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IN THE SUPREME COURT OF THE STATE OF IDAHO

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| STATE OF IDAHO, |) | |
| |) | NO. 49087-2021 |
| Plaintiff-Appellant, |) | |
| |) | ADA COUNTY NO. CR01-19-1763 |
| v. |) | |
| |) | |
| SUNNY DAWN RILEY, |) | APPELLANT’S BRIEF |
| |) | IN SUPPORT OF |
| Defendant-Respondent. |) | PETITION FOR REHEARING |
| _____ |) | |

Sunny Dawn Riley asks this Court, pursuant to Idaho Appellate Rule 42, to rehear her case and reconsider the opinion it issued reversing the district court’s grant of her motion to suppress. *See State v. Riley*, No. 49087 (Idaho June 10, 2022) (“Opinion”). This case warrants rehearing because the Opinion cannot be reconciled with *State v. Karst*, 170 Idaho 219 (2021), and is inconsistent with *Rodriguez v. United States*, 575 U.S. 348 (2015), as informed by the Tenth Circuit’s recent decision in *United States v. Frazier*, 30 F.4th 1165 (10th Cir. 2022).

In this case, it is undisputed that Officer Kingland had two conversations with Ms. Riley that “deviated from the original purpose of the traffic stop,” and were not supported by

reasonable suspicion. (See Opinion, pp.2, 4.) Ms. Riley was unlawfully seized *at the time of those deviations*, regardless of what happened thereafter. This Court must affirm the grant of Ms. Riley’s motion to suppress under *Karst* and *Rodriguez*.

In *Karst*, this Court “agree[d] with [the defendant]” that “the district court erred when it denied her motion to suppress because [the officer] impermissibly extended the traffic stop when he stopped for nineteen seconds on the way back to his vehicle to contact dispatch and request a drug dog unit.” 170 Idaho at 1151. This Court quoted its earlier decision in *State v. Linze*, 161 Idaho 605 (2016), for the proposition that “[t]he rule [from *Rodriguez*] isn’t concerned with when the officer deviates from the original purpose of the traffic stop, it is concerned with the fact that the officer deviates from the original purpose of the stop at all.” *Karst*, 170 Idaho at 1156. *Karst* thus establishes a bright line rule that whether termed a detour or an abandonment, any deviation from the original purpose of the stop that is not supported by independent reasonable suspicion results in a Fourth Amendment violation.

This rule follows directly from *Rodriguez*, as clarified by *Frazier*, 30 F.4th 1165. In *Frazier*, the Tenth Circuit followed the Third Circuit’s reasoning in *United States v. Green*, 897 F.3d 173 (3d Cir. 2018), and “read *Rodriguez* as holding that when reasonable suspicion is lacking at the ‘*Rodriguez* moment,’ seizure of the individual remains illegal from that point forward.” *Frazier*, 30 F.4th at 1179 (citation omitted). The First Circuit used the phrase “*Rodriguez* moment” to refer to the moment when an officer “diverts from a stop’s traffic-based purpose to investigate other crimes.” *Green*, 897 F.3d at 179 (citation omitted). Thus, the Tenth Circuit held in *Frazier* that the defendant’s seizure violated his rights under the Fourth

