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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

UNITED STATES OF AMERICA,  
  
                                  Plaintiff,  
  
v.  
  
\$167,070.00 IN UNITED STATES  
CURRENCY,  
  
                                  Defendant.

3:13-CV-00324-LRH-VPC

ORDER

\_\_\_\_\_  
STRAUGHN SAMUEL GORMAN,  
  
                                  Claimant.  
\_\_\_\_\_

          This is a civil forfeiture action arising from two successive traffic stops that occurred on a stretch of Interstate 80 (“I-80”) between Wells, Nevada, and Elko, Nevada. On February 18, 2014, Plaintiff the United States of America (“United States”) filed a Motion for Summary Judgment (Doc. #11), which the Court denied on July 23, 2014 (Doc. #28). Before the Court is Claimant Straughn Gorman’s (“Gorman”) Motion to Suppress. Doc. #18.<sup>1</sup> The United States filed a Response (Doc. #24), to which Gorman replied (Doc. #27). The Court held an evidentiary hearing on December 15 and 16, 2014, during which the Court viewed the video of both traffic stops and heard deposition testimony from the officer who effectuated the first stop, and live testimony from the officer who effectuated the second stop. After the hearing, Gorman submitted supplemental

<sup>1</sup> Refers to the Court’s docket number.

1 briefing. Doc. #61. The United States filed a Supplemental Opposition (Doc. #62), to which  
2 Gorman replied (Doc. #63).

3 On February 24, 2015, the Court stayed consideration of Gorman's Motion to Suppress  
4 pending the Supreme Court's decision in *Rodriguez v. United States*, recognizing that *Rodriguez*  
5 could impact the law underlying this case. Doc. #64. The Supreme Court decided *Rodriguez* on  
6 April 21, 2015. The parties filed responsive memoranda on May 5 and 6, 2015 (Doc. ##66, 68),  
7 and replies on May 21, 2015 (Doc. ##70, 71). After considering all briefing, the arguments and  
8 evidence presented at the December 15 and 16, 2014, evidentiary hearing, and all relevant statutes  
9 and case law, the Court grants Gorman's Motion to Suppress.

#### 10 **I. Facts and Procedural History**

11 On January 23, 2013, at approximately 9:03 a.m., Nevada State Trooper Greg Monroe  
12 ("Monroe") observed Gorman driving in the left westbound lane along I-80 just outside of Wells,  
13 Nevada. Monroe Depo. at 46:18-21, 47:21-24. Monroe told Gorman that he stopped Gorman for a  
14 "left-lane violation" because he was driving slowly in the left lane and traffic had backed up behind  
15 his motor home. *Id.* at 46:3-9. Gorman responded that he was driving in the left lane to avoid  
16 being stuck behind slow moving trucks in the right lane, and that he planned to move back to the  
17 right lane as soon as possible. *Id.* at 59:7-13. Upon request, Gorman produced his license and  
18 registration and told Monroe that he was traveling to Sacramento, California to visit "his chick."  
19 *Id.* at 60:9-61:5. Gorman told Monroe that his girlfriend lived in downtown Sacramento, but was  
20 not able to produce her exact address, noting that it was entered into his GPS system. *Id.* at 84:2-  
21 22. Gorman's use of the word "chick" aroused Monroe's suspicion that Gorman's answers were  
22 rehearsed because Monroe thought that "chick" was an unusual word for a person Gorman's  
23 age—thirty-one at the time of the stop—to use. *Id.* at 62:4-8; 63:12-17. Monroe's suspicions grew  
24 "extremely high" when Gorman stated that he was *moving* to California because this was  
25 inconsistent with Gorman's earlier statement that he was *visiting* his girlfriend in Sacramento. *Id.*

26 ///

1 at 62:12-21. Additionally, Gorman told Monroe that he worked for a Maui beach activities and  
2 paddle board company, which Monroe also thought sounded rehearsed. *Id.* at 89:1-11.

