

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN RE:

REINSTATEMENT OF
WILLIAM A. SWAFFORD, ESQ.
STATE BAR NO. 11469

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Jun 21 2022 08:11 a.m.
Case No. Elizabeth A. Brown
Clerk of Supreme Court

Volume VIII

RECORD OF DISCIPLINARY PROCEEDINGS,
PLEADINGS
AND TRANSCRIPT OF HEARINGS

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EXHIBIT K

EXHIBIT K

NEVADA COMMISSION ON JUDICIAL DISCIPLINE
(“NCJD”)

OPPOSITION TO AB20

I. Current Commission Statutes and Procedural Rules Reflect a Careful Balancing of Competing Interests

¾ Competing Interests

- x Rights of judges to fair treatment
- x Judges’ interest in confidentiality of complaints
- x Public’s concern that complaints against judges are given serious consideration and that judges are held to high standards of behavior
- x Interests of judges and the public in having judicial disciplinary complaints resolved promptly and accurately

II. The Procedural Rules of the Commission were first adopted by the Nevada Supreme Court and were included in the Supreme Court Rules for decades

II I. Article 6 Commission

¾ Nevada Supreme Court formed the Article 6 Commission in 2006

¾ Members and Participants of Article 6 Commission

- x Experts throughout the U.S.
- x Members of the public, judiciary and legal profession
- x Nevada Press Association
- x ACLU of Nevada
- x Non-profit organizations
- x Full NCJD cooperation and participation

¾ Goals of Article 6 Commission

- x Increase transparency of the NCJD
- x Improve timeliness of NCJD proceedings
- x Improve NCJD effectiveness
- x Ensure fair treatment of judges

- ¾ Examined for over 2 years the entire court structure and judicial discipline system in Nevada
- ¾ Investigated all topics and issues that the members of the Article 6 Commission believed should be investigated for the good of justice in Nevada
- ¾ Examined the Nevada Constitution, applicable laws and rules of courts; information from the National Center for State Courts, the National Judicial College, the National Council on Juvenile and Family Court Judges, and the American Bar Association, among others
- ¾ Outcome (2009 Legislative Session)
 - x Sweeping changes to Commission's statutes and Procedural Rules enacted and adopted by the Nevada Legislature and NCJD, respectively (See AB496)
 - x These changes reflect national standards for judicial conduct in conformity with judicial discipline commissions throughout the U.S.

IV. Analysis of AB20

¾ Section 1

- x Granting advice authority to limited jurisdiction judges for judicial appointments to NCJD
 - Constitutionality questionable
 - Nevada Supreme Court is appointing authority under Nevada Constitution
 - Nevada Constitution does not grant advice authority to limited jurisdiction judges
 - Sets bad precedent other groups will petition the Legislature for advice authority to influence appointing authorities with respect to the selection of members to a multitude of boards and commissions throughout Nevada

¾ Section 2

- x Deletion of application of Nevada Revised Statutes and Procedural Rules of Commission
 - Constitutionality questionable
 - Nevada Constitution empowers NCJD to adopt procedural rules to govern its proceedings and carry out its duties

- AB20 seeks to negate decades of judicial precedent and judicial disciplinary jurisprudence
- x Application of Nevada Rules of Civil Procedure to all stages of judicial discipline proceedings
 - AB20 would negate decades of judicial precedent and judicial disciplinary jurisprudence
 - AB20 would be a radical departure from what is normal and customary in the rules applicable to judicial discipline commissions throughout the U.S.
 - AB20 would require the wholesale revamping of NRS Chapter 1 and the Commission's Procedural Rules
 - AB20 would require the doubling of NCJD staff and resources at taxpayers' expense (See NCJD Fiscal Note)
- x Requiring NCJD Procedural Rules to provide due process to judges
 - Not necessary The Nevada Constitution, NRS Chapter 1, NCJD Procedural Rules, and Nevada Supreme Court case law already provide judges with due process rights

¾ Section 3

- x Revises the standard of proof required in judicial discipline proceedings
 - Current standard of proof is consistent with the standards of proof found in all jurisdictions throughout the U.S.
 - AB20 would be a radical departure from what is normal and customary in rules applicable to judicial discipline commissions throughout the U.S.
- x Eliminates NCJD's ability to consider all "evidence available for introduction at a formal hearing."
 - AB20 would force the Commission to only consider the investigative report and no other evidence.

