

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 19-0670

STATE OF MONTANA,

Plaintiff and Appellee,

v.

MATTHEW DOUGLAS WEBB,

Defendant and Appellant.

OPENING BRIEF OF APPELLANT

On Appeal from the Montana Fourth Judicial District Court,
Missoula County, the Honorable Jason T. Marks Presiding

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STATEMENT OF THE ISSUES

Did the district court err when it determined that what the stopping officer thought as generally suspicious behaviors—a driver’s extreme nervousness, his offering “inconsistent” explanations about who loaned him the vehicle, a suspicious explanation for where the driver was coming from and going, and dispatch notifying the stopping officer that the driver had discharged a prior drug possession conviction—constituted particularized suspicion to extend a traffic stop into a dog sniff for drugs?

STATEMENT OF THE CASE

Matthew Douglas Webb appeals from a jury verdict in the Montana Fourth Judicial District Court, Missoula County, convicting him of a single count of criminal possession of dangerous drugs. (D.C. Doc. 50.)

Webb filed a motion to suppress the evidence discovered after a canine sniff of his vehicle alerted officers to the presence of certain illegal drugs. (D.C. Doc. 23.) Following a hearing, the district court denied Webb’s motion to suppress and dismiss the charge. (D.C. Doc. 41.) Webb pled guilty to criminal possession of dangerous drugs and

reserved the right to appeal the denial of his motion to suppress. Webb received a two-year suspended sentence with 116 days as credit for time served. (D.C. Doc. 50 at 2; Tr. at 61.)

Webb filed a timely appeal. (D.C. Doc. 52.)

STATEMENT OF THE FACTS

Shortly before midnight on June 6, 2017, Montana Highway Patrol State Trooper Novak was patrolling U.S. Highway 93 near Valley Grove Drive in Lolo just south of Missoula. (*See* Tr. at 10.) His patrol car was posted on a cross street to Highway 93 South. (*See* Tr. at 13.) A white Ford Contour approached southbound. (*See* Tr. at 10, 13.) There was no indication whatsoever that the driver of the Ford Contour was violating any traffic laws. However, Trooper Novak decided to follow the Ford Contour south on U.S. Highway 93. (Tr. at 13.) The Ford Contour slowed down below the speed limit and a short time later pulled into a Town Pump gas station. (Tr. at 13–14.) Rather than immediately running a check through dispatch on registration plates of the Ford Contour or rather than approaching the vehicle while it was still at the Town Pump in Lolo, the patrol car continued south on Highway 93 and pulled off the road and waited to intercept the Ford

Contour. Meanwhile Trooper Novak ran the license plate through dispatch to check whether its registration was current or expired. (Tr. at 14.) Trooper Novak discovered that one of the registered owners, Matthew Mitchell, was a white male with brown hair and his driver's license had been suspended. (See Tr. at 14.) A few minutes later, the Ford Contour had finished at the Town Pump and was southbound again on U.S. Highway 93. (See Tr. at 14.) Trooper Novak decided to initiate a traffic stop of the Ford Contour to investigate whether the driver was operating his vehicle while his license was suspended. (See Tr. at 14.)

According to Trooper Novak, the driver, who was alone, roughly matched the description of Mitchell—white male, with brown hair. (See Tr. at 14.) Trooper Novak in his police report indicated he observed a blue duffel bag and a black backpack in plain view on the back seat. (See Tr. at 40.) Trooper Novak thought the luggage appeared suspicious because it had been “hastily” placed on the back seat. (See Tr. at 40.) Trooper Novak approached the vehicle and asked the driver if he was Matthew Mitchell. (See Tr. at 14.) The driver identified himself as Matthew Douglas Webb—At 23 years old, he was much younger than

