STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF ANOKA | TENTH JUDICIAL DISTRICT

State of Minnesota,

Plaintiff,

vs.

S[redacted] P[redacted],

Defendant.

Court File No.: 02-CR-17-[redacted]

MEMORANDUM IN SUPPORT OF MOTIONS TO SUPPRESS AND DISMISS

FACTS

At the December 13, 2017 *Contested Omnibus Hearing*, Mr. P[redacted] raised several Motions before the Honorable [redacted] Judge of the Anoka County District Court, all revolving around United States and Minnesota Fourth Amendment violations. Officer [redacted] was the only witness to testify. The parties agreed to admit Exhibit 1, a copy of the squad video, which documented the traffic stop and eventual conversation between Officer [redacted] and Mr. P[redacted] As agreed upon by both parties, attached to this letter is the transcript of the relevant portion of the squad video.

Officer [redacted] testified that on January 24, 2017 at approximately 7:57 pm, he was driving his marked squad car in the City of Ramsey, Anoka County, Minnesota, when he noticed a white Cadillac CTS, commit three petty misdemeanor traffic offenses. The traffic offenses included an abrupt lane change, following too close to another vehicle, and speeding. He testified that at no point did the driver swerve within or outside of his lane, drive erratically, flee the scene, or exhibit any other driving conduct that would suggest alcohol or drug intoxication.

Officer [redacted] activated his squad lights, and the driver pulled over lawfully and parked by the curb in a safe manner. Officer [redacted] approached the vehicle, obtained the driver's identification, and identified the driver as S[redacted] P[redacted]. Mr. P[redacted] handed Officer [redacted] his identification without any signs of impairment or intoxication. Officer [redacted] checked his driver's license and discovered that Mr. P[redacted]'s license was valid and that he had no warrants for his arrest. Mr. P[redacted] stated he was running late to meet a friend. Officer [redacted] then returned to his squad car at which point a second police officer appeared to be the passenger seat.[1] Officer [redacted] and the second officer had a brief conversation and shortly thereafter, both returned to Mr. P[redacted]'s vehicle, with Officer [redacted] questioning Mr. P[redacted] at the driver's window while the second officer shined his flashlight in the vehicle's windows.

Officer [redacted] testified that Mr. P[redacted] was alert and cooperative, was not slurring his words, and was properly and completely answering his questions. He also testified that he observed no evidence of drug use or drug activity of any kind, such as air fresheners, drug paraphernalia, straws, rolling papers, marijuana, or white powder residue. Mr. P[redacted] stated that he was a military veteran and had a conceal-and carry-permit, but there was no firearm in the vehicle.

Officer [redacted] testified that Mr. P[redacted] told him that he was driving to Kwik Trip but had changed locations to Burger King, as his friend had changed the meeting location. He testified on direct examination that he thought this was suspicious because "drug dealers often change locations." Officer [redacted] conceded on cross-examination that Mr. P[redacted] also had told him that he was going to Burger King to meet his friend rather than at his house because he was later meeting a friend at St. Paul. He also admitted on cross-examination that Mr.

[1] Ex. 1, squad video, at 8:03:56 (starts conversation between the two)

P[redacted]'s friend could have merely wanted a "whopper" sandwich and that is why he changed locations from Kwik Trip to Burger King.[2]

Officer [redacted] also testified that in July of 2016, the Anoka-Hennepin Drug Task Force received an anonymous tip that Mr. P[redacted] was engaged in the drug trafficking business. Officer [redacted] conceded that not a single police officer or police department followed up on this tip or initiated any additional investigation. He also acknowledged that the tip could have been from his disgruntled ex-wife or employee, and that the tip bore no evidence of being reliable.