3 After questioning Gorman, Monroe returned to his vehicle and requested a canine unit at  
4 approximately 9:07 a.m. *Id.* at 90:18-20. Monroe then called in for a driver's license warrant  
5 check and a criminal history check. *Id.* at 91:13-20. At 9:08:30 a.m., dispatch informed Monroe  
6 that there were no available canine units in Wells, to which Monroe replied "oh great" in an  
7 exasperated tone. *Id.* at 95:19-21. At approximately 9:09 a.m., Monroe told dispatch "without a  
8 dog I'm not even going to get in to this one." At approximately 9:10 a.m., dispatch informed  
9 Monroe that Gorman's driver's license was valid. *Id.* at 100:17-20. At approximately 9:10:30  
10 a.m., Monroe asked someone who is inaudible on the recording "how far out are you guys?" and  
11 then stated that he was going to try to get consent to search the vehicle but that he was "pretty sure"  
12 Gorman would refuse. Monroe then said that he was between the 346 and 347 mile markers, and  
13 "if you guys don't mind start heading this way, . . . I'm going to call [El Paso Intelligence Center  
14 ("EPIC")] on this one and if the guy shuts me down, well then he shuts me down." At  
15 approximately 9:12 a.m., Monroe called in a check with EPIC. *Id.* at 104:25-105:5. This call  
16 included a check of any law enforcement activities involving drugs at Gorman's residence. *Id.* at  
17 107:15-22. At 9:22:30 a.m., Monroe told the EPIC operator that he did not have a canine unit  
18 available, but that he was going to try to get consent to search Gorman's vehicle. *Id.* at 117:11-15.  
19 At 9:22:45 a.m., EPIC responded that they had a "DEA hit" on Gorman involving a transfer of  
20 \$10,000 out of the country, but all other checks were negative. *Id.* at 118:3-9.

21 At approximately 9:23 a.m., Monroe exited his vehicle and told Gorman that he was not  
22 going to write a ticket. At 9:23:35 a.m., Monroe then handed Gorman his identification and told  
23 him that he was free to leave. *Id.* at 126:16-24. Immediately afterward, Monroe asked Gorman if  
24 he could ask some additional questions. *Id.* at 128:12-17. Monroe first asked how Gorman could  
25 afford to drive a motor home cross-country when gas prices were over \$3.00 per gallon. Monroe  
26 then asked if Gorman still sold paddle boards for a living, and asked about his compensation, to

1 which Gorman responded “I don’t want to talk about how much I make.” At approximately 9:25  
2 a.m., Monroe asked if there was anything illegal in Gorman’s motor home, or if he was carrying  
3 large amounts of U.S. currency. *Id.* at 129:17-130:3. Gorman then told Monroe that he was only  
4 carrying about \$2000 in U.S. currency in the motor home. At 9:25:45 a.m., Monroe asked Gorman  
5 “do you mind if we search the vehicle?,” to which Gorman said “I do mind, yes.” *Id.* at 131:19-23.  
6 At this point, Monroe told Gorman that he was free to leave, returned to his vehicle, and said “he’s  
7 carrying money” aloud to himself.

8 Monroe then contacted Nevada Highway Patrol (“NHP”) dispatch and informed the  
9 operator that there was a vehicle headed westbound on I-80 from Wells, Nevada that he strongly  
10 suspected was carrying large amounts of currency. *Id.* at 135:7-13. Monroe informed the operator  
11 that the only way to get probable cause to search Gorman’s motor home would be to use a canine  
12 unit. *Id.* at 136:3-9. NHP dispatch then informed Elko County Sheriff’s Office (“ECSO”) Deputy  
13 Doug Fisher (“Fisher”) that Monroe had stopped a vehicle near the 360 mile marker on I-80 near  
14 Wells, Nevada, and that Fisher might be interested in stopping the vehicle. Fisher Depo. at 32:4-  
15 11. Fisher was told that Gorman did not consent to the search during the first stop, and that a  
16 canine unit “might want to follow up on the information.” *Id.* at 43:18-20; 35:12-16. Fisher  
17 understood this to mean that he may want to walk his canine around Gorman’s vehicle. *Id.* at  
18 36:10-19.

19 Monroe also called Fisher directly to relay his suspicions about Gorman and that Gorman  
20 was driving westbound on I-80 from Wells, Nevada. Monroe added that Gorman was traveling  
21 from Delaware to Sacramento to visit his girlfriend, that he had \$5000 in the motor home, and that  
22 Gorman acted abrasive during the initial stop. *Id.* at 40:1-5. Monroe also told Fisher Gorman’s  
23 name and license plate number, but did not tell Fisher which records checks he had conducted. *Id.*  
24 at 41:7-42:20. Monroe told Fisher that he was denied consent for a search and that he let Gorman  
25 leave because he had no probable cause for a search and no canine units were available. *Id.* at 43:4-  
26 11. After this call, Fisher left the ECSO and “started patrolling the highway.” *Id.* at 45:6-9. Fisher

1 was on a roving patrol initially, but became stationary between the 302 and 303 mile markers on I-  
2 80, facing eastbound near Elko approximately five miles from ECSO.<sup>2</sup> *Id.* at 45:10-23.