Mitchell. (*See* Tr. at 14.) Trooper Novak thought how Webb answered this question appeared suspicious—to him it suggested Webb did not know Matthew Mitchell. (*See* Tr. at 14.) Webb did not have his wallet with him. (Tr. at 15.) Webb explained he had purchased the Ford Contour from a female: “Her name is Jamie can I check my Facebook Messenger?”—not from Mitchell, the registered male co-owner described by dispatch. (*See* Tr. at 18; *see* Montana Highway Patrol Incident Report Number 10061753-01, dated June 6, 2017, attached as App. C, at 2.) Incidentally, Trooper Novak learned from dispatch that the vehicle had registered co-owners, a man, Matthew Mitchell, and a woman, Sherry Louise Kenda-Feller. (*See* App C. at 1–3.) Trooper Novak asked Webb whether he knew the male registered co-owner, Matthew Mitchell. (App. C. at 2.) Webb explained that he had talked to Matthew Mitchell on the phone, but had mostly talked to Matthew’s mother—ostensibly Kenda-Feller. (*See* App. C. at 2.) Webb explained he knew that Mathew Mitchell had sold this vehicle, his old high school car, to Jaime and then he purchased it from her. (*See* App. C. at 2.)

Trooper Novak requested the vehicle’s registration and proof of insurance. (*See* Tr. at 23.) Webb looked around the vehicle inside

compartments for the documents. (*See* Tr. at 23.) Webb offered to call Jaime to help him locate the registration and insurance. (*See* Tr. at 14.) Webb began calling. (*See* Tr. at 18.) Trooper Novak asked Webb to stop calling.

Trooper Novak just wanted to put questions to Webb. Where do you live? (*See* Tr. at 18.) Webb gave two addresses: one in Great Falls and another in Butte. (*See* Tr. at 15, 17–18.) Trooper Novak thought this was suspicious—in his training and experience, a motorist giving multiple addresses was consistent with criminal or unlawful activity. (Tr. at 15.) Where are you headed? Webb said he was going to Stevensville to visit Dan. (*See* Tr. at 17.) Webb was extremely nervous and could not remember Dan’s last name. (*See* Tr. at 17.) Trooper Novak thought Webb’s inability to remember Dan’s last name was suspicious.

Dispatch notified Trooper Novak that Webb had a previous conviction for criminal possession of dangerous drugs with intent to distribute from December of 2016 and a few other misdemeanor convictions. (Tr. at 16.) From what dispatch said, Trooper Novak got a hunch that Webb was moving meth between Butte and Missoula, even

though he stopped Webb's vehicle in Lolo traveling south on Highway 93 towards Stevensville. (App. C at 1.)

For about forty-five minutes, Trooper Novak put questions to Webb. After forty-five minutes of questioning, Trooper Novak flat out asked to search the vehicle for illegal drugs. (*See* Tr. at 13.) Webb would not consent to a search of the vehicle. (*See* Tr. at 13.) One hour after initiating the stop, Trooper Novak gave Webb citations for driving while his driver's license had been suspended and for failure to carry proof of liability insurance. (Tr. at 13.) Trooper Novak told Webb he was free to walk away on Highway 93, but the Ford Contour was seized until and unless a canine search cleared it of the presence of illegal drugs. (*See* Tr. at 13.) Trooper Novak continued putting more accusatory questions to Webb—this time he directly accused Webb of transporting meth to Butte. (Tr. at 28.) Webb denied he was transporting meth. (Tr. at 28.)

Webb did not appear intoxicated or high on drugs. Trooper Novak did not see any drugs nor drug paraphernalia in plain view inside the Ford Contour. (Tr. at 23.) He did not see any stacks of cash lying around inside the vehicle. (Tr. at 23.) Webb did not have any money

nor a wallet on him. Novak did not see any cellphones. (Tr. at 23.) Trooper Novak did not see a single air freshener. (Tr. at 23.) Trooper Novak did not smell any odor of drugs emanating from the vehicle. (Tr. at 23.) Trooper Novak acknowledged that there were no active warrants for Webb’s arrest—otherwise he would have placed Webb under arrest. (Tr. at 27.) Another officer arrived with a canine. A canine sniff was conducted, and it alerted the officers to the presence of some illegal drugs in the vehicle. (Tr. at 13.)