Finally, Officer [redacted] testified that upon further questioning, Mr. P[redacted] became nervous and his hands were shaking and his head was sweating. He acknowledged on cross-examination that it is not uncommon for drivers being pulled over to exhibit these physical mannerisms. He conceded that the traffic stop occurred in the middle of winter and Mr. P[redacted] could have had the heat in his vehicle on high. At no point in time, either before or after the arrest, did Officer [redacted] believe that Mr. P[redacted] was under the influence of drugs or alcohol. He finally admitted at the conclusion of the hearing that the only justification for asking Mr. P[redacted] questions regarding drug activity were (1) the petty misdemeanor driving violations, (2) the change of location for meeting his friend, (3) his head sweating, (4) his hands slightly shaking, and (5) an anonymous, uninvestigated tip from over a year previous that could have been brought by his disgruntled ex-wife, where he conceded the tip bore no evidence of reliability. Officer Hinnenkamp had no other evidence of drug-related activity whatsoever, and

[2] It was disingenuous for Officer [redacted] to testify under oath that this "clue" of changing locations was indicative of criminal activity. Officer [redacted] admitted on cross-examination that the only clues of criminal activity up to this point in the conversation were the petty misdemeanor driving violations. Unfortunately, and which should be discouraged by this Court, Officer [redacted] was trying to bolster his reasons supporting his eventual interrogation of drug activity. To testify that Mr. P[redacted]'s decision to change his meeting spot from Kwik Trip to Burger king was a clue of "drug dealing" is absolutely ridiculous and undermines Officer [redacted]'s credibility.

admitted that it is "not uncommon" for drivers to exhibit nervous behavior such as shaking and sweating.

The parties agreed to submit simultaneous briefs on December 22, 2017.[3]

ARGUMENT

The United States Constitution and the Minnesota Constitution protect against unreasonable searches and seizures. U.S. CONST. amend. IV; MINN. CONST. art. I, § 10. Officer Hinnenkamp needed reasonable, articulable suspicion to initiate the traffic stop, to expand the stop's scope by asking questions unrelated to the reason for the stop, and to extend the stop's duration beyond that needed to issue a warning or citation. He further needed probable cause to request consent to search the vehicle and to search the vehicle. The defense concedes that Officer Hinnenkamp had reasonable, articulable suspicion to initiate the traffic stop due to the above-discussed petty misdemeanor traffic violations. However, he lacked reasonable, articulable suspicion (or probable cause) for every other phase of the case. This lack of probable cause resulted in an illegal search and seizure requiring suppression and dismissal of the charges.

A. Reasonable, Articulable Suspicion for an Investigatory Traffic Stop.

An investigatory traffic stop is lawful if the police officer has a reasonable, articulable suspicion that the person stopped is engaged in criminal activity. *State v. Munson*, 594 N.W.2d 128, 136 (Minn. 1999) (citing *Terry v. Ohio*, 392 U.S. 1 (1968)). The officer must have objective support for his suspicion. *State v. Johnson*, 444 N.W.2d 824 (Minn. 1989). To be reasonable, a limited, investigatory seizure requires a "particularized and objective" suspicion, while a seizure amounting to an arrest generally requires probable cause. *State v. Pike*, 551 N.W.2d 919, 921 (Minn. 1996).

[3] The defense understood that the Court's instruction was to file the brief in memorandum form.

The scope and duration of any traffic stop must be limited to the original justification for the stop. *State v. Diede*, 795 N.W.2d 836, 845 (Minn. 2011); *State v. Fort*, 660 N.W.2d 415, 418 (Minn. 2003); *State v. Syhavong*, 661 N.W.2d 278, 281 (Minn. Ct. App. 2003). "Detention of an individual during the routine stop of an automobile, even for a brief period, constitutes a 'seizure' protected by the Fourth Amendment." *Syhavong*, 661 N.W.2d at 282. There must be a "a reasonable relationship between the purpose of the stop . . . and [the officer]'s question concerning contraband in the car. During a traffic stop, an officer's questions must be limited to the purpose of the stop. . . . Because [the officer]'s question about contraband was not related in scope to the circumstances that justified the stop, the resulting detention and inquiry were unreasonable." *Id.* at 281. Officers may ask for a driver's license and registration and about the driver's destination and reason for trip. *Id.* (citing *United States v. Bloomfield*, 40 F.3d 910, 915 (8th Cir. 1994) (en banc)).