¾ Section 4

- x Refer to Section 2 above

¾ Section 5

- x Refer to Section 3 above regarding changes to current standard of proof
- x Not compelling a judge to respond to a complaint during the investigativestageof judicial discipline proceedings
 - AB20 would constitute an obstruction and impediment to the completion of NCJD investigations

- AB20 would be a radical departure from what is normal and customary in rules applicable to judicial discipline commissions throughout the U.S.
- Nevada Supreme Court will hear en banc oral arguments on April 2, 2019, with respect to the sole issue of whether the NCJD can require a judge to answer written questions during the investigative stage of a judicial discipline proceeding

¾ Section 6

- x Refer to Section 3 regarding changes to current standard of proof

V. Commission's statutes and Procedural Rules being challenged by proponents of AB20 are the same as they existed in 2009 following the implementation of the Article 6 Report (See AB496, 2009 Legislative Session)

VI. Current Judicial Discipline Due Process Protections for Judges

¾ 18-24 months of due process prior to filing of public charges

- x NCJD review of confidential complaint. Preliminary investigation commences
- x NCJD holds meeting to review confidential complaint and other documents and evidence, and votes to proceed to full investigation (1st NCJD Meeting)
- x Confidential investigation performed by independent investigator
 - Judge and witness interviews
 - Review of documentary and video evidence
 - Preparation of Investigation Report
 - Commission holds meeting, reviews investigation report and all evidence available for introduction at a formal hearing, and votes to require judge to respond (2nd NCJD Meeting)
 - All evidence considered by NCJD delivered to judge
 - Judge responds to complaint and follow up investigative questions by Commission to address new evidence obtained during investigative process, correct misstatements during investigative interviews, reconcile conflicting testimony and documentary evidence, provide additional evidence and legal arguments to NCJD etc.

- NCJD holds meeting to review judge's responses and additional information and arguments, and votes to proceed to formal charges (3rd NCJD meeting)
- x Judge has a right to file a Writ Petition with the Nevada Supreme Court regarding perceived due process violations prior to and after the filing of a public complaint which rise to the level of actual prejudice as defined by the Nevada Supreme Court
- $\frac{3}{4}$ After public charges are filed, judge has a right to a trial on the merits
- $\frac{3}{4}$ Judge has a right to appeal to the Nevada Supreme Court after an adverse decision by the NCJD

VII. Judges avail themselves of substantially greater due process/judicial discipline cases than any civil or criminal litigant receives in any court in the U.S.

- $\frac{3}{4}$ Litigants are not notified 12 months in advance prior to a public complaint being filed against them
- $\frac{3}{4}$ Litigants are not provided with all evidence gathered against them prior to a public complaint being filed against them
- $\frac{3}{4}$ Litigants are not given an opportunity to respond or provide evidence, legal arguments, etc. prior to a public complaint being filed against them
- $\frac{3}{4}$ Litigants do not have the option to file a Writ Petition with the Nevada Supreme Court regarding perceived violations of due process rights prior to a public complaint being filed against them

VIII. NCJD introduced legislation during the 2017 Legislative Session to expand due process protections for limited jurisdiction judges. See AB28

- $\frac{3}{4}$ Testified before the Judicial Council
- $\frac{3}{4}$ Drafted AB28
- $\frac{3}{4}$ Worked with the Administrative Office of the Courts
- $\frac{3}{4}$ Testified in favor of AB28 before the Assembly and Senate Judiciary Committees

- IX. Discipline imposed on limited jurisdiction judges for numerous violations of the Code of Judicial Conduct and the law have been by unanimous decision
- ³/₄ Judges in these cases admitted that they committed violations of the Code of Judicial Conduct and the law or were found to be in violation of the same by the NCJD after a trial on the merits
 - ³/₄ Two of these seven Commissioners on the NCJD are limited jurisdiction judges and colleagues of the disciplined judges
- X. No consensus regarding lack of due process protections among the Nevada judiciary, including limited jurisdiction judges
- ³/₄ See attached NCJD Pretrial Orders denying motions to dismiss on constitutionality grounds (refer to highlighted sections)
- XI. Unintended and Adverse Consequences
- ³/₄ Confidentiality of NCJD complaints would be compromised
 - ³/₄ Endless discovery and legal actions causing significant delays
 - ³/₄ Investigations would be as lengthy and costly
 - ³/₄ Chilling effect on the filing of complaints by the public and participation by witnesses in the judicial discipline process
 - ³/₄ Public transparency and accountability would be significantly diminished
 - ³/₄ AB20 would have a dramatic fiscal impact on both the Commission and Nevada taxpayers
- XII. Conclusions
- ³/₄ Discipline systems seek to protect the public and the integrity of judicial discipline proceedings, deter future misconduct, promote public confidence in the judicial system and reassure the public that judicial misconduct is not tolerated or condoned
 - ³/₄ If a jurisdiction is to have a judicial system that has the confidence of its citizens, it must have a judicial discipline system that is effective