Trooper Novak summarized the reasons why he asked for a canine search of the vehicle. The following historical facts piqued his suspicion. Webb exhibited “extreme nervousness” far beyond the nervousness of a person stopped for a traffic violation. (Tr. at 14.) Trooper Novak thought Webb’s story about the vehicle—who loaned it or sold it—appeared “inconsistent.”¹ (See Tr. at 15.) Webb did not have his wallet with him and did not have any cash. (See Tr. at 15.) Webb said he lived in two different places, one of them was Butte. (See Tr. at 15.) Trooper Novak thought, in his training and experience, Butte was a very “high use-distribution” area for methamphetamine. (Tr. at 17.) Dispatch

¹ Although he did not suspect Webb of stealing the Ford Contour.

notified Trooper Novak that Webb had discharged his conviction for criminal distribution of illegal drugs. (Tr. at 16). From all these historical facts, Trooper Novak presumed he could extend the traffic stop into a canine search for illegal drugs.

The district court rejected Webb's argument under *Wilson* and concluded that the totality of these circumstances constituted particularized suspicion to extend the traffic stop into a canine sniff for illegal drugs. (Order on Defendant's Motion to Dismiss, attached as App. D, at 12.) This appeal resulted.

STANDARDS OF REVIEW

The Court reviews a district court's grant or denial of a motion to suppress to determine whether the court's findings are clearly erroneous and whether those findings were applied correctly as a matter of law. *State v. Wilson*, 2018 MT 268, ¶ 21, 393 Mont. 238, 430 P.3d 77 (*citing State v. Gill*, 2012 MT 36, ¶ 10, 364 Mont. 182, 272 P.3d 60). A district court's finding that particularized suspicion exists is a question of fact which we review for clear error. *Gill*, ¶ 10 (*citing City of Missoula v. Moore*, 2011 MT 61, ¶ 10, 360 Mont. 22, 251 P.3d 679). A finding is clearly erroneous if it is not supported by substantial

evidence, if the lower court has misapprehended the effect of the evidence, or if our review of the record leaves us with the firm conviction that a mistake has been made. *Gill*, ¶ 10.

SUMMARY OF THE ARGUMENT

The Court decided this same exact case in *Wilson*. Therefore, as a matter of law, the same historical facts necessitate the same result—a reversal and dismissal of all charges. After dispatch notified Trooper Novak that Webb had previously discharged a conviction for possession of illegal drugs, he developed a hunch, a general suspicion that Webb was trafficking meth. Here, all the historical facts arose to the level of general suspicion and inarticulate hunches inside Trooper Novak’s suspicious mind. However, Trooper Novak did not develop additional “objective” information suggesting Webb was engaged in unlawful possession of illegal drugs to warrant extending a routine traffic stop into a canine sniff. Therefore, there is no “objective” data supportive of a resulting suspicion that Webb was engaged in unlawful possession of drugs.

The information available at the traffic stop was that Webb was unusually nervous. Trooper Novak thought the nervousness was more

extreme than was normal for a traffic stop. Trooper Novak observed a backpack and a duffel bag in plain view “hastily” thrown about on the back seat. Dispatch notified Trooper Novak that Webb had recently discharged his conviction for possession of illegal drugs from 2016. Webb gave two different stories about the vehicle he was driving—bought or borrowed. However, Trooper Novak did not suspect Webb had stolen the vehicle. Webb had indicated to Trooper Novak he lived sometimes in Great Falls and sometimes in Butte. Trooper Novak thought in his experience and training Butte was a “high use-distribution” area for meth. Trooper Novak issued two citations for driving while suspended and for not carrying a valid insurance. Without developing any further suspicion that illegal drug activity was afoot, Trooper Novak extended the traffic stop into a canine sniff investigation. Instead of terminating the traffic stop, Trooper Novak told Webb he was free to leave but his vehicle was seized pending the results of a canine sniff for illegal drugs.