B. Reasonable, Articulable Suspicion to Expand the Scope of the Stop and to Extend the Duration of the Stop.

An officer may expand the scope of a stop only for offenses for which the officer possesses a reasonable, articulable suspicion within the time necessary to resolve the original offense. *Diede*, 795 N.W.2d at 845; *State v. Wiegand*, 645 N.W.2d 125, 136 (Minn. 2002) ("the reasonableness requirement of the Fourth Amendment is not concerned only with the duration of a detention, but also with its scope"). In order to prolong a stop, there must exist particularized and objective facts that provide a basis for suspecting the person seized of criminal activity. *Id.* at 842–43. Articulable suspicion is an objective standard and is determined from the totality of the circumstances. *Paulson v. Commissioner of Public Safety*, 384 N.W.2d 244, 246 (Minn. Ct. App. 1986). A reasonable, articulable suspicion requires more than a mere hunch. *State v. Martinson*, 581 N.W.2d 846, 850 (Minn. 1998) (citations omitted). In order to be reasonable, the

suspicion must be objectively appropriate in light of the facts available at the time of the search and seizure. *State v. Askerooth*, 681 N.W.2d 353, 364 (Minn. 2004).

"Expansion of the scope of the stop to include investigation of other suspected illegal activity is permissible under the Fourth Amendment only if the officer has reasonable, articulable suspicion of such other illegal activity." *Wiegand*, 645 N.W.2d at 135 (citing *Terry v. Ohio*, 392 U.S. 1, 20–21 (1968); *United States v. Ramos*, 20 F.3d 348, 352 (8th Cir.1994) (holding consent to search was fruit of illegal detention, as it took place after the original purpose of the stop—a seat belt violation—had been accomplished)).

Evidence obtained as a result of the unlawful expansion of a traffic stop must be suppressed. *Askerooth*, 681 N.W.2d at 370; *Syhavong*, 661 N.W.2d at 282–83.

C. Questions After a Traffic Stop Investigation Ends.

Similar to illegal expansion of the stop, questioning after "the original purpose of the stop has been accomplished" violates the Fourth Amendment and corresponding provision of the Minnesota Constitution. *Syhavong*, 661 N.W.2d at 282. In *Syhavong*, the traffic investigation had been completed when the officer asked for consent to search the vehicle. *Id.* Because consent was given after the traffic stop was completed, "the consent [was] a product of an illegal detention" and the evidence was suppressed. *Id.*; *see also Ramos*, 20 F.3d 348 (officer lacked reasonable, articulable suspicion to continue detention after issuing traffic warning).

D. Probable Cause to Request Consent to Search or to Search a Vehicle.

The United States and Minnesota Constitutions safeguard the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, and mandate that "[n]o warrant 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." U.S. CONST. amend. IV; MINN. CONST. art. I, § 10. Though a warrant is not needed to search a vehicle, law enforcement still needs probable cause that the vehicle contains contraband in order to conduct a legal search. *Flowers*, 734 N.W.2d at 248.

Probable cause to search exists if "a person of ordinary care and prudence [would] entertain an honest and strong suspicion that a crime has been committed" and "a 'fair probability [indicates] that contraband or evidence of a crime will be found in a particular place.'" *State v. Johnson*, 314 N.W.2d 229, 230 (Minn. 1982) (citation and inner quotation marks omitted); *Carter*, 697 N.W.2d at 204–05 (quoting *Illinois v. Gates*, 462 U.S. 213, 238 (1983)). Minnesota has adopted the "totality of the circumstances" test for determining whether probable cause to issue a search warrant existed. *State v. Wiley*, 366 N.W.2d 265, 268 (Minn. 1985). Under the totality of the circumstances test, "[t]he task of the issuing magistrate is simply to make a practical, commonsense decision whether, given all the circumstances set forth in the affidavit before him . . . there is a fair probability that contraband or evidence of a crime will be found in a particular place." *Id.* (quoting *Gates*, 462 U.S. at 238).

"It is fundamental that 'all evidence obtained by searches and seizures in violation of the Constitution is . . . inadmissible in a state court.'" *State v. Mathison*, 263 N.W.2d 61, 63 (Minn. 1978) (quoting *Mapp v. Ohio*, 367 U.S. 643, 655 (1963)).