January 3, 2019

Steve Yeager
Assembly Judiciary Chair
10120 West Flamingo Road, Suite 4162
Las Vegas NV 89147-8392

RE: Assembly Bill 20

Dear Assemblyman Yeager

I am the Executive Director and General Counsel of the Nevada Commission on Judicial Discipline ("Commission"). The Commission is comprised of district court judges, attorneys and lay citizens appointed by the Nevada Supreme Court, the State Bar of Nevada and the Governor, respectively. I am writing this letter to you and each of your fellow colleagues on both the Assembly and Senate Judiciary Committees on behalf of the Commission regarding AB20.

If enacted into law, this bill would dramatically undermine judicial disciplinary enforcement in Nevada, thereby significantly impacting the administration of justice and causing harm to the public your constituents on a statewide basis. AB20 was submitted for filing with the Legislature by the Nevada Judges of Limited Jurisdiction (NLTJ), which is a Domestic Nonprofit Cooperative Corporation whose members consist of justices of the peace and municipal court judges throughout the State. This bill is not supported by the Commission and many others, including those among the judiciary, for many of the same reasons set forth below.

AB20 will significantly impact the Commission's ability to carry out its constitutional and statutory mandates to protect the public from judicial misconduct.

If AB20 is enacted into law, confidential complaints filed by the public for alleged judicial misconduct warranting formal charges would never see the light of day as they will be bogged down and encumbered by endless writs, interlocutory appeals and legal actions before both the Commission and the Nevada Supreme Court prior to the filing of a formal statement of charges ("formal complaint") against a judge.

Currently, it is not until the Commission's filing of a formal complaint that the public is first made aware of pending allegations of judicial misconduct stemming from the previous filing of a confidential complaint by a member of the public. The longstanding public policy behind maintaining confidentiality of judicial disciplinary proceedings before the filing of a formal

complaint is to protect judges from unfounded and/or frivolous complaints prior to the completion of an investigation to determine whether such complaints have merit. Consequently, AB20 will substantially undermine judicial economy, as well as further delay the public dissemination of allegations of judicial misconduct warranting formal charges.

Commission investigations will also be greatly delayed and thwarted by means of excessive objections and attacks on the judicial discipline process, thereby frustrating the Commission's efforts to simply gather information to determine whether judicial misconduct occurred. This will result in endless discovery, multiple follow-up investigations, witness interviews and Commission meetings, as well as countless legal actions, all at taxpayers' expense. Consequently, cases will remain in limbo for an inordinate amount of time while these delay tactics play out and public transparency takes a back seat. This in turn will invite public criticism of not only the efficacy of the judicial discipline process, but also of any newly enacted laws, such as AB20, that would seemingly undermine it.

AB20 is contrary to existing law, Nevada Supreme Court precedent and judicial disciplinary jurisprudence throughout the United States.

The proponents of AB20 not only ignore existing Nevada law and Nevada Supreme Court precedent but also seek to rewrite critical components of judicial disciplinary jurisprudence which have developed over and existed for many decades throughout this country. No jurisdiction, including Nevada, permits the Rules of Civil Procedure to apply prior to filing of a formal complaint against a judge. This is true even outside the area of judicial discipline as it relates to other licensed professionals appearing before their respective disciplinary authorities for alleged misconduct, such as doctors, accountants, lawyers, etc.

The effect of such a change would result in the discipline process becoming mired in the time and expense of endless discovery and legal actions which can and has been used by counsel as a means of delay. This eventuality has already been thoroughly considered and is buttressed by a detailed body of legislative history dating back to the 1970s, as well as by innumerable decisions among the highest courts throughout the country, including the Nevada Supreme Court, where such existing laws have been repeatedly upheld and any attempts to revise them in the manner proposed by AB20 rejected.

Additionally, AB20 seeks to minimize and effectively negate the existing Procedural Rules of the Commission that were first promulgated and adopted by the Nevada Supreme Court upon the creation of the Commission over 40 years ago, and which have undergone further development and revisions by both the Nevada Supreme Court and the Commission over the ensuing decades up to the present time.

AB20 will make it more difficult for the Commission to bring formal (public) complaints against judges.