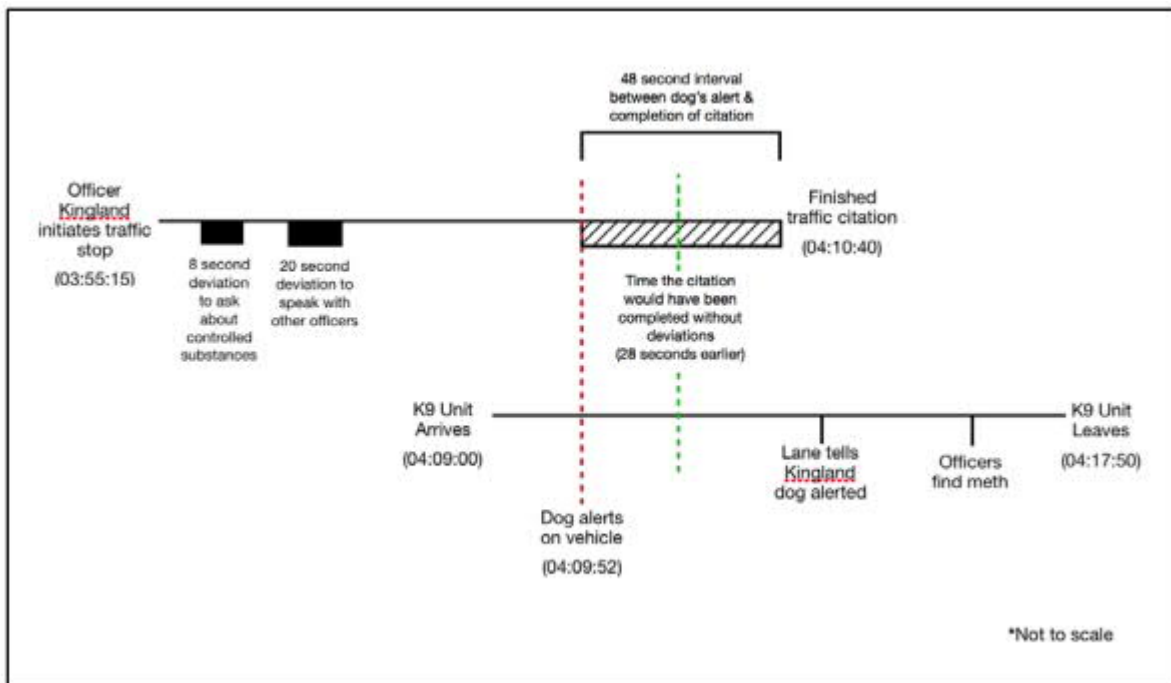
Amendment because the officer departed from the traffic-based mission of the stop by arranging for a dog sniff that was unsupported by reasonable suspicion—regardless of what occurred thereafter. *Frazier*, 30 F.4th at 1180. The *Frazier* Court said that “each minute that the trooper spent arranging the dog sniff was time the citation-related tasks went unaddressed,” which “*necessarily* prolonged the stop.” *Id.* at 1173 (emphasis added, footnote omitted).

In its Opinion in this case, the Court first held the district court erred in concluding that the length of the conversation between Officer Kingland and his backup officers (the second deviation, which was not related to the purpose of the stop and not supported by reasonable suspicion), could not be determined from the video evidence. (Opinion, pp.6-7.) Ms. Riley does not take issue with the Court’s holding in this regard, but contends that it is irrelevant to the legal analysis. As *Karst* and *Rodriguez* make clear, Ms. Riley’s seizure violated her rights under the Fourth Amendment at the moment of the first deviation—that is the “*Rodriguez* moment” in this case—because her new seizure could not “piggy-back” on the reasonableness of the original seizure. *See Linze*, 161 Idaho at 609.

