STATE OF IDAHO)
County of KOOTENAI)ss

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CLERK, DISTRICT COURT

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Deputy

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE

STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,

Plaintiff,

vs.

COREY WILLIAM COLLINS,

Defendant.

Case No. **CRF 2010 13041**

MEMORANDUM DECISION AND ORDER DENYING DEFENDANT'S MOTION TO SUPPRESS

Amy Borgman, Deputy Prosecuting Attorney, lawyer for the Plaintiff.
Jedediah J. Whitaker Coeur d'Alene, lawyer for Defendant Corey Collins.

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I. FACTUAL BACKGROUND.

At about ten in the morning on July 7, 2010, defendant Corey Collins was a passenger in an automobile being driven by Tara Collins. Tara Collins was stopped by Coeur d'Alene Police Officer Nicholas Knoll (Knoll) after turning from Hastings Avenue onto Fourteenth Street without using her turn signal, a violation of I.C. § 49-808. Police Report, p. 1. Knoll also noticed the passenger was not wearing his seat belt, a violation of I.C. § 49-673. *Id.* Once stopped, Knoll contacted the female driver, asked whether she knew the reason for the stop, to which she admitted she had failed to use her turn signal. *Id.* Knoll asked her for her driver's license, proof of insurance and vehicle registration which she provided to Knoll. *Id.* Knoll asked the male passenger "…if he had any ID I could see." *Id.*

The passenger said “Yes” and handed Knoll his driver’s license. Knoll wrote: “I noticed that the male appeared very nervous as I was speaking with them both.” *Id.* After calling dispatch with the information on the licenses, dispatch informed Knoll that there was a current civil protection order between the passengers, and that they were to have no contact other than through their respective attorneys or where an emergency existed regarding their children. *Id.* Because of Knoll’s motorcycle unit status, he was joined by a motorcycle cover unit and requested an additional patrol unit. Knoll reports he went back to the car to speak with Corey Collins and asked him “…why he was with Tara. *Id.* Corey Collins stated “I know we’re not supposed to be together” and Corey Collins stated he was with Tara Collins in an effort to reconcile. Knoll asked Corey Collins to exit the vehicle and when Corey Collins got out Knoll observed a five inch long folding knife in the front passenger seat where Corey Collins had been sitting. “It appeared that he had been concealing it with his leg.” *Id.* Knoll placed Collins under arrest, secured him in handcuffs, and had Corey Collins sit on the curb as the patrol unit had not yet arrived. *Id.*

Knoll asked Tara Collins to step out of the vehicle so he could secure the knife in the front passenger seat. He then performed a protective sweep of the driver’s lunging area because he desired to speak with Tara Collins within the vehicle so as to remain out of Corey Collins’ earshot. *Id.,* p. 2. Knoll searched a fanny pack style bag on the front passenger floorboard because he determined the bag to be within the lunging area of the driver and large enough to contain a weapon. Inside the bag Knoll immediately discovered drug paraphernalia, approximately 100 small plastic bags, what he believed to be a digital scale (but was later determined to be a GPS screen), and a glass pipe with crystal residue (which later NIK tested positive for amphetamines). Knoll questioned Corey Collins about the bag and Corey Collins stated he had brought the bag into the vehicle, but the contents

belonged to a friend of his. *Id.* The patrol unit then arrived and transported Corey Collins to the Kootenai County Public Safety Building. Knoll arrived at the Public Safety Building to complete the booking process and then read Corey Collins his *Miranda* rights, after which Corey Collins agreed to continue to speak to Knoll. *Id.*

Corey Collins now moves this Court for an Order suppressing all evidence gathered, all statements made, and all observations of the officers because the "warrantless stop was illegally expanded by the officers and was, therefore, unlawful and without legal justification, and in violation of the Constitution and laws of the United States and the State of Idaho." Memorandum in Support of Motion to Suppress, p. 1. Corey Collins waived his preliminary hearing and Judge Caldwell's Order Holding Defendant was entered on July 21, 2010.

The Motion to Suppress and brief in support thereof were filed by Corey Collins on September 7, 2010, six days beyond the 42-day deadline under the Order Holding Defendant within which Corey Collins was to file all pretrial motions. At Corey Collins' arraignment on August 30, 2010, counsel for Corey Collins stated his intent to file a motion to suppress, which this Court initially scheduled for hearing on September 10, 2010. However, no motion was filed until September 7, 2010, and the original hearing on the motion was continued to September 14, 2010. The State has not objected to the fact that Corey Collins filed his motion untimely.

Due to witness unavailability, the State was not able to proceed on September 14, 2010. The hearing on Corey Collins' motion to suppress was continued to September 27, 2010. At that September 27, 2010, hearing, counsel for Corey Collins moved to dismiss this case due to Knoll's failure to appear for hearing on September 14, 2010. It became clear the Knoll did not disregard the subpoena issued by the State, but rather, while the State had faxed the subpoena for Knoll to appear to the Coeur d'Alene Police Department,

Knoll had not been given his copy of the subpoena by anyone at the Coeur d'Alene Police Department. Thus, Knoll had not been served with the subpoena and did not know about the September 14, 2010, hearing. The Court denied Corey Collins' motion to dismiss because: 1) although Corey Collins argued he had been prejudiced, no prejudice was articulated by Corey Collins' counsel, and 2) no legal authority could be shown by Corey Collins' counsel directing that dismissal of a criminal case to be an appropriate sanction for the failure of a witness to appear at a motion to suppress.

At the September 27, 2010, hearing, Knoll testified credibly and consistent with his police report as described above. Knoll's testimony was uncontradicted as there was no other testimony presented by either party. In his testimony Knoll provided the following details additional to his report. Knoll testified the reason he searched Tara Collins' car was for weapons. Knoll testified he made the search of the car for weapons because after having Corey Collins exit the vehicle and then sit on the curb and having had Tara Collins exit the vehicle, Knoll planned on interviewing Tara Collins back inside her vehicle so that Corey Collins would not be able to hear Tara Collins' answers to Knoll's questions. Knoll testified he opened Corey Collins' fanny pack to search for weapons because fanny packs are known to contain weapons, but when Knoll found paraphernalia inside (small one inch by one inch baggies), his continued search of the fanny pack switched to a search for illegal drugs.