Consent given—or a request to consent—after a traffic stop is completed is the product of an illegal detention. *Syhavong*, 661 N.W.2d at 282; *Askerooth*, 681 N.W.2d at 370.

E. Caselaw.

Numerous Minnesota cases have addressed the foregoing laws and constitutional protections.

State v. Syhavong

In *State v. Syhavong*, the defendant was pulled over because he had a broken taillight, but because the defendant and the passenger appeared "excessively nervous compared to what [the officer] normally encounter[ed] on an equipment violation traffic stop," the officer asked if they had anything illegal in the car. 661 N.W.2d at 280. The defendant said no and the officer asked if he could search the car, to which the defendant consented. *Id.* The officer found meth in the car and the defendant was later convicted of felony possession of a drug. *Id.* at 280–81. The court stated:

> To be reasonable under the Minnesota and federal constitutions, an investigatory stop must be limited in both duration and scope. [A]n investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop. Moreover, the scope of a stop must be strictly tied to and justified by the circumstances that rendered the initiation of the investigation permissible.

Id. at 281 (citations omitted).

Upon review in *Syhavong*, the Court of Appeals held that the government was unable to demonstrate a reasonable relationship between the purpose of the stop, i.e. the broken taillight, and the questioning and subsequent search. *Id.* at 281. Though the initial stop was justified, the further expansion of the search was impermissible because the officer lacked reasonable, articulable suspicion that the driver was engaged in criminal activity based merely on the officer's observations that the driver appeared to be excessively nervous. *Id.* at 282 (emphasis added). Further, where, "a consent to search is given after the original purpose of the stop has been accomplished, the consent is a product of an illegal detention . . ." *Id.* (emphasis added). The court held that the evidence obtained due to the unlawful expansion of the stop must be suppressed. *Id. See also State v. Fort*, 660 N.W.2d 415, 419 (Minn. 2003) (holding evidence must be suppressed where "investigative questioning, consent inquiry, and subsequent search

went beyond the scope of the traffic stop and was unsupported by any reasonable articulable suspicion").

State v. Askerooth

In *Askerooth*, the defendant was pulled over for not stopping for a stop sign. 681 N.W.2d at 356–57. He did not have a driver's license, so the officer had him get out of the vehicle, did a pat-down search, and then put him in the squad car. *Id.* at 357. The officer then asked to search the vehicle to which the defendant consented. *Id.* After the search, the officer issued citations for the driving offenses. *Id.* The defendant was released and the officer searched the squad, finding a container with methamphetamine. *Id.* The defendant was charged with drug possession. *Id.*

The appellate court stated, "the focus of our analysis is whether [the officer]'s intensifying the intrusive nature of the seizure by confining [the defendant] in the squad car was justified by some governmental interest that outweighed [the defendant]'s interest in being free from arbitrary interference by law officers." *Id.* at 365 (inner quotation marks and citation omitted). The officer's justification for putting the defendant in the squad was supposedly due to procedure when a driver does not have a license so that the officer does not have to go back and forth between the vehicles during their conversation. *Id.* But law enforcement "convenience" and lack of a license "is not a reasonable basis for confining a driver in a squad car's locked back seat when the driver is stopped for a minor traffic offense." *Id.* This detention "at most only tangentially served a governmental interest" and "lacks any consideration for a driver's interest in being free from unnecessary intrusions." *Id.* at 366. The defendant's "interest in being free from unreasonable seizure in these circumstances outweighed [the officer]'s need for

convenience." *Id.* Thus, the "prolonged detention" of the defendant "beyond the time necessary to effectuate the purpose of the stop" violated the Minnesota Constitution. *Id.* at 371.