The proponents of AB20 seek to change the standard of proof by which the Commission determines whether a judge has committed misconduct warranting public notice and the commencement of formal proceedings. The existing standard of proof to determine if a formal

complaint is filed against a judge and, thus, made public is “whether there is a reasonable probability that the evidence available for introduction at a formal hearing could clearly and convincingly establish grounds for disciplinary action against a judge.” Importantly, this standard of proof has existed in its current form for over 40 years and is akin to the standards of proof applied in judicial discipline cases in every jurisdiction throughout the country.

A plain reading of the proposed statutory change in AB20 highlights an inherent contradiction of terms and legal outcomes which leave more questions than answers. On the one hand, there must be a reasonable probability to file a formal complaint; but on the other hand, such reasonable probability must be supported by “clear and convincing evidence,” which happens to be the standard of proof required to determine if discipline is warranted at a judicial discipline trial, which has not yet occurred.

Consequently, this proposed change in law would require the Commission to prove its entire case against a judge prior to the filing of a formal complaint, prior to the case being made public and, most importantly, prior to the presentation of evidence and witness testimony during a disciplinary trial on the merits. By way of example, and to analogize to a more familiar area of law falling outside the system of judicial discipline, this would be tantamount to a district attorney’s office in a criminal case being required to make a showing of “beyond a reasonable doubt” (a much higher standard), in lieu of “probable cause” (a much lesser standard), prior to taking a case to trial

No court, tribunal, board, agency or adjudicative authority in Nevada now requires such a high standard of proof merely to proceed to a trial or hearing, irrespective of the nature of the proceeding or whether it arises in a civil, criminal or administrative context, or otherwise. Accordingly, for many of the foregoing reasons and concerns, certain renowned experts in the field of judicial discipline have already been contacted and will be called upon to testify before both the Senate and Assembly Judiciary Committees, if necessary, to oppose this bill on behalf of the Commission and the public.

AB20 will require the doubling of the Commission’s budget and staff at taxpayers’ expense.

AB20 was submitted to the Legislature claiming that there would be no fiscal impact on the State. To the contrary, the Commission’s budget and staff would need to be doubled, at a minimum, at taxpayers’ expense if AB20 becomes law. Accordingly, the Commission will be submitting fiscal notes to the bill at the appropriate time, which will detail at length the fiscal impact on both the Commission and Nevada taxpayers.

AB20 will require the wholesale revamping of NRS Chapter 1 and the Commission’s Procedural Rules, thus negating decades of legal precedent in Nevada, which will further result in the public having to endure years of future litigation, uncertainty and unwarranted delays in addressing judicial misconduct in this State. Thus, this bill will effectively tie the hands of the Commission in determining in a thorough but timely manner whether misconduct occurred warranting formal (public) proceedings, all at the expense of transparency, judicial economy and public accountability.

The NJLJ neither consulted with nor made the Commission aware of its intent to file this bill. The Commission has viewed this very inquisitively, ~~partly~~ given that AB20 directly relates to and impacts the Commission, which is one of the smallest agencies in the State of Nevada in terms of its budget, staff and resources, as well as considering that the bill would require overhauling the entire judicial discipline enforcement structure in Nevada, thereby resulting in the expungement of decades of judicial jurisprudence and precedent.

The Commission has been granted broad constitutional authority to protect the public.

In carrying out this enormous responsibility, the Commission's fair and balanced, but no-nonsense approach to judicial disciplinary accountability and enforcement in this State has complied with the law and judicial precedent in all respects. The primary benefactors of such an approach have been your own constituents, the very people the Constitution of this State has empowered the Commission to protect.

The Commission is performing the job it was created to do and doing it well. AB20 will weaken the Commission and make it infinitely more difficult to protect the public in the years ahead, not to mention the numerous unintended, adverse consequences that would follow.

Thank you for your time and consideration. I would be happy to meet with you at your convenience to further discuss this bill and answer any questions that you may have.

Respectfully submitted,

Paul C. Deyhle
General Counsel and Executive Director
Nevada Commission on Judicial Discipline

Submitted on behalf of the Commission

Gary Vause, Chairman – Appointed by the Governor
Stephanie Humphrey, Vice Chair – Appointed by the Governor
John F. Krmpotic – Appointed by the Governor
District Court Judge Jerome Polaha - Appointed by the Nevada Supreme Court
District Court Judge Mark R. Denton – Appointed by the Nevada Supreme Court
District Court Judge Thomas L. Stockard – Appointed by the Nevada Supreme Court
Karl W. Armstrong, Esq. – Appointed by the State Bar of Nevada
Bruce C. Hahn, Esq. – Appointed by the State Bar of Nevada

cc: Assembly and Senate Judiciary Committee Members
U.S. Mail and Email



pharan@nvlitigation.com

From: pharan@nvlitigation.com
Sent: Friday, February 10, 2017 4:03 PM
To: 'ahoney@interact.ccsd.net'
Cc: maggie
Subject: Public Records Act request
Attachments: CCSD - 2017.02.10 PRA.pdf

Good afternoon, Mr. Honey.

