows that between Defendant Brown questioning Officer Asmus about having to exit the vehicle, Defendant Brown's delay in locating proof of insurance, and Defendant Brown engaging in small talk, Officer Asmus had not had the chance to conduct any investigation into Defendant Brown's license, insurance status, or warrant status. The Court finds that any delay up to the 13-minute mark of the traffic stop was primarily Mr. Brown's own doing, and the dog-sniff was conducted within a minute after that.

Defendant Brown's suppression motion fails for a second reason, as the dog sniff was supported by a reasonable suspicion of additional criminal activity. The testimony at the

suppression hearing showed that the officers were engaged in a drug interdiction and revealed several pieces of evidence supporting a reasonable suspicion, including the following:

- a review of the vehicles located at the residence came back with the identified owners being two brothers that had extensive criminal histories involving the sale of narcotics;
- a criminal informant contacted Detective Mack from inside the residence and told Detective Mack that narcotics were to be exchanged in the residence after the informant had left that day;
- Detective Mack saw the informant leave the residence as the informant said he would;
- Detective Mack saw several individuals visit the residence for very brief periods of times, which was consistent with narcotics dealing;
- Detective Mack's testified that another individual who was observed visiting the residence before Mr. Brown had been pulled over found in possession of methamphetamine;
- Defendant Brown was seen visiting the residence briefly while carrying a backpack, which was consistent with narcotics dealing; and
- While Mr. Brown was being pulled over, Officer Asmus observed Mr. Brown reaching over to secure something in the passenger area

Officer Asmus testified that he knew a narcotics interdiction investigation was taking place, he was in communication with his colleagues about what was occurring in the investigation, and based on the totality of the circumstances listed above, based on his training and experience he had a reasonable suspicion that Defendant Brown was engaged in other criminal activity beyond the traffic violation.

The Government argues that this case is analogous to *United States v. Reyes* and that Officer Asmus had a reasonable suspicion to justify extending a traffic stop. 963 F.3d at 485–86. In *Reyes*, an officer stopped a truck for speeding and called a canine unit about eight and a half minutes into the traffic stop. The canine unit did not arrive until about 32 minutes after the start

of the traffic stop. *United States v. Reyes*, No. 1:18-CR-054-C-1, Dkt. No. 127 at 23 (N.D. Tex. Apr. 25, 2019). The Fifth Circuit found that the government had presented specific and articulable facts to support the officer's reasonable suspicion. *Id.* at 488. Those facts included that the truck was on a drug-trafficking corridor and came from a city that was a known source of narcotics. The truck was not registered to the driver and had a temporary plate for a different state—activity that drug couriers engage in to avoid forfeiture. The driver was protective of the truck and initially refused to exit it. The driver offered inconsistent and implausible stories about the purpose of her travel. The driver had a conviction for methamphetamine. The driver responded evasively when asked if there was anything illegal in the truck; and the officer who stopped the truck drew on his training, education, and experience in narcotics interdiction and his familiarity with the area to determine there was a reasonable suspicion. *Id.* at 488–89. The Court agrees that this case is analogous to *Reyes* and that Officer Asmus has presented sufficient specific and articulable facts that clears the burden for a reasonable suspicion. *See also United States v. Pack*, 612 F.3d 341, 344 (5th Cir. 2010), *opinion modified on denial of reh'g,* 622 F.3d 383 (5th Cir. 2010) (finding reasonable suspicion to wait for a narcotics dog under similar circumstances).

The evidence adduced here justified the dog sniff. The evidence demonstrates that there was no delay in engaging the canine search because Asmus had the dog with him. The totality of the circumstances also demonstrate that Officer Asmus had a reasonable suspicion that justified any delay associated with the dog sniff. That is well within this Circuit's guidance provided in *Reyes* and *Pack*.