From these undisputed facts, Trooper Novak developed a hunch—a generalized suspicion—that Webb was moving meth to Butte, although he stopped Webb’s vehicle in Lolo driving south on Highway

93 towards Stevensville. From the totality of these circumstances, Trooper Novak believed the particularized suspicion was sufficient to extend a routine traffic stop into a canine sniff for illegal drugs. The district court erred as a matter of law. In *Wilson* these same exact historical facts did not provide sufficient particularized suspicion to extend a traffic stop into a canine sniff of the vehicle. *Wilson* controls here. As a matter of law, these same exact historical facts warrant the same result.

Montana's Constitution and statutes enshrine Montanans' faith in the fundamental right to be let alone. We recognize that this "right of individual privacy is essential to the well-being of a free society." Mont. Const. art. II, § 10. This cherished right is not so feeble as to be overcome by an officer's generalized opinion that all vehicles driven by nervous drivers who live part time in Butte—a "high use-distribution area" for meth—were distributing meth to Butte. The district court erred in concluding that Trooper Novak's generalized opinions about Webb's nervousness, Webb's inconsistent explanations about who loaned him the vehicle, Webb's inability to remember the last name of who he was going to visit, his inarticulate hunches about Webb's

“hastily” thrown backpack and duffel bag on the back seat, and dispatch notifying him that Webb had recently discharged a sentence for possession of illegal drugs, gave particularized suspicion to extend the routine traffic stop to a drug investigation. The Court must remand with instructions to suppress all evidence and to dismiss the charge against Webb.

ARGUMENT

The district court erred when it concluded that Webb’s nervousness, his inconsistent explanation of who loaned him the vehicle, his not remembering the last name of the person he was going to visit, and dispatch notifying the stopping officer of his prior discharged drug conviction gave sufficient particularized suspicion to extend a traffic stop into a canine investigation for drugs.

The Fourth Amendment to the United States Constitution and Article II, Section 11 of the Montana Constitution protect persons against unreasonable searches and seizures, including brief investigatory stops such as traffic stops. *State v. Elison*, 2000 MT 288, ¶ 15, 302 Mont. 228, 14 P.3d 456. The fundamental purpose of the Fourth Amendment and Article II, Section 11, is “to protect the privacy and security of individuals” from unreasonable government intrusion or interference. *State v. Hoover*, 2017 MT 236, ¶ 14, 388 Mont. 533, 402

P.3d 1224 (*citing State v. Clayton*, 2002 MT 67, ¶ 11, 309 Mont. 215, 45 P.3d 30). To initiate a traffic stop, a law enforcement officer must have particularized suspicion that the occupant of the vehicle is or has been engaged in unlawful behavior. Mont. Code Ann. § 46-5-401.

Particularized suspicion is objective data from which an experienced law enforcement officer can make certain inferences and a resulting suspicion that the person to be stopped is or has been engaged in unlawful behavior. *See Wilson*, ¶ 28; *State v. Marcial*, 2013 MT 242, ¶ 18, 371 Mont. 348, 308 P.3d 69. Whether particularized suspicion exists is a factual inquiry determined by examining the totality of the circumstances confronting the officer at the time of the stop, including a consideration of “the quantity, substance, quality, and degree of reliability of information known to the officer.” *Wilson*, ¶ 28 (citations omitted). An officer’s training and experience are also relevant factors in a totality of the circumstances analysis to determine what reasonable inferences the officer is entitled to make from his objective observations. *State v. Wagner*, 2013 MT 159, ¶ 10, 370 Mont. 381, 303 P.3d 285 (citations omitted).

While the particularized suspicion standard requires an officer to have more than “mere generalized suspicion or an undeveloped hunch of criminal activity,” the officer does not need to “satisfy a checklist of factors” to justify the investigative stop, nor must the officer “be certain, or even ultimately correct, that a person is engaged in criminal activity.” *Wilson*, ¶ 28 (citations omitted); *State v. Rodriguez*, 2011 MT 36, ¶ 18, 359 Mont. 281, 248 P.3d 850 (citations omitted).