I am writing on behalf of Ms. McLetchie. Attached please find her correspondence dated today. A copy has also been sent by mail. Should there be questions or concerns, please contact the office.

Thank you,

Pharan Burchfield

Paralegal



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EXHIBIT L

EXHIBIT L

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ABDUL MAJID

Defendant.

CASE NO.: 3:18-cr-00077-MMD-WGC-2

**MOTION TO SUPPRESS EVIDENCE
(EVIDENTIARY HEARING REQUESTED)**

CERTIFICATION

This motion is timely filed on or before **March 14, 2019**. Responses are due on or before **March 28, 2019**; replies are due on or before **April 4, 2019**.

MOTION

COMES NOW, Defendant ABDUL MAJID (hereinafter “Majid”), by and through his counsel, THE LAW OFFICES OF DAVID R. HOUSTON, David R. Houston, Esq., and hereby moves this Honorable Court for an Order suppressing the evidence seized between July 19, 2018 and July 20, 2018, from a white Commercial 2018 Freightliner Cascadia Tractor, bearing Alberta commercial registration E11142, and Vin # 3AKJGLDR8JSSHP7276, and from its passengers, Haseeb U. Malik and Majid, to wit: (i) all evidence obtained during warrantless searches of the vehicle; (ii) all evidence obtained during the execution of search warrants on the vehicle; (iii) all evidence obtained during searches of Majid’s personal cell phones; (iv.) all evidence obtained

1 from Mr. Malik's cell phones; (v) all statements made by Majid and Mr. Malik subsequent to
 2 arrest. Defendant respectfully requests an evidentiary hearing, as some material facts may be in
 3 dispute.

4 **POINTS & AUTHORITIES**

5 **I. STATEMENT OF FACTS**

6
 7 Based upon the police reports, affidavits, recordings and other items tendered in
 8 discovery, the facts appear to be as follows:

9 1. On July 19, 2018, at approximately 2104 hours, Nevada Highway Patrol ("NHP")
 10 Trooper Chris Garcia ("Tpr. Garcia") observed a commercial motor vehicle ("CMV") traveling
 11 northbound on Interstate 93 in White Pine County, Nevada near mile marker 58, traveling 71
 12 mph, which was in excess of the posted 60 mph speed limit. (See Police Report of Tpr. Garcia
 13 ("Garcia Report") attached hereto as Exhibit 1.) Upon initial contact with the driver, Haseeb U.
 14 Malik ("Malik"), Tpr. Garcia informed him that he stopped the vehicle because it was driving in
 15 excess of the posted speed limit. (See Report of Investigation by DEA Special Agent Karen
 16 Rossi ("Rossi Report"), attached hereto as Exhibit 2, at ¶ 1.) Tpr. Garcia observed that the
 17 curtains to the sleeper area of the cab were closed and asked if anyone else was present in the
 18 vehicle. Rossi Report ¶2. Malik indicated that his co-driver, Majid, was in the sleeper area and
 19 Trooper Garcia had him open the curtains and reveal Majid. Rossi Report ¶2. Tpr. Garcia asked
 20 Malik to provide him with his driver's license and paperwork. While communicating with the
 21 occupants of the vehicle Tpr. Garcia detected the odor of burnt marijuana emitting from within
 22 the passenger compartment and/or the driver. Rossi Report ¶2. Tpr. Garcia asked the occupants
 23 whether they were in possession of marijuana and they both denied having any marijuana on
 24 them or inside of the vehicle. Rossi Report ¶2. Tpr. Garcia asked the occupants if they smoked
 25 marijuana, and they both replied that they do sometimes on their days off. Rossi Report ¶2. Tpr.

1 Garcia told the men that he could smell marijuana and asked whether there was still marijuana
2 inside of the truck. Rossi Report ¶2. The driver, Malik, stated that he purchased a pre-rolled
3 marijuana cigarette the previous day, smoked half of it and placed the remainder in his cigarette
4 package; he then finished smoking it inside of the truck approximately six (6) to seven (7) hours
5 earlier. Rossi Report ¶2. Tpr. Garcia asked Malik what he did with the joint when he was
6 finished, and Malik responded that he threw the filter and any remaining portion of the joint
7 outside of the vehicle. Rossi Report ¶2.