This matter is currently set for a two-day jury trial on October 12, 2010.

II. STANDARD OF REVIEW.

The standard of review of a suppression motion is bifurcated; the Court of Appeals accepts a trial court's findings of fact supported by substantial evidence and freely reviews the court's application of constitutional principles applied to the facts found. *State v.*

Atkinson, 128 Idaho 559, 561, 916 P.2d 1284, 1286 (Ct.App. 1996); *State v. Cruz,* 144 Idaho 906, ___, 174 P.3d 876, 878 (Ct. App. 2007). Whether a search is reasonable under the Fourth Amendment is a question of law over which reviewing courts exercise free review. *State v. McIntee,* 124 Idaho 803, 804, 864 P.2d 641, 642 (Ct.App. 1993); *State v. Whiteley,* 124 Idaho 261, 264, 858 P.2d 800, 803 (Ct. App. 1993). The voluntariness of consent given is a question of fact and reviewing courts accept the findings of fact by the trial court unless they are clearly erroneous. *State v. McCall,* 135 Idaho 885, 886, 26 P.3d 1222, 1223 (2001). When evaluating the trial court's determination of voluntariness of consent given, reviewing courts will not disturb such a decision on appeal if the trial court's finding is based on reasonable inferences to be drawn from the record. *State v. Post,* 98 Idaho 834, 837, 573 P.2d 153, 156 (1978). Findings are deemed clearly erroneous when they are not supported by substantial evidence in the record. *State v. Benson,* 133 Idaho 152, 155, 983 P.2d 225, 228 (Ct.App. 1999).

III. ANALYSIS.

A. Introduction.

The Fourth Amendment guarantees every citizen the right to be free from unreasonable searches and seizures. *State v. Ramirez,* 145 Idaho 886, 888, 187 P.3d 1261, 1263 (Ct.App. 2008). The stop of a vehicle constitutes a seizure of its occupants and is therefore subject to Fourth Amendment restraints. *Id*. Because a traffic stop is limited in scope and duration, it is analogous to an investigative detention and is analyzed under *Terry v. Ohio,* 392 U.S. 1, 88 S.Ct. 1868 (1968).

An investigative detention must be temporary and not last longer that necessary to effectuate the purpose of the stop. *Ramirez,* 145 Idaho 886, 889, 187 P.3d 1261, 1264. Because there is no rigid time limit, to evaluate whether a detention has lasted longer than

necessary a court must consider the scope of the detention and the law enforcement purposes to be served along with the duration of the stop. *U.S. v. Sharpe,* 470 U.S. 675, 685-686, 105 S.Ct. 1568 (1985). When an individual is detained, the scope of detention must be carefully tailored to the underlying justification for the stop, but brief inquiries not related to the initial purpose of the stop do not necessarily violate a detainee's Fourth Amendment rights. *State v. Roe,* 140 Idaho 176, 181, 90 P.3d 926, 931 (Ct.App. 2004). A routine traffic stop may turn up suspicious circumstances that could justify an officer asking further questions unrelated to the stop. *State v. Brumfield,* 136 Idaho 913, 916, 42 P.3d 706m 709 (Ct.App. 2001). The length and scope of the initial investigatory stop may lawfully be extended where there exist objective and specific articulable facts that justify suspicion that the detained person is, was, or will be engaged in criminal activity. *Id.* During a lawful traffic stop, general questioning on topics unrelated to the purpose of the stop is permissible as long as it does not extend the duration of the stop. *State v. Parkinson,* 135 Idaho 357, 363, 17 P.3d 301, 307 (Ct.App. 2000). For example, brief, general questions about drugs or weapons do not extend an otherwise lawful detention. *Id*.

Finally, any detention is a fluid process. A detention initiated for one investigative purpose may disclose suspicious circumstances that justify expanding the investigation to other possible crimes. *State v. Brumfield,* 136 Idaho 913, 916, 42 P.3d 706, 709 (Ct.App. 2002), *citing Florida v. Royer,* 460 U.S. 491, 500, 103 S.Ct. 1319, 1325, 75 L.Ed.2d 229, 238 (1983). Any routine traffic stop might turn up suspicious circumstances, which could justify an officer asking questions unrelated to the stop. *State v. Brumfield,* 136 Idaho 913, 916, 42 P.3d 706, 709, *citing State v. Myers,* 118 Idaho 608, 613, 798 P.2d 453, 458 (Ct.App. 1990).

B. The Traffic Stop.

"Under the Fourth Amendment, an officer may stop a vehicle to investigate possible criminal behavior if there is an articulable and reasonable suspicion that the vehicle is being driven contrary to traffic laws." *State v. Dewbre,* 133 Idaho 663, 665, 991 P.2d 388, 390 (Ct.App. 1999) (citing *United States v. Cortez,* 449 U.S. 411, 417, 101 S.Ct. 690, 694 (1981)). The reasonableness of an officer's suspicion to effect a stop is evaluated based on the totality of the circumstances at the time of the stop and must be more than mere speculation or instinct of the officer, but the standard requires less than probable cause. *State v. Naccarato,* 126 Idaho 10, 12, 878 P.2d 184, 186 (Ct.App. 1994).

Here, there is no argument by Corey Collins that the traffic stop itself was improper. Idaho Code § 49-808 requires a driver to signal their intention to turn or move left or right continuously to warn other traffic when entering onto, merging into, or exiting from any highway. I.C. §§ 49-808(1), (2). Title 49 of the Idaho Code defines a highway as the entire width between the boundary lines of any publicly maintained way. I.C. § 49-109(5). Thus, Tara Collins' failing to signal before turning onto Fourteenth Street violated the statute and there was "some objective probable cause to believe that a traffic infraction, however minor, has occurred." *Dewbre,* 133 Idaho 663, 667, 991 P.2d 388, 392 (citing *United States v. Hudson,* 100 F.3d 1049, 1415 (9th Cir. 1996). While under I.C. § 49-673(5), an officer cannot stop a vehicle for the passenger or driver not wearing a seat belt, under I.C. § 49-673(3)(a), the passenger or driver can be cited for such violation if they are stopped for some other reason. In the present case, that reason was for failing to signal.