A traffic stop may not last longer than is necessary to effectuate the purpose of the stop. Mont. Code Ann. § 46-5-403. However, a stop may be prolonged and the scope of the investigation may be broadened if the investigation remains within the limits created by the facts and the suspicions from which they arose. *State v. Meza*, 2006 MT 210, ¶ 23, 333 Mont. 305, 143 P.3d 422; *Rodriguez v. United States*, 575 U.S. ___, 135 S.Ct. 1609, 1614–15 (2015). The justification for a stop may change as officers acquire additional information. *State v. Estes*, 2017 MT 226, ¶ 15, 388 Mont. 491, 403 P.3d 1249 (citing *State v. Carlson*, 2000 MT 320, ¶ 21, 302 Mont. 508, 15 P.3d 893).

A canine sniff of a vehicle constitutes a search under Article II, Sections 10 and 11 of the Montana Constitution. *Meza*, ¶ 22; *State v.*

Tackitt, 2003 MT 81, ¶ 22, 315 Mont. 59, 67 P.3d 295. This Court has said that due to the minimally intrusive nature of a canine sniff, it does not require the issuance of a warrant. Instead, only particularized suspicion is a prerequisite. *Tackitt*, ¶ 31; *Wilson*, ¶¶ 25–26.

Here, there is no dispute as to the facts. Nor is there a dispute as to the applicable law. The only dispute is whether the totality of these circumstances—the historical facts in the present case—constitute a factual predicate that supports what the law recognizes as particularized suspicion to extend the traffic stop to conduct a drug investigation. Particularized suspicion requires “objective” data from which an experienced law enforcement officer can make certain inferences and a resulting suspicion that the person is engaged or has been engaged in unlawful behavior. *See Wilson*, ¶ 28. The Court’s review of the historical facts will reveal that Trooper Novak only had a generalized hunch and not specific articulable facts demonstrating Webb was engaged in unlawful possession of illegal drugs—Where is the “objective” data supportive of a resulting suspicion that Webb was engaged in illegal possession of drugs? It does not exist.

Trooper Novak testified that Webb’s nerves were more than what he typically sees during a traffic stop. The vehicle was borrowed from someone and Webb in his “extreme nervousness” provided two different genders for the person that he bought the vehicle from or from whom he had borrowed it. Notably, the facts do not establish that Trooper Novak suspected Webb of stealing the vehicle. Trooper Novak’s investigation proceeded into a canine sniff for illegal drugs and not an investigation for a stolen or missing vehicle.

This Court has already decided this case in *Wilson*—it is factually identical to the present case. Significantly, Trooper Novak failed to identify details that objectively indicated that Webb was engaged in unlawful possession of illegal drugs. *See Wilson*, ¶ 35.

Trooper Novak made an initial traffic stop to investigate whether the driver was driving on a suspended license. *See Estes*, ¶ 17; *Wilson*, ¶ 27. Admittedly, like most people who come into contact with police, Webb was nervous. Webb in his “extreme” nervousness gave two different stories about who loaned him the vehicle and even forgot the last name of the person he was going to visit—which one of us citizens is not nervous when stopped by an officer? Trooper Novak issued Webb

two citations for driving while his license was suspended and for failure to carry insurance. *See Wilson*, ¶ 12 (Identical facts: The stopping officer issued citations to the driver for failure to provide proof of insurance and for operating a vehicle with expired registration and then asked to search the vehicle for drugs. And when the driver refused, the officer seized the vehicle for a canine sniff for illegal drugs.). The routine traffic stop should have ended there. However, Trooper Novak told Webb he could walk away but his vehicle was being seized until a canine sniff cleared it of the presence of illegal drugs. Trooper Novak lacked the requisite particularized suspicion to extend the stop into a drug investigation. Montana Code Annotated § 46-5-403, required Webb’s release after those citations were issued. *See Wilson*, ¶ 37. Remember “mere generalized suspicion or an undeveloped hunch of criminal activity,” is not enough to create particularized suspicion. *See Wilson*, ¶ 28; *see also, Hoover*, ¶ 19.