8
9 2. Tpr. Garcia was not trained or certified in CMV regulations and enforcement, and thus,
10 he returned to his patrol vehicle and called NHP Tpr. A. Zehr to inquire about the situation
11 involving the marijuana. Rossi Report ¶3. Tpr. Garcia informed Tpr. Zehr that the driver stated
12 he has smoked marijuana earlier in the day and then threw the filter and “roach” out of the
13 vehicle. Garcia Report. Tpr. Zehr advised that it was an automatic 24-hours out of service, and
14 that Tpr. Garcia would be able to do a probable cause search of the vehicle. Rossi Report ¶3.
15 Tpr. Zehr stated that he was currently finishing a traffic stop, and he would come to the scene
16 when he was finished. Tpr. Zehr arrived on scene at approximately 2136 hours. Garcia Report.
17 Tpr. Zehr’s body camera recording demonstrates that when he arrived on scene he spoke to Tpr.
18 Garcia, who told him that the driver admits to smoking marijuana earlier in the day, and stated
19 that he smoked a joint and then threw it out of the vehicle, and both occupants denied possessing
20 any additional marijuana. (See Tpr. Zehr Body Camera Video (USAO 000404 Malik.Majid 4 –
21 Zehr.mp4) (“Zehr Body Cam.”) beginning at 3:33 minutes.) The body camera recording shows
22 that Tpr. Zehr told Tpr. Garcia that they would get the occupants out of the vehicle, pat them
23 down, and then search the vehicle for the marijuana cigarette which could be stored anywhere.
24 Id. Tpr. Garcia asked whether he should cite the driver for speeding now or later, and Tpr. Zehr

1 responded that it did not matter because there was probable cause to search and the driver was
2 out of service. Id. Tpr. Zehr then stated, however, that *he was unsure if he could order the*
3 *driver out of service if they could not find any marijuana.* Id.
4

5 3. The troopers went to the CMV and ordered the occupants to exit. Rossi Report ¶3. Tpr.
6 Zehr asked the men who smoked the marijuana and the driver, Malik, admit that he smoked the
7 marijuana approximately three to four hours previously. Rossi Report ¶3. Tpr. Zehr asked
8 where the marijuana was, and Malik claimed that he was positive that he threw it out. Rossi
9 Report ¶3. Tpr. Garcia advised dispatch that he was doing a probable cause search and began
10 searching the inside of the CMV. Garcia Report. Tpr. Garcia located a garbage bag and
11 searched it, and inside located an electronic vaping device. Garcia Report. Majid told Tpr.
12 Garcia that it was his and it must have fallen into the garbage, and that is was nicotine only.
13 Garcia Report. Tpr. Garcia continued his search into the sleeper area and opened a built in
14 cabinet where he observed white plastic garbage bags containing numerous items that appeared
15 to be similar in shape and size. Garcia Report. Tpr. Garcia believed that the bags contained
16 paperback books, but as he manipulated the objects further it became apparent to him that the
17 objects in the bags were not books. Garcia Report. Tpr. Garcia removed one of the objects from
18 the bags and noticed that the packaging on the exterior of the object consisted of masking tape,
19 and based on his experience and training, he concluded that the packaging was consistent with
20 that of illegal narcotics packaging. Garcia Report. Tpr. Garcia placed the object back into the
21 bag, exited the CMV and directed Tpr. Zehr to the cabinet to view the items. Garcia Report.
22 The body camera of Tpr. Zehr reveals that Tpr. Garcia exited the CMV to speak with Tpr. Zehr
23 at approximately 2151 hours. Tpr. Zehr located the items and asked for a knife. Garcia Report.
24 Tpr. Garcia retrieved a knife from Tpr. Zehr's patrol vehicle and brought it to him. Garcia
25
26
27
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1 Report. Tpr. Zehr made a small cut into one of the packages to reveal a white power substance.

2 Garcia Report. Tpr. Zehr retrieved a NIK Type G test kit from his patrol vehicle and utilized the
3 kit on a sample of the white substance from the package he cut into. Garcia Report. The
4 substance tested positive for the presence of cocaine. Garcia Report.