C. The dog alert gave probable cause to search Brown's car.

Defendant Brown also challenges the dog's reliability and requested an evidentiary hearing to determine whether Officer Asmus had sufficient basis to rely on the dog to establish probable cause. ECF No. 31 at 8. When a dog's alert is the basis for probable cause, as it is here, the question is not whether narcotics were actually found, but rather whether all of the facts surrounding the alert "would make a reasonably prudent person think that a search would reveal contraband or evidence of a crime." *Florida v. Harris*, 568 U.S. 237, 248 (2013).

The Government presented evidence to show that the dog was certified by the National Narcotic Detector Dog Association Inc. ("NNDDA") in each of the past four years. Exhibits 3 and 4. Officer Stevens testified as to the training process and the dog's certification. Officer Asmus also testified to the dog's certifications and success rate. This is sufficient to provide probable cause for the search even though narcotics were never found. *See Harris*, 568 U.S. at 246-48 (upholding a search even though the substances on which the dog was trained were not found, but other illegal substances were found). Mr. Brown did not present any evidence to undermine the dog's reliability. *U.S. v. Daniel*, No. 23-30491, 2024 WL 1929013, at *5 (5th Cir. May 2, 2024). The Court therefore finds that the dog's alert was not unreliable, and Officer Asmus has a reliable basis to rely on his dog's alert.

D. The Exclusionary Rule does not extend to revocation hearings.

Brown also seeks to exclude evidence of the firearm in his supervised release revocation proceeding. While Brown's brief does not articulate the point, by filing the motion in the supervised release proceeding, he is arguing that the exclusionary rule should extend to revocation hearings. The Government responds by stating that the exclusionary rule does not apply to revocation hearings. ECF No. 34 at 6.

The Court agrees that the exclusionary rule does not apply to Brown's supervised release revocation proceeding. The Fifth Circuit has been clear that absent a showing of police harassment, which is not applicable here, the exclusionary rule does not extend to revocation proceedings. *See United States v. Montez*, 952 F.2d 854, 857–59 (5th Cir. 1992) (holding "that the value to society of safely reintegrating former prisoners clearly outweighs whatever marginal benefit which might accrue from extending the exclusionary rule to supervised release revocation hearings which do not involve harassment"). At the suppression hearing, Brown's counsel conceded this point and was unable to find any contrary case law. As such, the exclusionary rule does not extend to Brown's revocation matter, and the Court **RECOMMENDS DENYING** Mr. Brown's suppression motion in his supervised release revocation proceeding, 6:20-CR-00148-ADA.

RECOMMENDATION

The Court **RECOMMENDS DENIAL** of Defendant's Motion to Suppress in both cases: 6:23-CR-00177 and 6:20-CR-00148-ADA. The parties may wish to file objections to this Report and Recommendation. A party filing objections must specifically identify those findings or recommendations to which objections are being made. The District Court need not consider frivolous, conclusive, or general objections. *See Battle v. U.S. Parole Comm'n*, 834 F.2d 419, 421 (5th Cir. 1987). A party's failure to file written objections to the proposed findings and recommendations contained in this Report within fourteen (14) days after the party is served with a copy of the Report shall bar that party from de novo review by the District Court of the proposed findings and recommendations in the Report and, except upon grounds of plain error, shall bar the party from appellate review of unobjected-to proposed factual findings and legal

conclusions accepted by the District Court. *See* 28 U.S.C. § 636(b)(l)(C); *Thomas v. Arn*, 474 U.S. 140, 150-53 (1985).

SIGNED this 9th day of September, 2024.

DEREK T. GILLILAND
UNITED STATES MAGISTRATE JUDGE

IT IS THEREFORE ORDERED that the Report and Recommendation of United States Magistrate Judge Gilliland (ECF No. 46 for Case No. 6:23-CR-00177 and ECF No. 77 for Case No. 6:20-CR-148) is **ADOPTED**.

IT IS FURTHER ORDERED that the Defendant's Motion to Suppress (ECF No. 31 in Case No. 6:23-CR-00177 and ECF No. 61 in Case No. 6:20-CR-00148) is **DENIED.**

SIGNED this 10th day of December, 2024.

ALAN D ALBRIGHT
UNITED STATES DISTRICT JUDGE