In *Wilson*, the Montana Supreme Court held that virtually identical facts, including the driver exhibiting nervousness “at a different level” than normal and “trembling” when talking to the police officer were not objective indicia of drug activity. *Wilson*, ¶¶ 4, 32, 34–

35. The motorist informed the stopping officer that he had borrowed the vehicle from a work acquaintance. *Wilson*, ¶ 5. There was a suitcase in the back seat, and the vehicle had a “somewhat lived in appearance”—it was messy. *Wilson*, ¶6. Moreover, the stopping officer asked the driver of the vehicle how long he had known the vehicle’s owner, to which he responded about four or five months. *Wilson*, ¶7. The officer found it suspicious that a person would loan their vehicle to someone who the person knew for less than six months, especially for an interstate trip lasting several days. *Wilson*, ¶7. The driver did not have a wallet or driver’s license on him when he was stopped, and the Montana Supreme Court held that was not indicative of illegal drug activity. *Wilson*, ¶¶ 5, 34-35. Again, in *Wilson*, the driver “had a history of prior drug convictions” and had been on probation for a drug conviction, yet the Montana Supreme Court held that the driver’s criminal history did not establish particularized suspicion for a drug investigation. *Wilson*, ¶¶ 10, 34–35. In *Wilson*, the stopping officer found the motorist’s explanation about where he was coming from and going to, suspicious. The driver informed the stopping officer that he was returning home from North Dakota from his wedding in Sandpoint,

Idaho. *Wilson*, ¶6. The officer found this explanation suspicious—a newlywed driver was traveling without his new beloved bride. *Wilson*, ¶6. The officer questioned the occupants of the vehicle five separate times about that suspicious explanation. *Wilson*, ¶6. The driver nervously, while avoiding eye-contact, insisted that his wife was driving separately with the children. *Wilson*, ¶6.

Again, in *Wilson*, this Court found that a suitcase in the back seat and a messy vehicle were not sufficiently indicative of illegal drug activity. *Wilson*, ¶¶ 4, 34–35. This Court has already concluded that all of the factors listed by Trooper Novak revealed only “a generalized hunch and not an articulation of specific facts demonstrating criminal activity” in *Wilson*, ¶ 34.

Factor	<i>Wilson</i>	Here
1. The driver was extremely nervous and was trembling.	Check	Check
2. The driver had a history of a prior drug conviction.	Check	Check
3. The officer found suspicious the driver’s explanation of who loaned him the vehicle.	Check	Check

4. The driver did not produce registration nor proof of insurance.	Check	Check
5. The officer found suspicious the driver's explanation of his origin and destination.	Check	Check
6. The officer found it suspicious that the driver had no wallet and no money.	Check	Check
7. The driver did not appear intoxicated nor appeared to be on drugs. There were no smells of drugs, no cellphones, no stacks of cash in plain view.	Check	Check
8. The officer found it suspicious that the area behind the driver's seat appeared messy with luggage strewn about.	Check	Check
9. Officer issued the driver citations for the suspended registration or license and for failure to carry insurance.	Check	Check
10. Officer asked to search the vehicle because the highway was considered a drug corridor –the driver refused consent.	Check	Check
11. Officer seized the vehicle and extended the routine traffic stop into a canine sniff for illegal drugs.	Check	Check
CONCLUSION: The totality of these circumstances—as a matter of law—did not establish particularized suspicion.	Check	----

In *Wilson*, this Court also distinguished the facts in that case from those in an earlier case, *Estes*, where it had found valid particularized suspicion for the expansion of a traffic stop into a drug investigation. *Wilson*, ¶¶ 29–31, 35. The key difference between these cases was the presence in *Estes* of factual details observed by the officer conducting the traffic stop that were “objectively indicative of illegal drug activity,” including “the overwhelming smell of numerous air fresheners,” and two cell phones and a stack of cash in plain view in the console of the vehicle. *Wilson*, ¶ 35 (*citing Estes*, ¶ 18).