C. The Initial Detention.

The stop of a vehicle constitutes a detention of all occupants; passengers therefore have standing to contest the reasonableness of the detention. *State v. Gutierrez,* 137 Idaho 647, 651-53, 51 P.3d 461, 465-67 (Ct.App. 2002). However, only the owner of a

vehicle has standing to contest an illegal search. *Rakas v. Illinois,* 439 U.S. 128, 99, S.Ct. 421 (1978). Because a passenger has no proprietary interest in the vehicle, and therefore no reasonable expectation of privacy therein, a passenger lacks standing to challenge a search where a driver has consented. *State v. Guznman,* 126 Idaho 368, 373, 883 P.2d 726, 731 (Ct.App. 1994). No consent to search was given by Tara Collins. Only where there is a valid challenge to an initial stop or to continued detention may the passenger have standing to contest a search of a vehicle. *State v. Luna,* 126 Idaho 235, 236-38, 880 P.2d 265, 266-68 (Ct.App. 1994). Here, Corey Collins is challenging his continued detention. Corey Collins argues the subsequent search was unreasonable under the facts confronting the officers. Memorandum in Support of Motion to Suppress, p. 5.

Although police officers do not have unfettered discretion to randomly stop drivers and request a display of a driver's license, I.C. § 49-316 authorizes an officer to demand display of a license and briefly detain a driver to run a status check after having lawfully stopped the driver. This process was held as reasonable under the Fourth Amendment. *State v. Godwin,* 121 Idaho 491, 495-96, 826, P.2d 452, 456-57 (1992) (holding a request for a *driver's* identification as reasonable even where there is no suspicion of criminal activity because police have a strong interest in identifying the individuals they come in contact with in any capacity). A limited seizure occurs when an officer takes a driver's license. 121 Idaho 491, 493, 826 P.2d 452, 454. In *State v. Martinez,* the Idaho Court of Appeals held the defendant's detention to run a status check was reasonable because: Martinez's car was inoperable and the request did not prevent Martinez from leaving in the vehicle; the entire period of time the officer held the defendant's paperwork was approximately six minutes; and the limited encroachment on the privacy right protected by the fourth Amendment was outweighed by substantial public interest. 136 Idaho 436, 440-

41, 34 P.3d 1119, 1123-24. (holding the contact between law enforcement and driver was proper under the community caretaking function where defendant's vehicle was broken down.) The question for this Court, then, is whether it was reasonable for Knoll to request or demand Corey Collins' driver's license, where Corey Collins was merely a *passenger* in a car driven in violation of Idaho traffic laws.

This Court finds Knoll was authorized to ask for Corey Collins' identification for two reasons. First, because the request was reasonably related in scope to the circumstances, and second, because Corey Collins' failure to wear his seatbelt was a citeable offense.

1. The Request for Corey Collins' Identification was "Reasonably Related in Scope to the Circumstances."

In determining whether an investigative detention is reasonable the Court looks first to whether the officer's actions were justified at the inception and then whether the detention was reasonably related in scope to the circumstances. *State v. Parkinson,* 135 Idaho 357, 361, 17 P.3d 301, 305 (Ct.App. 2002). Knoll testified he stopped Tara Collins for her failing to signal for a turn. Knoll went to the driver's window and asked the female driver for her driver's license and registration. Then Knoll asked the male for identification and received an Idaho driver's license. It was at this early juncture that Knoll noticed the extreme nervousness displayed by Corey Collins. Knoll then went back to his patrol motorcycle to call dispatch to check the driver's status. A few moments later Knoll learned of the civil protection order between these two individuals, the driver and her passenger. They were to only have contact between their attorneys, or where an emergency existed with their children. Knoll went to the male passenger and asked him about the protective order, and Corey Collins responded "I knew we were not to be together." It was at that point Knoll decided to take Corey Collins into custody and asked him to get out of the car.

Just as in *State v. Roe,* 140 Idaho 176, 90 P.3d 926 (Ct.App. 2004), Knoll's asking

Tara Collins for her driver's license and registration, and Knoll's asking Corey Collins for his identification occurred *nearly* simultaneously. Thus, the length of the stop was not extended beyond the purpose of the stop (to issue Tara Collins a citation, ignoring for the moment that Corey Collins would get a citation as well). In Roe, one officer asked the driver for identification at the same a second officer asked the passengers for identification. The Idaho Court of Appeals wrote:

> The identification of the driver and rear seat passengers occurred simultaneously and, thus, the driver and passengers were not detained any longer than if the officer had only identified the driver. The second officer's verbal request for the identity of the rear passenger did not extend the duration of the stop beyond the time necessary to effectuate the purpose of the stop [traffic violation for not wearing seat belts]. Applying the rationale of *Guitierrez* and *Godwin* to the facts presented here, the officers' conduct was not improper. Therefore, Roe was not unreasonably detained pursuant to a lawful traffic stop.

140 Idaho 176, 182, 90 P.3d 926, 932. In this case, because Knoll went directly and immediately from his request of Tara Collins' driver's license, registration and proof of insurance, to his request of Corey Collins for identification, the detention was extended by only a mere moment. This Court finds as a matter of fact and law that moment to be a distinction without a difference.

The analysis that follows is made in the alternative, in the event that that additional moment is a distinction *with* a difference, that is, the request of Corey Collins somehow extended the length of the detention in some significant manner.

2. Knoll's request of Corey Collins' Identification was Permissible for Several Additional Reasons.

The stop itself in the present case is unchallenged, but whether Knoll acted reasonably thereafter remains in dispute. Idaho has not directly addressed this issue. Some jurisdictions have held seizure of a passenger for identification and a records check is an unreasonable detention in the absence of reasonable suspicion of criminal activity.

State v. Morlock, 40 Kan.App.2d 216, 230, 190 P.3d 1002 (Kan. App. 2008). *See also, U.S. v. Henderson,* 463 F.3d 27, 31 (1st Cir., 2006) ("In Massachusetts, a seatbelt violation is not a crime [it is a civil infraction]. We have found no Massachusetts case that permits a police officer to demand a passenger's social security number and date of birth in order to write a citation for a seatbelt violation."); *Bautista v. State of Florida,* 902 So.2d 312, 313 (Fla.App. 2005) (in absence of reasonable suspicion, officer's demand that passenger remove his wallet from his pocket was improper).