The court continued, stating that the officer's request to search and the search while the defendant was confined violated the Minnesota Constitution. *Id.* at 370. The officer asked the defendant for consent to search the vehicle when the defendant sat in the squad. *Id.* at 357. The defendant consented. *Id.* The request to search "was not supported by any reasonable articulable suspicion." *Id.* at 370–71. The officer claimed the purpose of the search was to make sure the defendant had no access to weapons in the vehicle. *Id.* at 371. But there was no evidence that there was anything in the vehicle that could be used as a weapon and the officer was going to allow the defendant to walk home rather than drive away. *Id.* The officer's "prolonging of [the defendant]'s detention in order to conduct the van search included both an expansion of the scope of the seizure—detaining [the defendant] in order to conduct a search—as well as an extension of the duration of the detention beyond the original purpose of the stop." *Id.* At the moment the officer could have issued the citations, he, "absent a reasonable articulable suspicion of some additional crime or danger, was required to issue the citations and allow [the defendant] to leave, but [the officer] did not issue the citations until after he finished searching [the defendant]'s van." *Id.* Further, the defendant was not released from the squad until after the search. *Id.* Thus, the request to search "exceeded the scope of the stop." *Id.*

State v. Fort

In *State v. Fort*, the defendant was a passenger in a car pulled over for speeding and having a cracked windshield in a "high drug" area. 660 N.W.2d at 416. Two officers approached either side of the car. *Id.* When the officers discovered that the defendant nor the driver had a valid driver's license, they decided to tow the vehicle. *Id.* at 417. One officer took

the driver to the squad car to talk; the other officer had the defendant exit the car, go back to the squad car, and asked him about drugs or weapons. *Id.* The defendant denied any drugs or weapons in the vehicle or on his person. *Id.* The officer then asked to search the defendant for drugs or weapons, to which the defendant consented. *Id.* The officer found cocaine on the defendant. *Id.* at 416. At the suppression hearing, the officer testified that he observed the defendant to be nervous and avoid eye contact. *Id.* at 417. The officer testified that his intent was to drive the defendant home, but he did not tell the defendant that. *Id.*

The supreme court stated that the officers clearly had a particularized reason to stop the car and investigate the speeding and cracked windshield. *Id.* at 418. The court then determined that the defendant was seized even though he was a passenger because an officer in full uniform came over to him, escorted him to the squad car, and asked him questions about drugs and weapons. *Id.* The officer never stated he suspected any criminal offense besides the traffic violations. *Id.* at 419. "The purpose of this traffic stop was simply to process violations for speeding and a cracked windshield and there was no reasonable articulable suspicion of any other crime. Investigation of the presence of narcotics and weapons had no connection to the purpose for the stop." *Id.* Therefore, the "investigative questioning," asking for consent to search, and the search itself "went beyond the scope of the traffic stop and was unsupported by any reasonable articulable suspicion." *Id.* The court noted that this also may have "extended the duration of the traffic stop beyond that necessary for the stop," but the record was not clear enough to conclude as such. *Id.* n.1. The court reinstated the district court's order suppressing the drugs. *Id.*

United States v. Ramos

In *United States v. Ramos*, two men, Salvador and Servando Ramos, were pulled over because the passenger—Servando—was not wearing a seatbelt. 20 F.3d at 349. Both Servando and Salvador provided their driver's licenses upon request and their vehicle had out-of-state plates. *Id.* The trooper asked Salvador to sit in the squad car and Servando stayed in the car. *Id.* The trooper "testified that upon receiving Servando's identification he had all the information necessary to prepare a citation for the seatbelt violation . . ." *Id.* Further, "he had no reason to suspect that either defendant was engaged in criminal activity" when he had Salvador sit in the squad. *Id.* at 350. While in the squad, the trooper did a computer check on the defendants the vehicle while he worked on the seatbelt warning ticket. *Id.* The trooper asked Salvador about their destination to which Salvador said they were going to Chicago to visit a sick cousin but did not know the exact location in Chicago. *Id.* The trooper asked about employment and other "idle chit chat." *Id.* The computer check came back negative and the trooper issued the warning to Servando while leaving Salvador in the squad. *Id.* The trooper found it "suspicious" that Salvador did not know the location in Chicago they were headed, so he wanted to find out more." *Id.* The trooper asked Servando about their destination, to which Servando replied they were headed to Chicago to visit a sick cousin. *Id.* The trooper then asked if there were drugs or weapons in the vehicle. *Id.* The trooper returned to the squad and asked Salvador more about his destination and where he was from, and whether there were drugs or weapons in the vehicle. *Id.* Salvador said no. *Id.* The trooper asked to search the truck and Salvador agreed, signing a consent-to-search form. *Id.* The trooper called for another officer, had the defendants exit the vehicles, and proceeded to search the vehicle, finding bullets and a handgun, and noticed welds on the fuel tank. *Id.* At the trooper's request, Salvador drove the truck to a gas station for a