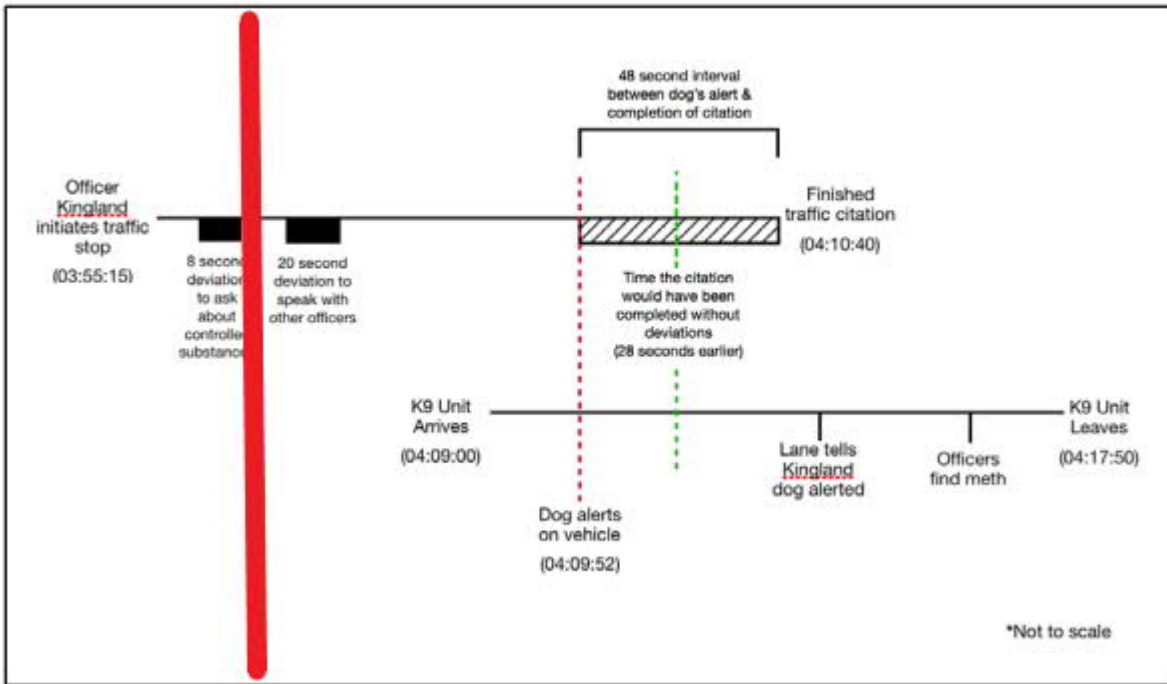
This Court concluded Ms. Riley’s seizure did not violate her rights under the Fourth Amendment, noting that “[i]n the context of dog sniffs, the courts have been consistent in permitting law enforcement to perform a dog sniff during the course of a lawful traffic stop only so long as it does not add time to the stop.” (Opinion, p.9 (citations omitted).) The Court explained that “a dog sniff does not prolong the stop where one officer pursues the original objective of the stop while another officer conducts the dog sniff.” (*Id.* (citation omitted).) But a dog sniff *does* prolong the stop “where the officer detours from the stop to radio for a drug dog,

even if it only extends the seizure by mere seconds.” (*Id.* (citation omitted).) The Court held that the two deviations in this case did not prolong Ms. Riley’s seizure because the drug dog called by Officer Miles “alerted a full 48 seconds *before* Officer Kingland completed writing Riley’s traffic citation, an event that established reasonable suspicion of new unlawful activity.” (Opinion, p.10.)

The Court included a drawing in the Opinion to illustrate its analysis, which is copied below:

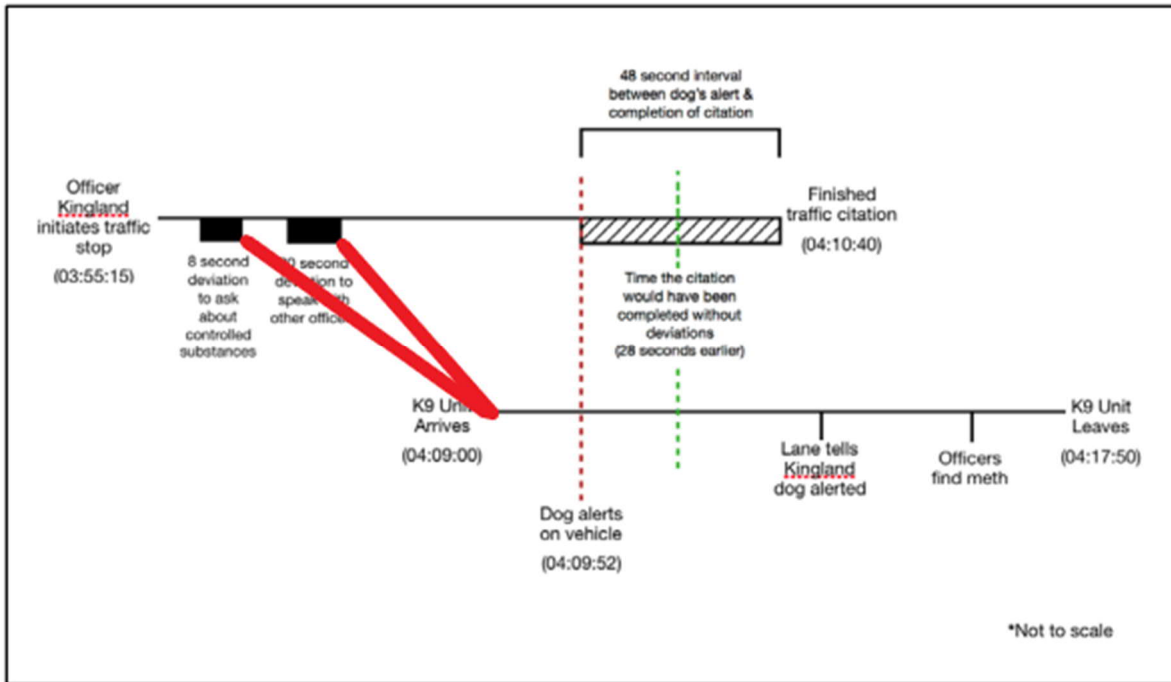


(Opinion, p.10.) There are two independent fatal flaws with this drawing. The first is the most obvious. As discussed above, the constitutional violation took place at the time of the initial deviation, indicated by the thick red line below, and the reasonable suspicion that developed as a result of the subsequent dog alert cannot retroactively justify this initial deviation.



What this Court is effectively saying is that Officer Kingland’s deviations were not long enough to matter, which is contrary to the rule from *Rodriguez* that there are no *de minimus* deviations. *Rodriguez*, 575 U.S. at 356.

The second fatal flaw with the Court’s drawing is that it imagines the arrival of the canine unit and subsequent alert as being entirely separate from Officer Kingland’s two earlier deviations. This is plainly untrue, as Officer Lane (the canine officer), was called to the scene by Officer Miles (one of the backup officers), after Officer Miles conversed with Officer Kingland about matters unrelated to the purpose of the original stop. (Opinion, p.3.) Thus, a more accurate depiction of the events would be as follows:



This drawing makes clear that the dog alert flowed from the earlier deviations; it was not an independent event. What this Court is effectively saying is that if, as in *Karst*, one officer detours to call a drug dog, absent reasonable suspicion, that is a violation; but if one officer detours to talk to another officer, absent reasonable suspicion, and that officer calls a drug dog, there is no violation. This is not a reasoned distinction to draw under *Rodriguez*.

Officer Kingland twice deviated from the original purpose of the traffic stop, absent new reasonable suspicion, and those deviations necessarily extended Ms. Riley's seizure, and directly led to the arrival of the drug dog. It is clear under *Rodriguez* and *Karst* that Ms. Riley's Fourth Amendment rights were violated, and the district court correctly granted her motion to suppress. This Court should affirm.

CONCLUSION

Ms. Riley respectfully requests that this Court rehear her case, and grant the relief she requested in her original briefing and at oral argument before this Court.

DATED this 11th day of August, 2022.

/s/ Andrea W. Reynolds
ANDREA W. REYNOLDS
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of August, 2022, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF IN SUPPORT OF PETITION FOR REHEARING to be served as follows:

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/s/ Evan A. Smith
EVAN A. SMITH
Administrative Assistant

AWR/eas