However, Washington Courts have held a police encounter reasonable where the officer asked for, but did not demand, a passenger's identification, parked ten to fifteen feet behind the suspect vehicle, and did not activate his emergency lights or siren; the Court found a reasonable person would have felt free to leave under the circumstances. *State v. Johnson,* 156 Wash.App. 82, 92, 231 P.3d 225, ___ (Wash.App. Div. 2, 2010). In the present case, the Court specifically finds, based on Knoll's report and his testimony, that he asked Corey Collins for his identification, and did not in any way demand such.

There are four reasons why even if Knoll extended the length of the detention by asking Corey Collins for his identification, any such extension of detention was permissible.

First, is officer safety. The Fifth Circuit Court of Appeals in *United States v. Chaney*, 584 F.3d 20, 26, (5th Cir. 2009), wrote:

> The Supreme Court has explained that it is "too plain for argument" that the justification of officer safety is "both legitimate and weighty." *See Pennsylvania v. Mimms,* 434 U.S. 106, 110, 98 S.Ct. 330, 54 L.Ed.2d 331 (1977). Noting the inherent dangers of a traffic stop, the Supreme Court has allowed officers to, as a matter of course, take the arguably more intrusive step of ordering passengers out of a vehicle during a valid traffic stop without any individualized suspicion or justification. *See Maryland v. Wilson,* 519 U.S. 408, 415, 117 S.Ct. 882, 137 L.Ed.2d 41 (1997). More recently, the Supreme Court emphasized that "[a]n officer's inquiries into matters unrelated to the justification for the traffic stop, this Court has made plain, do not convert the encounter into something other than a lawful seizure, so long as those inquiries do not measurably extend the

duration of the stop." *Johnson,* 129 S.Ct. at 788.

> Here, the officer's initial inquiries into Chaney's identity took at most a minute or two and did not measurably extend the duration of the stop. Any additional delay, including that attributable to the records check, was independently warranted by the officer's reasonable suspicion, based on Chaney's implausible answers and nervous demeanor, that Chaney was giving a false name and might be involved in other criminal activity. *See United States v. Smith,* 164 Fed.Appx. 825, 828 (11th Cir.2006) ("[t]he continued detention of the vehicle ... reasonably warranted the intrusion" where officer suspected passenger of giving false name based on passenger's body language and inability to provide social security number). In addition, Officer Brown testified that in his experience, people sometimes give a false name when they are carrying a concealed weapon without the required permit. Officer Brown's actions continued to be justified after learning that the information Chaney gave did not match records in any of the surrounding jurisdictions. Under the circumstances, then, it was reasonable to undertake further questioning of Chaney and LaFontaine to determine Chaney's identity and the reasons he might have given false information. *See United States v. Decker,* 292 Fed.Appx. 752, 753 (10th Cir.2008) (unpublished decision) (upholding denial of motion to suppress where officer questioned passenger about identity, records check demonstrated passenger gave false name, and officer observed contraband after returning to vehicle to further question passenger about his identity).

584 F.3d 20, 26.

Second, is a logical extension of *Guiterrez*. As the Idaho Court of Appeals in *Roe* noted: "However, this Court has held that, even after the justification for the stop has ended, an officer is not required to walk away without ascertaining the identity of the driver. *State v. Guitierrez,* 137 Idaho 647, 653, 51 P.3d 461, 467 (Ct.App. 2002)." While *Guitierrez* and *Godwin* (*State v. Godwin,* 121 Idaho 489, 493-96, 826 P.2d 452, 454-57 (1992)) concerned requests of a driver for his license, which is required under I.C. § 49-316, given the fact that the United States Supreme Court held in *Maryland v. Wilson,* 519 U.S. 408, 415, 117 S.Ct. 882, 137 L.Ed.2d 41 (1997) (as cited by the Fifth Circuit Court of Appeals in Chaney above): "Noting the inherent dangers of a traffic stop, the Supreme Court has allowed officers to, as a matter of course, take the arguably more intrusive step of ordering passengers out of a vehicle during a valid traffic stop without any individualized

suspicion or justification", an officer being able to ask a passenger for identification is a logical extension of *Guitierrez*. If an officer can order a passenger out of a vehicle without suspicion, an officer should be able to ask a passenger to identify himself or herself.

Third, the fact that in the present case, Corey Collins had committed a citeable offense (not wearing his seatbelt), and identification of Corey Collins was necessary to complete that citation. Idaho Code § 49-673 speaks in terms of a "conviction" for which "a citation may be issued", and a violation of I.C. § 49-673 is an infraction. *State v. Betterton,* 127 Idaho 562, 563, 903 P.2d 151, 152 (Ct.App. 1995).

It could be argued in the present case that all Knoll was confronted with was a female driver who failed to signal and a nervous male passenger. However, Knoll had also seen the passenger not wearing a seat belt. If Knoll was to cite Corey Collins for his failure to wear his seat belt, he would need Corey Collins' identification.

The Kansas Court of Appeals in *Morlock*, mentioned above*,* was primarily concerned with whether the officer could ask questions of the passenger as to the passenger's travel plans (how long had he been here, what was he doing here). While those are not the facts in the present case, because Knoll observed Corey Collins not wearing his seat belt, the following analysis in *Morlock* applies to the present case:

> The Kansas Supreme Court has previously described the reasonable scope of a routine traffic stop:
>
> > "A law enforcement officer conducting a routine traffic stop may request a driver's license and vehicle registration, run a computer check, and issue a citation. When the driver has produced a valid license and proof that he or she is entitled to operate the car, the driver must be allowed to proceed on his or her way, without being subject to further delay by the officer for additional questioning." *State v. Mitchell,* 265 Kan. 238, 245, 960 P.2d 200 (1998).
>
> The Kansas Supreme Court has further indicated that when the original purpose of a traffic stop has been completed, further questioning is permissible only if (1) the encounter between the officer and the driver ceases to be a detention, but becomes consensual, and the driver

> voluntarily consents to additional questioning, or (2) during the traffic stop the officer gains a reasonable and articulable suspicion that the driver is engaged in illegal activity. *State v. DeMarco,* 263 Kan. 727, 734, 952 P.2d 1276 (1998).