search of the fuel tank as the trooper suspected it did not contain fuel. *Id.* Before leaving the station, Salvador admitted there was marijuana in the fuel tank and both defendants made other incriminating statements. *Id.* They were subsequently charged with both possession of marijuana with intent to distribute and using and carrying a firearm during and in relation to a drug trafficking crime. *Id.* at 349.

The traffic stop was valid. *Id.* at 351. In order to effectuate the traffic ticket, all the trooper needed was Servando's driver's license. *Id.* The trooper did not need Salvador's license as he had not committed a criminal offense; nor was there any basis to have Salvador sit in the squad car. *Id.* at 351–52. The trooper "then proceeded to question Salvador about his destination and employment—matters that were wholly unrelated to the purpose of the initial stop." *Id.* at 352 (emphasis added). After 40 minutes of Salvador sitting in the squad, the trooper issued the warning ticket to Servando and discovered that neither defendant was wanted for a crime. *Id.* The trooper's basis for expanding the stop was "the pickup truck with foreign plates on an interstate highway, the defendants' uncertainty about their destination, and [the trooper]'s observation of the welds on the fuel tank . . ." *Id.* The court found otherwise: out-of-state plates are clearly not suspicious, the defendants were consistent with their destination and "Salvador's lack of knowledge as to the particular vicinage within Chicago that he was going to created no more than an 'inchoate and unparticularized suspicion or "hunch"' that does not rise to the level of reasonable suspicion," citing *Terry*, 392 U.S. at 27, and the trooper's observation of the welds on the fuel tank occurred during his search. *Id.* Further, after the ticket was issued, the defendants, based upon the surrounding circumstances, could have felt unable to leave. *Id.* Notably, the "driver of the pickup truck, Salvador, was separated from his passenger shortly after the stop and the two remained apart until the search began." *Id.* The trooper's "repeated

interrogation about the defendants' destination" went beyond just a request for identification. *Id.* "Further, even after the original purpose of the stop had been accomplished, [the trooper] did not tell the defendants they could leave. Instead, he had Salvador remain in the patrol car for more questioning." *Id.* "After the ticket was prepared there was no reason for Salvador to remain in the patrol car other than [the trooper]'s desire to question him further about his destination and the presence of any drugs or guns in the truck. These events took place after the purpose of the traffic stop was satisfied . . ." *Id.* For these reasons, the evidence was suppressed. *Id.* at 353.

State v. Henry

In *State v. H* a reliable informant told law enforcement that "[redacted] was driving a 2002 Ford Taurus bearing Minnesota License Plate 055-VMP and that there was methamphetamine located within that vehicle." 65-CR-17- Order pp. 1–2 (Renville County District Court, June 20, 2017) (attached). Law enforcement observed a vehicle matching the description and license plate. *Id.* at p. 2. After losing sight of the vehicle and seeing it again, law enforcement saw a second vehicle closely following it. *Id.* Law enforcement initiated a traffic stop of the trailing vehicle at about 9:34 pm for failing to signal a turn 100 feet ahead of the turn. *Id.* The defendant was the driver. *Id.* The defendant said he was following his father, [redacted], in the vehicle ahead of him to a farm site to get prescription medication from his father. *Id.* Law enforcement did not see any indicia of impairment or any contraband, though the defendant appeared more nervous than the typical driver. *Id.* Law enforcement "issued a verbal warning for the traffic violation and told the Defendant he was free to leave." *Id.* Because the defendant was free to leave, the court concluded that law enforcement "did not believe he had a basis to expand the vehicle stop at this point." *Id.* Then, law enforcement asked the defendant to answer some more questions to which the defendant agreed. *Id.* at p. 3. The

defendant denied having any drugs in the vehicle but consented to a search of the vehicle revealing drugs. *Id.* The defendant was then charged with drug possession. *Id.*