3 NHP dispatched Fisher to follow up on Monroe's information at approximately 9:27 a.m.  
4 Doc. #23, Ex. J at 4; Doc. #27-1, Request for Admission No. 18. NHP further notified Fisher that  
5 Monroe released Gorman's vehicle, a white motor home, after he was denied consent to search. *Id.*  
6 At approximately 10:15 a.m., Fisher observed Gorman's motor home traveling westbound with the  
7 driver's side window obstructed by a window curtain that had been pulled forward. Doc. #12  
8 ("Fisher Decl.") ¶3. Fisher followed the motor home and observed it drift to the right onto the fog  
9 line three times and remain on the fog line each time for approximately 400 yards.<sup>3</sup> *Id.* Fisher also  
10 observed that the rear window of the motor home was obstructed by blinds or curtains that were  
11 partially closed. *Id.* Based on these observations, Fisher activated the overhead lights on his patrol  
12 car in an effort to initiate a stop of the motor home. *Id.* at ¶4. Fisher remained behind the motor  
13 home with his overhead lights activated for approximately one mile with no apparent effect on  
14 Gorman. *Id.* Thereafter, Fisher moved to the lane left of the motor home for an additional mile,  
15 keeping the overhead lights activated, with no apparent effect on Gorman. *Id.* He then activated  
16 his siren in two short bursts, again with no apparent effect on Gorman. *Id.* After moving his patrol  
17 car forward to the driver's side window and again activating his siren for two short bursts, Gorman  
18 stopped the motor home on the side of the road. *Id.*

19 Fisher approached the right side of the motor home and Gorman exited the vehicle with his  
20 insurance, registration, and identification ready, wearing a hat, gloves, and jacket. *Id.* at ¶5. Fisher  
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22 <sup>2</sup> Monroe initially stopped Gorman near the 347 mile marker on I-80. The Court notes that there was  
23 a high probability that Gorman would pass this location because the only way for Gorman to reach Sacramento  
going westbound on I-80 is through Elko.

24 <sup>3</sup> Fisher later contradicted the statements in the warrant application about when he first decided to  
25 effectuate the traffic stop. Specifically, Fisher told the magistrate that he noticed the vehicle drift onto the fog  
26 line before he decided to effectuate the stop. Doc. #18, Ex. A at 4. At the evidentiary hearing, Fisher stated  
that he decided to stop the motor home after noticing that the curtain was pulled forward, and that he only  
noticed the purported fog line violations as he was following the vehicle immediately prior to the stop.

1 told Gorman the reason for the stop and further advised Gorman of the safety issue caused by the  
2 obstructed side window. *Id.* at ¶6. Gorman responded that he had been pulled over about forty  
3 minutes earlier and had been stopped for twenty minutes. *Id.* Fisher replied “I don’t know if you  
4 got stopped,<sup>4</sup> because I get told that quite often . . . as a distraction.” Gorman stated that he was  
5 traveling to Sacramento to visit his girlfriend, and then stated his intention to move to California.  
6 *Id.* Gorman also said that he worked with a paddle board company that involved other beach  
7 activities in Maui. *Id.*

8 Fisher returned to his patrol car, at which point the evidentiary record is contested.  
9 Specifically, the parties dispute the point at which Fisher requested a records check of Gorman.  
10 Fisher states that he paged dispatch approximately four minutes into the stop, but that dispatch did  
11 not respond to his page. U.S. Ex. 7 ¶11(f). The video of the incident does not clearly indicate  
12 whether Fisher paged dispatch. Approximately five minutes into the stop, Deputy Prall (“Prall”)  
13 arrived at the scene and Fisher asked him to “stick around.” *Id.* The dispatch Call for Service  
14 Report indicates that Prall requested a records check approximately six minutes into the stop, but  
15 does not indicate that Fisher paged or otherwise requested a records check. *Id.*, Ex. 4 at 1. The  
16 dispatch report also indicates that Prall requested an EPIC check approximately seven minutes into  
17 the stop. *Id.* The EPIC check indicated that Gorman had four border crossings, most recently  
18 between the United States and Spain. *Id.* Meanwhile, Fisher filled out a consent to search form for  
19 the motor home, which he never presented to Gorman because based on their interactions, Fisher  
20 believed that an attempt to get consent would be futile.

21 When Fisher re-approached the vehicle, he told Gorman “they’re rolling some medical  
22 information at dispatch right now so I’m just going to ask you a couple questions if you don’t  
23 mind.” Gorman replied “I do mind. I’ve been asked a lot of other questions at the other place.”  
24 Fisher then asked “what did he ask you?” Gorman replied “he asked me a bunch. Am I getting a  
25 ticket? Am I detained?” Fisher responded “right now you are being detained because I haven’t

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<sup>4</sup> Fisher acknowledged at the evidentiary hearing that this was “a lie.”