40 Kan.App.2d 216, 223-24, 190 P.3d 1002, 1009-10. While that discussion is focused on the driver, the analysis applies to a passenger when the officer has witnessed an offense for which the passenger can be cited. The Kansas Court of Appeals continued:

> Kansas courts have recognized that a law enforcement officer may, even without suspicion of additional crimes, order a driver to exit a vehicle when the vehicle is lawfully stopped for a traffic violation. *State v. Schneider,* 32 Kan.App.2d 258, 263, 80 P.3d 1184 (2003); see *Pennsylvania v. Mimms,* 434 U.S. 106, 111, 98 S.Ct. 330, 54 L.Ed.2d 331 (1977).

40 Kan.App.2d 216, 227, 190 P.3d 1002, 1013.

> The reasonable scope of a law enforcement officer's investigation during a routine traffic stop differs somewhat as it relates to the driver of the vehicle as opposed to the passengers. While a law enforcement officer may demand that the driver produce his or her driver's license and vehicle registration in order to run a warrant check on the driver, the Kansas Supreme Court has held that the seizure of a passenger for identification and a records check constitutes an unreasonable detention, in the absence of reasonable suspicion of criminal activity. *State v. Damm,* 246 Kan. 220, 224-25, 787 P.2d 1185 (1990).

40 Kan.App.2d 216, 230, 190 P.3d 1002, 1016. It is the last sentence that distinguishes the facts of this case from *Morlock*, because in the present case Knoll observed Corey Collins not wearing his seatbelt.

The Supreme Court of Kansas then took a look at *Morlock*. After deciding that the five questions the Officer Cocking asked passenger Morlock were constitutionally permissible, the Kansas Supreme Court turned its attention to Officer Cocking's warrants check on Morlock:

> The panel [of the Kansas Court of Appeals] majority in the instant case additionally disapproved of Deputy Cocking taking passenger Morlock's driver's license to his patrol vehicle and also then using it to check for outstanding arrest warrants on his computer. Judge Leben disagreed because Morlock's "claim about the warrant check is precluded

by recent United States Supreme Court cases interpreting the Fourth Amendment." 40 Kan.App.2d at 237, 190 P.3d 1002. We agree with Judge Leben that these particular Cocking actions were constitutionally permissible. Specifically, any extension of the stop was based upon Cocking's reasonable suspicion. See *Moore,* 283 Kan. at 350, 154 P.3d 1 (appellate court reviews to determine if substantial competent evidence supports the district court findings but reviews de novo the legal conclusion-reasonable suspicion-as a question of law).

An officer is not required to disregard information which may lead him or her to suspect independent criminal activity during a traffic stop. When "the responses of the detainee and the circumstances give rise to suspicions unrelated to the traffic offense, an officer may broaden his inquiry and satisfy those suspicions." *United States v. Barahona,* 990 F.2d 412, 416 (8th Cir.1993); see also *United States v. Pereira-Munoz,* 59 F.3d 788, 791 (8th Cir.1995) (When officers develop reasonable, articulable suspicion of criminal activity during a traffic stop, they have " ' "justification for a greater intrusion unrelated to the traffic offense" ' " and are "permitted 'to graduate their responses to the demands of their particular situation.' ").

* * *

Cocking testified without refutation that before he asked the two travel questions of O'Kelly that the panel majority disapproved, he was aware of previous narcotics arrests on Highway 54. He also found "the nervousness" suspicious. He testified that he noticed O'Kelly's nervousness-shaking and trembling, dropping his license into his lap, and almost dropping it to the ground when handing it to Cocking. He did admit, however, that some young drivers, like O'Kelly, may be nervous when stopped by an officer. The trial court noted O'Kelly's nervousness as contributing to its ultimate determination of reasonable suspicion to extend the stop. Judge Leben acknowledged its appearance in the reasonable suspicion calculus. See *Moore,* 283 Kan. 344, 154 P.3d 1 (driver's nervousness can contribute to reasonable suspicion). Cocking also noticed Morlock, whose identity was yet unknown, looking straight ahead at the dash while Cocking talked to O'Kelly. He testified that he found Morlock's behavior odd. See *United States v. Brigham,* 382 F.3d at 508 (officer's "increasing suspicion was also fueled by ... [driver's] ... avoidance of eye contact").

* * *

We conclude as a matter of law that this information known to Cocking, coupled with his 15-year experience in law enforcement and recent experience with drug interdiction, is sufficient to justify taking Morlock's license to the patrol vehicle and using it to run a warrant check. See *Moore,* 283 Kan. at 350, 154 P.3d 1 (appellate court reviews to determine if substantial competent evidence supports the district court findings but reviews de novo the legal conclusion-reasonable suspicion-as a general question of law). We expressly do not consider in our calculus the factor of the four bags in the van, only because as the panel majority

> pointed out, Cocking acquired that information after he had already decided to take Morlock's license to his patrol vehicle.
>
> Finally, Morlock's counsel has submitted a letter under Rule 6.09(b) (2008 Kan. Ct. R. Annot. 47) contending that a July 17, 2009, opinion of the Court of Appeals, *State v. Diaz-Ruiz,* 42 Kan.App.2d 325, 211 P.3d 836 (2009), contains persuasive rationale. Morlock argues that Cocking failed to comply with the legal statement contained in that opinion's Syl. ¶ 1 which provides:
>
> > "When analyzing whether an officer's actions have exceeded the scope or duration of a traffic stop, the court considers whether the officer diligently pursued a means of investigation that was likely to confirm or dispel the officer's suspicions quickly, during which time it was necessary to detain the defendant." 42 Kan.App.2d 325, Syl. ¶ 1, 211 P.3d 836.
>
> More particularly, Morlock argues that Cocking did not "diligently" pursue the investigation to "quickly" address his suspicions because he did more than simply obtain O'Kelly's driver's license, run a computer check on him, and write a citation.
>
> Morlock's contention is best addressed by simply noting we earlier held that Cocking developed increasing amounts of suspicion during the stop. This warranted his continued investigation which resulted in an increase in detention length. We cannot say Cocking failed to diligently pursue his investigation to quickly address his suspicions, especially when, as Judge Leben points out, the entire stop took only 12 minutes. See 40 Kan.App.2d at 243, 190 P.3d 1002.