The court concluded that law enforcement "lacked reasonable, articulable suspicion of criminal activity needed to request consent of the Defendant to expand the traffic stop." *Id.* The court also noted that "based upon the traffic stop expansion law, if the Deputy had possessed a legal basis to expand the stop to make further inquiry of the Defendant, seeking consent would be unnecessary. It follows that obtaining consent does not result in a legal authorization to expand a traffic stop eve if, as here, consent is provided." *Id.* at n.3. The court suppressed the drugs seized and the case was dismissed. *Id.* at p. 4.

F. Application to Mr. P[redacted]'s Case

1. Traffic Stop

As stated above, the defense concedes that Officer [redacted] had reasonable, articulable suspicion to stop Mr. P[redacted]'s vehicle for petty misdemeanor traffic violations. Everything beyond giving him a citation, however, violated Mr. P[redacted]'s constitutional rights.

2. Questioning and Detention

Officer [redacted]'s questioning of Mr. P[redacted] beyond the basic questions of requesting his driver's license and insurance went beyond the scope of the stop. *Ramos*, 20 F.3d at 352. Officer [redacted]'s questioning of Mr. P[redacted]'s destination was completely unwarranted and not connected to any traffic stop issue. *Fort*, 660 N.W.2d at 419. His random inquiries about the contents of the car were simply a fishing expedition and unconnected to the reason for the stop. Officer [redacted] continued to question Mr. P[redacted] about his destination for no legitimate reason:

> Officer 1: Got it. S[redacted], look, you said you were meeting a friend at – you were going to meet him at QuikTrip?

Mr. P[redacted]: Well, we were – I was – thought [unintelligible] QuikTrip, but it was Burger King he said, so…

Officer 1: Gotcha. Where does your friend live? Because you live in Maple Lake.

Mr. P[redacted]: Yeah, I know. I live right down here.

Officer 1: That's what I'm saying.

Mr. P[redacted]: I went to QuikTrip up there.

Officer 2: Gotcha. Why didn't he just come to your house? Save you a lot of the hassle.

Mr. P[redacted]: **Because I was running to St. Paul to see a friend of mine too.**

Officer 1: Gotcha.

Mr. P[redacted]: I was just out and about tonight, so [unintelligible]. Oh, yeah [unintelligible].

(Tr. 3–4, emphasis added). There was no reason to grill Mr. P[redacted] about his legitimate activities that night. Nothing had occurred to objectively raise Officer [redacted]'s suspicions. There was certainly nothing suspicious about Mr. P[redacted]'s change in destination and there was no need to justify his change in plans to law enforcement. It is clear what Officer [redacted]'s true motives were in this situation by examining his next question to Mr. P[redacted]: "S[redacted], ***you got anything illegal in the vehicle?***" (Tr. 4, emphasis added). This question violates Mr. P[redacted]'s constitutional rights as discussed. Mr. P[redacted] denied having any weapons or drugs in his car (Tr. 4–5). He explained what was in his car (Tr. 5–6). After stating that he was nervous simply by this encounter with law enforcement, Officer [redacted] asked him to exit the car to talk further (T. 6–7). Again, Officer [redacted] had no reason to expand the scope of the stop or to further detain Mr. P[redacted] by separating him from his vehicle for further questioning. After

further discussion about Mr. P's nervousness, Officer asked to search the vehicle, and Mr. P states, "[Unintelligible.] I don't think I have anything illegal in there."[4]

None of Officer 's questions related to the reason for the stop. *Fort*, 660 N.W.2d at 419. Beyond his initial questions of why Mr. P was speeding, nothing else related to Mr. P's commission of the petty misdemeanor traffic violations. *Ramos*, 20 F.3d at 352. Mr. P told Officer that he was late to meet his friend. A very valid explanation. This answered Officer 's question of why Mr. P drove as he did. But Officer 's detailed and persistent questions about why Mr. P would drive somewhere to meet his friend and then why they changed locations were in no way tied to the reason for the stop.