5
6 4. Tpr. Garcia advised Malik and Majid that they were under arrest, and he read them their
7 Miranda rights. Garcia Report. Both men invoked their rights and stated that they did not want
8 to answer any questions. Garcia Report. NHP Tpr. Deeds arrived on scene and transported
9 Malik to the White Pine County Jail. Garcia Report. Tpr. Deeds returned and transported Malik
10 to the White Pine County Jail. Garcia Report. The troopers decided that based on the suspected
11 amount of illegal narcotics present that they would stop the search, have the CMV transported to
12 town, seal the CMV and apply for a search warrant. Rossi Report ¶6.

13
14 5. Tpr. Zehr placed the Nevada Highway Patrol trailer seal no. 0001433 on the CMV's
15 trailer. Rossi Report ¶7. Battleborn Towing arrived on scene to transport the CMV to their tow
16 yard located in Ely, Nevada. Rossi Report ¶7. Tpr. Garcia followed the CMV as it was
17 transported to the tow yard, maintaining visual contact with the CMV until it arrived at its
18 destination. Rossi Report ¶7. Tpr. Garcia sealed the CMV pending a search warrant. Rossi
19 Report ¶7. Tpr. Garcia applied for a search warrant from the Ely Justice Court Justice of the
20 Peace Steven Bishop. Rossi Report ¶7. Justice of the Peace Steven Bishop granted the search
21 warrant of the 2018 Friehtliner Cascadia Alberta commercial registration E11142 and the
22 attached 53' white box trailer with Alberta commercial registration 5MR394. Rossi Report ¶7.

23
24 6. At approximately 12:49 a.m. on July 20, 2018, Tpr. Garcia and Tpr. Zehr executed the
25 search warrant. Rossi Report ¶8. During the search, in the same cabinet the suspected cocaine
26 was located in, there were packaging items including a box of white plastic trash bags, two pairs
27
28

1 of latex gloves, packing tape, and items possibly used to conceal odor including packs of
2 cayenne pepper and three packages of Glade Air Freshener. Rossi Report ¶8. The located box
3 of white plastic trash bags was consistent with that of which the suspected cocaine was located.
4
5 Rossi Report ¶8.

6 7. Tpr. Garcia raised the lowered bed which revealed a storage area under the bed. Rossi
7 Report ¶9. Located in the center of the storage area were two large suitcases black and blue in
8 color. Rossi Report ¶9. Upon opening the suitcases, both contained numerous packages
9 wrapped in a saran wrap type plastic. Rossi Report ¶9. Both suitcases and their contents were
10 taken as evidence. Rossi Report ¶9. On the top bunk in the sleeper, Tpr. Garcia observed
11 blankets stacked on top of unknown items that were toward the passenger side of the sleeper
12 area. Rossi Report ¶9. Upon moving the blankets Tpr. Garcia noticed three lack duffel bags.
13 Rossi Report ¶9. The bags contained numerous packages sealed with Food Saver type packaging
14 which was consistent with packaging of illicit controlled substances for transport. Rossi Report
15 ¶9. The three duffel bags and their contents were taken for evidence. Rossi Report ¶9.

16 8. On July 20, 2018, Tpr. Garcia, along with Tpr. Deeds, Tpr. Barney, Tpr. Boynton, Sgt.
17 Brewer and Det. Sifre processed the suspected controlled substances which included testing,
18 weighing, labeling and sealing for evidence. The two substances identified by presumptive
19 testing were cocaine and methamphetamine. Rossi Report ¶10. At the conclusion of the
20 packaging, testing and weighing process it was determined that a total of 135.36 lbs. of cocaine,
21 and 114.27 lbs. of methamphetamine were collected from the CMV. Rossi Report ¶10.

22 9. Defendants Majid and Malik are charged with Possession with Intent to Distribute a
23 Controlled Substance, in violation of Title 21, United States Code, Sections 841(a)(1) and
24 (b)(1)(A)(ii)(II) and (viii).
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1 II. ARGUMENT

2 A. THE DURATION OF THE TRAFFIC STOP INVOLVING MAJID 3 WAS UNLAWFUL UNDER THE FOURTH AMENDMENT BECAUSE 4 LAW ENFORCEMENT OFFICERS LACKED THE INDEPENDENT 5 REASONABLE SUSPICION NECESSARY TO PROLONG ITS 6 DURATION

7 1. Majid Has Standing Under The Fourth Amendment To Challenge The 8 Traffic Stop And Seizure Of His Person.