State v. Morlock, 289 Kan. 980, 995-999, 218 P.3d 801, 811-14 (Kan. 2009). There are similarities in the present case.

First, in Knoll's police report Knoll notes Corey Collins was nervous. While "nervousness" in response to law enforcement contact "is of limited value in determining reasonable suspicion" ("Because it is common for people to exhibit signs of nervousness when confronted with law enforcement regardless of criminal activity, a person's nervous demeanor during such an encounter is of limited significance in establishing the presence of reasonable suspicion.", *State v. Zuinga,* 143 Idaho 431, 435, 146 P.3d 697, 701 (Ct.App. 2006, *quoting State v. Gibson,* 141 Idaho 277, 285-86, 108 P.3d 424, 432-33 (Ct.App. 2005)), in the present case there is no reason for Corey Collins to be nervous. The stop occurred mid-morning, Corey Collins was in no jeopardy of receiving the ticket for failure to

signal as he was simply the passenger in the car, and it does not appear Knoll ever discussed Corey Collins' failure to wear his seat belt with Corey Collins. It does not appear from either the police report or from Knoll's testimony that he articulated to Tara Collins that her passenger was not wearing his seat belt and it certainly does not appear Knoll said anything directly to Corey Collins about such failure to wear his seat belt. The most important distinguishing feature of the present case from *Morlock* is in the present case Knoll, before he even stopped Tara Collins, had reasonable suspicion to believe Corey Collins had committed a citable offense…not wearing a seatbelt. In *Morlock*, there was no independent reason to cite Morlock at the inception of the stop.

Second, Knoll was not asked how long the entire detention lasted before Knoll had Corey Collins transported, but it could not have been long. In *Morlock,* the detention lasted only twelve minutes. In the present case, it is doubtful the detention took even that long before Corey Collins was in custody and handcuffed for violating the civil protective order. It is doubtful because the only estimate of time we have in the present case was through Knoll's testimony at the suppression hearing. Knoll testified it was about five minutes from the stop to when the other motorcycle unit (Officer Averett) arrived. That motorcycle unit arrived as Knoll was receiving word from dispatch regarding the no contact order, and that occurred mere seconds before Knoll placed Corey Collins in handcuffs and took him into custody. Once Corey Collins was taken into custody, any additional length of the continued detention is of little relevance.

Third, just as with Deputy Cocking in *Morlock*, Knoll in the present case had "increasing amounts of suspicion during the stop." At the onset, Knoll suspected Corey Collins to be citable for not wearing a seat belt. That allowed Knoll to ask Corey Collins for his identification. Upon receiving that identification, within a very short amount of time,

Knoll suspected Corey Collins of violating a civil protective order. That allowed Knoll to take Corey Collins into custody. Having taken Corey Collins into custody and placing him on the cub near the car, and then Knoll deciding he needed to return Tara Collins to that car to conduct further inquiry of her outside Corey Collins hearing, that allowed Knoll to make a protective sweep of the car in which they had been travelling.

Fourth, consensual encounter. The State argues the request for Corey Collins' identification was nothing more than a consensual encounter. State's Brief in Opposition to Defendant's Motion to Suppress, pp. 4-5. If this were a consensual encounter, the first question is whether Knoll demanded or requested Corey Collins' identification. The State claims Knoll requested (*Id.,* p. 5), and the Court has already found Knoll simply requested Corey Collins to provide some identification. Again, *State v. Johnson,* 156 Wash.App. 82, 92, 231 P.3d 225, ___ (Wash.App. Div. 2, 2010), discussed above, holds that when an officer *asks* for identification of a passenger (as opposed to demands), a reasonable person would have felt free to leave under the circumstances. In other words, it is still a consensual request.

The next question is whether a reasonable person in Corey Collins' position would have felt they were entitled to end the encounter and leave the scene. The State dispatches with the question of whether Knoll's request for a license amounted to a demand and notes how nervous Corey Collins appeared to Knoll. *Id.,* p. 5. Again, Idaho case law has held that nervousness is of limited value in determining reasonable suspicion to justify extending a detention because:

> [I]t is common for people to exhibit signs of nervousness when confronted with law enforcement regardless of criminal activity, a person's demeanor during such an encounter is of limited significance in establishing the presence of reasonable suspicion.

State v. Zuniga, 143 Idaho 431, 435, 146 P.3d 697, 701 (Ct.App. 2006) (citing *State v.*

Gibson, 141 Idaho 277, 285-86, 108 P.3d 424, 432-33 (Ct.App. 2005)). While it may be of "limited" value, the uncontradicted fact of Corey Collins' nervousness is still a fact of "some" value. In the present case, the nervousness of Corey Collins is out of place with the consequences that face him for the citation for not wearing a seat belt. "Nervousness alone is not sufficient to justify further detention; however, in combination with other suspicious circumstances, it might contribute to a finding of articulable suspicion." *Morlock,* 40 Kan.App.2d 216, 233, 190 P.3d 1002, 1014, *citing, State v. DeMarco*, 263 Kan. 727, 737, 952 P.2d 1276 (Kan. 1998). In the present case, Corey Collins exhibited nervousness that was out of place given the fact that was daylight, mid-morning, he was simply the passenger in a car and no one pointed out to him the minor infraction he faced for not wearing a seat belt. Even if this were analyzed under a "consensual encounter", Knoll had reasonable suspicion Corey Collins was engaged in some criminal activity (beyond not wearing a seatbelt) given Corey Collins' out of place nervous behavior.

An important fact is how quickly in this encounter Knoll asked Corey Collins for his identification. On cross-examination, Knoll stated that he was the only officer on scene when he asked Corey Collins for his identification and was given his Idaho driver's license by Corey Collins. It was after Knoll had that license and went back to his patrol motorcycle to contact dispatch that a backup unit, Officer Averett arrived. Knoll testified that this was about five minutes into the stop. Thus, Knoll's request for Corey Collins identification came very quickly after the stop. Corey Collins' response in handing him his driver's license was voluntary.