In *Estes*, the officer noted the overwhelming smell of numerous air fresheners and observed in plain view two cell phones and a stack of cash in the console. *Estes*, ¶ 18. Trooper Novak did not identify similarly incriminating conduct. Trooper Novak did not detect any odor of air fresheners—indicating attempts to mask odors of illegal drugs—as he approached the vehicle.

This Court in *Estes* held that an officer had particularized suspicion to expand a routine traffic stop into a drug investigation. In that case, the officer noticed that the driver had food wrappers and energy drink bottles strewn around and a sleeping bag in the back seat

covering a cardboard box—which suggested to the officer that the driver wanted to get from point A to point B quickly. The driver also had two cell phones, even though he was the only person in the vehicle, as well as cash in the center console. *Estes*, ¶ 18. The officer further detected an overwhelming odor from multiple air fresheners as he approached the vehicle, a common tactic used to mask the scent of narcotics according to his experience. Further, the driver appeared unusually nervous for an expired registration stop which occurred late at night in a known “source and destination” area for drug traffic. *Estes*, ¶ 18. In light of the officer’s considerable experience and his ability to point to conduct that appeared objectively suspicious, the Court affirmed the district court’s finding of particularized suspicion. *Estes*, ¶ 20; *Wilson*, ¶ 30.

In stark contrast, here, Webb, at his traffic stop, was not carrying a wallet and did not provide Trooper Novak with an identification. *See Wilson*, ¶¶ 5, 34–35. How did not having a wallet or a penny indicate to Trooper Novak that Webb was involved in illegal drug activity? Just like in *Wilson*, ¶ 7, Trooper Novak found Webb’s explanation about who loaned him the vehicle suspicious and inconsistent. Just like in *Wilson*,

¶ 6, Trooper Novak found suspicious Webb’s explanation about his destination. Webb explained he was going to visit Dan in Stevensville but could not remember Dan’s last name. Trooper Novak found it suspicious that Webb had “hastily” placed a backpack and duffel bag on the back seat. He thought the “hastily” placed luggage was an “objective” articulable fact suggesting that Webb was engaged in illegal drug trafficking. *See Wilson*, ¶ 6.

According to Trooper Novak, dispatch notified him that Webb had discharged a prior drug conviction from 2016. From this he developed a hunch that Webb was engaged in trafficking illegal drugs.

During the traffic stop, Trooper Novak did not observe any drug contraband in plain view. He did not observe a stack of cash in plain view in the console of the vehicle. *See Wilson*, ¶ 35 (*citing Estes*, ¶ 18). Webb did not appear to be under the influence of illegal drugs or alcohol. Nothing objectively indicated the driver was engaged in illegal drug trafficking.

This Court has already decided this case. *Wilson* is factually identical to the present case. Therefore, under Montana law, Trooper Novak lacked particularized suspicion to extend the traffic stop of Webb

into a canine drug investigation. Therefore, the search warrant subsequently issued, and all evidence discovered as a result of the illegal search of the vehicle, is inadmissible and must be suppressed. *See Mapp v. Ohio*, 367 U.S. 643, 655 (1961); *State v. Anderson*, 258 Mont. 510, 515, 853 P.2d 1245, 1249 (1993).

CONCLUSION

Webb requests the Court to set aside his conviction and dismiss the charge.

Respectfully submitted this 27th day of July, 2020.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this principal brief is printed with a proportionately spaced Century Schoolbook text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 4,759, excluding Table of Contents, Table of Authorities, Certificate of Service, Certificate of Compliance, and Appendices.

/s/ Moses Okeyo

MOSES OKEYO

APPENDIX

Judgment.....	App. A
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CERTIFICATE OF SERVICE

I, Moses Ouma Okeyo, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Opening to the following on 07-27-2020:

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