9 The Fourth Amendment to the U.S. Constitution guarantees “[t]he right of the people to
 10 be secure in their, persons, houses, papers, and effects, against unreasonable searches and
 11 seizures. As opined by the U.S. Supreme Court, “The security of one’s privacy against arbitrary
 12 intrusion by the police -- which is at the core of the Fourth Amendment -- is basic to a free
 13 society. It is therefore implicit in the ‘concept of ordered liberty’ and as such enforceable against
 14 the States through the Due Process Clause.” Wolf v. Colorado, 338 U.S. 23, 27-28 (1949). A
 15 search occurs when an expectation of privacy that society is prepared to consider reasonable is
 16 infringed, while a ‘seizure’ of property occurs when there is some meaningful interference with
 17 an individual’s possessory interest in that property.” United States v. Jacobsen, 466 U.S. 109,
 18 113 (1984). A person may challenge the propriety of a search or seizure which violates the
 19 defendant’s own reasonable expectation of privacy in the area searched or the items seized.
 20 Rakas v. Illinois, 439 U.S. 128 (1978). The capacity to claim the protection of the Fourth
 21 Amendment depends not upon a property right in the invaded place, but upon whether the person
 22 who claims the protection of the Amendment has a legitimate expectation of privacy in the
 23 invaded place. Katz v. U.S., 389 U.S. 347, 353 (1967).

24 Fourth Amendment jurisprudence recognizes three levels of contact between law
 25 enforcement officers and citizens: (i) consensual encounters, (ii) investigatory detentions, and
 26 (iii) arrests. United States v. Roberts, 2007 WL 1381776, *3 (D. Nev.). Although a consensual

1 encounter is not a seizure within the meaning of the Fourth Amendment, investigatory detentions
2 and arrests are such seizures. Id. When a vehicle is stopped by a police officer and its occupants
3 are detained, a seizure within the fourth amendment of the United States Constitution has
4 occurred, even if the purpose of the stop is limited and the resulting detention is quite brief.
5 Delaware v. Prouse, 440 U.S. 648, 653 (1979); United States v. Martinez-Fuerte, 428 U.S. 543,
6 556-558 (1976). It is well settled that a traffic stop constitutes a seizure within the purview of
7 the Fourth Amendment. Delaware v. Prouse, 440 U.S. 648, 661-663 (1979); United States v.
8 Daniel, 804 F.Supp. 1330, 1334 (1992). (See Arizona v. Johnson, 129 S.Ct. 781, 788 (U.S.
9 2009): “a traffic stop of a car communicates to a reasonable passenger that he or she is not free to
10 terminate the encounter with the police and move about at will.”)

13 A vehicle passenger may challenge a traffic stop on Fourth Amendment grounds even if
14 he lacks a property interest in the vehicle itself. USA v. Twilley, 222 F.3d 1092 (9th Cir., 2000).
15 Even where a passenger cannot challenge a search directly, he or she may establish that a traffic
16 stop was unlawful under the Fourth Amendment, and the evidence seized as a result of that stop
17 is subject to suppression as ‘fruit of the poisonous tree.’ Id.; see United States v. Kimball, 25
18 F.3d 1, 5 (1st Cir., 1994) (Because passenger's interests are affected when a vehicle is stopped,
19 he/she has standing to challenge the stop, and if illegal, evidence may be excluded as fruit of
20 poisonous tree).

23 In this case, Mr. Majid was the co-driver of the commercial motor vehicle, was living in
24 the vehicle during the trip back to Alberta, Canada, had personal possession in the cab, he was
25 sleeping in its sleeper-compartment in the rear of the cab when the vehicle was stopped by NHP
26 Trooper Garcia, and he has standing under the Fourth Amendment to challenge the legality of the
27 prolonged warrantless detention following the initial traffic stop.
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1 **2. The Extended Duration of the Traffic Stop Involving Majid Was**
2 **Unreasonable Under the Fourth Amendment to the U.S. Constitution.**

3 “A seizure that is lawful at its inception can violate the Fourth Amendment if its manner
4 of execution unreasonably infringes interests protected by the Constitution.” Illinois v. Caballes,
5 543 U.S. 405, 407 (2005). In particular, a seizure that is justified solely by the interest in issuing
6 a traffic ticket to the driver can become unlawful if it is prolonged beyond the time reasonably
7 required to complete that mission. Id. A traffic stop that extends beyond the time necessary to
8 effectuate its initial purpose is not unreasonable per se. State v. Beckman, 305 P.3d 912, 917
9 (Nev., 2013). A prolonged stop may be reasonable in three limited circumstances: when the
10 extension of the stop was consensual, the delay was de minimis, or the officer lawfully receives
11 information during the traffic stop that crea
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