Voluntariness is "the product of an essentially free and unconstrained choice by its maker." *Schneckloth v. Bustamonte,* 412 U.S. 218, 225, 93 S.Ct. 2041, (1973) (setting forth analysis for consent to a search). Whether Collins voluntarily provided Knoll with his

driver's license is a factual determination based on all surrounding circumstances. 412 U.S. 218, 229, 93 S.Ct. 2041. The question is whether Collins response to Knoll's request for identification was the result of "police conduct [which] would have communicated to a reasonable person that he was not at liberty to ignore the police presence and go about his business." *Michigan v. Chesternut,* 486 U.S. 567, 569, 108 S.Ct. 1975, 1977 (1988). In *State v. Jaborra,* the Idaho Court of Appeals affirmed the District Court's findings that a defendant's consent to opening a pillbox was not voluntary; although the issue in *Jaborra* was a search, not a demand for a driver's license, the factors to consider are instructive. 143 Idaho 94, 97, 137 P.3d 481, 484 (Ct.App. 2006). It is the State's burden to prove by a preponderance of the evidence that consent was voluntarily given. *Id.* Factors considered by the Court of Appeals in *Jaborra* include: the number of officers involved in the confrontation; the location and conditions of the consent including whether it was at night; whether the officer retained the individual's identification; whether the individual was free to leave; whether the individual knew of his right to refuse consent. 143 Idaho 94, 97, 137 P.3d 481, 485. Here, at the time Corey Collins provided his driver's license to Knoll, there was only one officer, Knoll. The stop took place at approximately ten in the morning. Knoll never informed Corey Collins of his right to leave and it is unclear whether Corey Collins knew of his own right to refuse to provide his driver's license to Knoll. Corey Collins did not testify at the suppression hearing. It is clear that up to the point Corey Collins was handcuffed, Knoll had made no mention of the fact that he had seen Corey Collins not wearing his seatbelt. Thus, there was no reason for Corey Collins to feel he was detained.

The *only* factor from *Jaborra* pointing to a lack of voluntariness on Corey Collins' part, is the fact that after Corey Collins gave his license to Knoll, Knoll retained that license. However, it is important to analyze Corey Collins voluntariness (or lack thereof) at the

appropriate point in time. The pertinent point in time is when Knoll asked Corey Collins for his license. At that time, there was only one officer, it was mid-morning, Corey Collins was merely a passenger in a car being driven by a driver who was about to be cited but Corey Collins had not been told he was seen not wearing a seat belt. Thus, on balance there was no reason for a reasonable person in Corey Collins' position to have felt he was not able to terminate the encounter and refuse to provide his driver's license. At the time Corey Collins provided Knoll with his license, there were no *Jaborra* factors weighing in favor of a lack of voluntariness by Corey Collins.

The fact that Knoll retained Corey Collins' license only pertains to the short time that Knoll ran that information through dispatch. Given that this is the only *Jaborra* factor that weighs toward a lack of voluntary behavior on Corey Collins' part, given the short time period Knoll retained Corey Collins' license, and especially given the fact Corey Collins started this time period by his own consensual behavior (providing Knoll with his license), this Court finds such continued detention to remain a consensual encounter.

Only after the details of the civil protective order were known to Knoll via the information from dispatch via the information on Corey Collins' license, did Knoll have reasonable suspicion to ask a few questions of Corey Collins. All Knoll asked was one question of Corey Collins, and Corey Collins' response ("I know we're not to be together"), gave Knoll all the information he needed to take Corey Collins into custody for violating the civil protective order.

D. The Weapons Sweep of Tara Collins' Car.

Knoll's obtaining and running through dispatch the identification of Tara Collins and Corey Collins was reasonable. That act returned information on the civil protection order. At that time Knoll had reasonable suspicion the passenger was the respondent at issue in

that civil protection order, and with a singular question about that order Corey Collins responded “I knew we’re not to be together”, Knoll had the ability to take Corey Collins into custody and he did by asking him to exit the vehicle, he was handcuffed and placed on the curb.

As Corey Collins exited the vehicle, Knoll saw a knife about five inches long, which previously seemed to have been hidden by Corey Collins’ leg. Knoll testified he wanted to question Tara Collins, wanted to do so where Corey Collins could not hear, and thus, wanted to place Tara Collins back in her vehicle she had been driving. Before he could do that, Knoll was allowed to perform a sweep of the vehicle for weapons. That was reasonable on Knoll’s part. As stated above, brief inquiries not related to the initial purpose of the stop do not necessarily violate a detainee’s Fourth Amendment rights. *State v. Roe,* 140 Idaho 176, 181, 90 P.3d 926, 931. And, a routine traffic stop may turn up suspicious circumstances that could justify an officer asking further questions unrelated to the stop. *State v. Brumfield,* 136 Idaho 913, 916, 42 P.3d 706, 709. However, “an investigative detention must be temporary and last no longer than is necessary to effectuate the purposes of the stop.” *Florida v. Royer,* 460 U.S 491, 500, 103 S.Ct. 1319, 1325 (1983). The burden rests with the State to show the seizure was based on reasonable suspicion and sufficiently limited in scope and duration to satisfy the conditions of an investigative seizure. *Id.* The initial reason for the stop was proper. The State has shown Knoll properly obtained identification of the occupants and properly extended the scope of the detention to investigate the civil protection order issue. Then, with one question by Knoll, Corey Collins himself admitted to being in violation of the order. This occurred *prior* to the time Knoll asked Corey Collins to leave the vehicle, handcuffed him, and had him sit on the curb. Given the facts before the Court the State has met its burden to show the detention was

sufficiently limited in scope and duration to satisfy the conditions of an investigative detention.

Corey Collins argues the grounds for an investigatory stop will not necessarily justify a frisk for weapons. Memorandum in Support of Motion for Summary Judgment, p. 4. And, while Corey Collins' assertion of *law* is correct, based on the *facts* in Corey Collins' case (the frisk for weapons came about *after* Corey Collins' license had been run, *after* Corey Collins admitted to violating the civil protective order, and *after* Corey Collins had been placed under arrest and was sitting handcuffed on the curb), this had turned from an investigatory stop to a custodial arrest. It was Knoll's removing Corey Collins from the vehicle which caused Knoll to observe the knife Corey Collins had up to that time obscured.