The question, then, is whether Officer had reasonable, articulable suspicion to ask the questions thereby expanding the scope and duration of the traffic stop and illegally detaining Mr. P.

At the hearing, Officer admitted that the only justification for asking Mr. P questions regarding drug activity were (1) the petty misdemeanor driving violations, (2) the change of location for meeting his friend,[5] (3) his head sweating, (4) his hands shaking, and (5) an anonymous uninvestigated tip that could have been brought by his disgruntled ex-wife, where he conceded the trip bore no evidence of reliability. These reasons, separately or together, do not add up to reasonable, articulable suspicion.

First, petty misdemeanor driving offenses are committed every day by nearly every driver. Speeding one mile over the speed limit is a petty misdemeanor driving offense. Driving offenses are not indicative of drug activity. Second, the change of location for meeting his friend

[4] Officer states this in his police report that Mr. P consented, but this is not supported by the video and audio of the squad video. Mr. P disputes that he consented to the search.
[5] Ridiculous.

proves nothing besides they changed their meeting location and is absolutely none of Officer [redacted]'s concern. If this is indicative of drug activity, then anyone who changes a meeting location last minute is subject to a drug investigation. Third, head sweating and hands shaking are indicative of nothing more than nervousness with being confronted by law enforcement. Getting stopped for speeding is nerve-wracking for the average person. Detailed questioning about the driver's personal life activities would do nothing to alleviate that stress. Officer [redacted] testified that these mannerisms are common in traffic stops. Further, nervousness is not indicative of criminal activity. *Syhavong*, 661 N.W.2d at 282. The only semi-legitimate reason—the anonymous tip—is dispelled due to the lack of investigation and follow-up . . . clearly no law enforcement officer believed it was worth any time or investigation. All of the reasons proffered by Officer [redacted] yield a ridiculous attempt to justify the search.

Similarly, Officer [redacted] had no permissible reason to have Mr. P[redacted] step out of his vehicle for further questioning.

Simply put, Officer [redacted] had no reasonable, articulable suspicion to ask questions unrelated to the reason for the traffic stop thereby illegally expanding the scope and extending the duration of the traffic stop. Nor did he have any reasonable, articulable suspicion to detain Mr. P[redacted] away from his vehicle.

3. Request for Consent to Search the Vehicle

Based on absolutely no suspicion or probable cause, Officer [redacted] asked Mr. P[redacted] if he could search the vehicle:

Officer 1: All right. S[redacted] do you mind if we – me and my partner here search the vehicle for anything illegal?

Mr. P[redacted]: [Unintelligible.] I don't think I have anything illegal in there.

Officer 1: Okay. . . .

(Tr. 8–9).

Officer [redacted] claimed, at the scene, that his suspicion was based on Mr. P[redacted]'s nervousness upon his illegitimate questions (Tr. 6). Mr. P[redacted]'s nervousness, however, is not indicative of criminal activity. *Syhavong*, 661 N.W.2d at 282. Officer [redacted] should have asked Mr. P[redacted] the basic questions, issued a citation, and let Mr. P[redacted] leave. Where "a consent to search is given after the original purpose of the stop has been accomplished, the consent is a product of an illegal detention . . ." *Syhavong*, 661 N.W.2d at 282; *Askerooth*, 681 N.W.2d at 370–71. Because Officer [redacted]'s request for consent to search occurred after the traffic stop *should have* concluded and he had no reasonable, articulable suspicion to expand the scope or extend the duration of the stop thus illegally detaining Mr. P[redacted], the request for consent to search was illegal. *Fort*, 660 N.W.2d at 419; *H*[redacted] 65-CR-17-[redacted] Order p. 3, n.3. The evidence must be suppressed.

CONCLUSION

WHEREFORE Mr. P[redacted] respectfully requests that this Court suppress the evidence and dismiss the case.

Respectfully submitted,

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s/ Ryan Garry

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