An officer may frisk an individual only where he can point to specific, articulable facts which would lead a reasonably prudent person to believe the individual suspect may be armed and presently dangerous; nothing in the initial stages of the encounter can have served to dispel the officer's belief of that the suspect is armed and presently dangerous. *Terry,* 391 U.S. 1, 27, 88 S.Ct. 1868, 1884; *Babb,* 133 Idaho 890, 892, 994 P.2d 633, 635. "In our analysis of the frisk, we look to the facts known to the officers on the scene and the inferences of risk of danger reasonably drawn from the totality of those specific circumstances." *State v. Muir,* 116 Idaho 565, 567-68, 777 P.2d 1238, 1240-41 (Ct.App. 1989). While the record does not disclose any articulable facts which would lead a reasonable person to believe Corey Collins and or Tara Collins were armed and presently dangerous, there was no search of Corey Collins' *person* at issue here. The issue is the search of *Tara Collins' car* prior to Knoll placing Tara Collins back in the car so that he could interview her outside of Corey Collins' hearing. Knoll testified the reason he

searched the car was for weapons, and the reason he searched the fanny pack was it was it could have contained a weapon.

Because the search was of Tara Collins' car, Corey Collins has no standing. As pointed out supra, only the owner of a vehicle has standing to contest an illegal search. *Rakas v. Illinois,* 439 U.S. 128, 99, S.Ct. 421 (1978). And because a passenger has no proprietary interest in the vehicle, and therefore no reasonable expectation of privacy therein, a passenger lacks standing to challenge a search where a driver has consented. *State v. Guznman,* 126 Idaho 368, 373, 883 P.2d 726, 731 (Ct.App. 1994). No consent to search was given by Tara Collins. However, only where there is a valid challenge to an initial stop or to continued detention may the passenger have standing to contest a search of a vehicle. *State v. Luna,* 126 Idaho 235, 236-38, 880 P.2d 265, 266-68 (Ct.App. 1994). Corey Collins has no issue with the initial stop, and the Court has found the continued detention was permissible.

Once Knoll found paraphernalia (small one inch by one inch baggies) within the fanny pack, Knoll testified his continued search of the fanny pack switched to a search for illegal drugs. That is permissible. A detention initiated for one investigative purpose may disclose suspicious circumstances that justify expanding the investigation to other possible crimes. *State v. Brumfield,* 136 Idaho 913, 916, 42 P.3d 706, 709 (Ct.App. 2002), *citing Florida v. Royer,* 460 U.S. 491, 500, 103 S.Ct. 1319, 1325, 75 L.Ed.2d 229, 238 (1983).

E. The Unraised *Miranda* Issue.

Although Corey Collins moves this Court for an Order suppressing all statements made, the basis for that motion is limited to the stop, the search and the weapons frisk. Memorandum in Support of Motion to Suppress, pp. 1-5. Corey Collins has made no argument that his statements were procured in violation of *Miranda.* The only statements

Knoll attributed to Corey Collins at the suppression hearing were his response regarding the protective order that: "I knew we're not to be together", and Corey Collins later unsolicited statement that "We were just trying to reconcile." The first statement was made by Corey Collins just prior to his being placed in handcuffs.

In *Miranda,* the United States Supreme Court held that police must inform individuals of their right to remain silent and their right to counsel before undertaking custodial interrogation in order to protect the Fifth-Amendment privilege against self-incrimination. *Miranda v. Arizona,* 384 U.S. 436, 467, 86 S.Ct. 1602, 1624 (1966). The *Miranda* rule applies where an individual is "in custody" or where their "freedom of action is curtailed to a degree associated with formal arrest." *Berkemer v. McCarthy,* 468 U.S. 420, 440, 104 S.Ct. 3138, 3150 (1984) (quoting *California v. Behler,* 463 U.S. 1121, 1125, 103 S.Ct 3517, 3520 (1983)). Interrogation includes not only express questioning, but also its functional equivalent; interrogation under *Miranda* refers to "any words or actions on the part of the police… that the police should know are reasonably likely to elicit an incriminating response from the suspect." *State v. Person,* 140 Idaho 934, 939-40, 104 P.3d 976, 981- 82 (Ct.App. 2004) (quoting *Rhode Island v. Innis,* 446 U.S. 291, 300-02, 100 S.Ct. 1682, 1689-90 (1980)). Knoll had likely reached that point when he asked Corey Collins about the protective order, that his question would likely elicit an incriminating response from Corey Collins.

In his written report, Knoll also states after he found and searched the fanny pack:

> I asked Corey about the bag. He told me he brought the bag into the car, but the items inside it weren't his. He told me the bag belonged to a friend of his and his friend told him there was a meth pipe inside.

Report for CDA Incident 10C18959, p. 3. That report continues:

> Officer Reneau arrived to transport Core to PSB [Public Safety Building]. I went to the jail to complete the booking process. I read Corey his Miranda

Rights from my pocket card.

Id. According to the police report, Corey Collins made several more admissions regarding the contents of the fanny pack.

Corey Collins is charged with possession of a controlled substance, possession of paraphernalia and violation of a Domestic Violence Protective Order. Corey Collins' initial admissions ("I know we're not to be together", and his statement about bringing the bag into the car) may be suppressed if *Miranda* warnings were not given. However, Knoll was never asked about *Miranda* warnings during his testimony on the suppression motion. It is only Knoll's written report that discusses giving Corey Collins' his *Miranda* warnings out at the public safety building. It could be Knoll covered *Miranda* warnings at an additional earlier time than out at the public safety building. Since the *Miranda* issue was not raised by Corey Collins and since the testimony was not developed on that specific issue, there is no suppression of evidence that is warranted under *Miranda* as a result of the present motion to suppress.

IV. CONCLUSION AND ORDER.

For the reasons stated above, Corey Collins' Motion to Suppress must be denied.

IT IS HEREBY ORDERED defendant Corey Collins' Motion to Suppress is DENIED.

DATED this 5th day of October, 2010

_____
JOHN T. MITCHELL District Judge

CERTIFICATE OF MAILING

I hereby certify that on the _____ day of October, 2010 copies of the foregoing Order were mailed, postage prepaid, or sent by facsimile or interoffice mail to:

Defense Attorney - Jedediah J. Whitaker
Prosecuting Attorney – Amy Borgman

CLERK OF THE DISTRICT COURT
KOOTENAI COUNTY

BY:_____
Deputy