1 even ran you through dispatch.” Fisher then asked “so you don’t want to answer my questions  
2 then?” Gorman replied “No I don’t because I was just held for seriously twenty to thirty minutes. I  
3 answered a bunch of questions and he finally let me go. . . . I’m done talking.”

4 Fisher asked Gorman if he had an objection to Fisher conducting a canine sniff around the  
5 motor home. Gorman responded “I have opposition, if that means anything.” Fisher then  
6 conducted a weapons pat-down of Gorman and asked him to stand twenty to thirty feet in front of  
7 the motor home. Next, approximately twelve minutes in to the traffic stop, Fisher released his  
8 drug-detection canine “Euros” from his vehicle. Fisher and Euros then approached the motor home  
9 and began walking around it in the clockwise direction, starting at the rear left-hand side of the  
10 vehicle. As Fisher and Euros circled the rear of the motor home, Euros sat down near the vehicle’s  
11 back right compartment, facing the compartment. Fisher described this as a “committed sit and  
12 stare,” which he considered to be a positive alert. Fisher then gave Euros his ball (apparently, the  
13 dog’s reward) and returned him to the vehicle.

14 Fisher returned to the motor home and told Gorman “Dispatch still hasn’t come back with  
15 your information. He just was able to get it through. . . . Once the information comes back from  
16 dispatch you will be free to leave, but your vehicle is staying here until we figure out if we are  
17 going to do a telephonic search warrant.” Gorman expressed disbelief that the dog positively  
18 alerted for drugs, and asked “did you make him alert?” Fisher responded “No. I did not make him  
19 alert.” Gorman then referred to the back rear compartment and said “I can open that if you want to  
20 look in it. It’s charcoal and stuff like that, do you want to look in it?” Fisher replied “do you want  
21 to talk to me now?” Gorman replied “if he alerted somewhere, look in it because there’s no drugs.”  
22 Fisher then noted that odor could come out anywhere on the vehicle, and that the rear back  
23 compartment was on the “down wind side of the vehicle.” Fisher then returned to his vehicle, at  
24 which point the video of this stop ends.

25 Based on the aforementioned circumstances, Fisher applied telephonically for a search  
26 warrant from the Justice Court of Elko Township, Elko County, Nevada. *Id.* at ¶10. Fisher did not

1 state in his telephonic warrant application that he had first been dispatched to investigate Gorman  
2 after Monroe alerted him that Gorman was heading westbound on I-80 from Wells.<sup>5</sup> An Elko  
3 County Justice of the Peace issued a warrant to search the motor home at approximately 11:15 a.m.  
4 *Id.* The officers conducted a search of the motor home with the assistance of Euros. *Id.* at ¶11.  
5 During the search, Euros positively alerted to Gorman’s backpack, clothes, and blankets, and the  
6 overhead storage cabinets above the master bed. *Id.* The search of the interior of the motor home  
7 yielded discovery of currency throughout the motor home, including in the freezer, microwave, and  
8 bedroom compartment. *Id.* at ¶12. The search also yielded discovery of fifteen “pay/owe” sheets, a  
9 Google Maps printout showing driving directions from Milton, Delaware to Garberville, California,  
10 a prescription inhaler containing Proventil with a prescription label designating “Ryan Cavalear” as  
11 the patient, two large empty canvas duffle-type bags, and a large hard-sided “Pelican” case. *Id.* at  
12 ¶¶13-16. No drugs were found.

13 On June 17, 2013, the United States filed a Complaint in Forfeiture *In Rem.* Doc. #1. On  
14 February 18, 2014, the United States filed a Motion for Summary Judgment. Doc. #11. Thereafter,  
15 Gorman filed the present Motion to Suppress. Doc. #18. On July 27, 2014, the Court denied the  
16 United States’ Motion for Summary Judgment, deferred judgment on Gorman’s Motion to  
17 Suppress, and set an evidentiary hearing. Doc. #28. The Court held an evidentiary hearing on  
18 December 15 and 16, 2014, during which the Court heard deposition testimony of Monroe, live  
19 testimony of Fisher, and reviewed the video of each traffic stop. Following the Supreme Court’s  
20 ruling in *Rodriguez*, both parties submitted memoranda on *Rodriguez*’s application to this case, and  
21 both parties thereafter submitted replies.

## 22 **II. Legal Standard**

23 Rule G(8)(a) of the Supplemental Rules for Admiralty or Maritime Claims and Asset  
24 Forfeiture Actions provides that “[i]f the defendant property was seized, a party with standing to

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25 <sup>5</sup> In addition to this omission, Fisher stated in the warrant application that Gorman “indicated that he  
26 had no job.” Doc. #18, Ex. A at 5. This statement is directly contradicted by the video of the traffic stop,  
which shows Gorman tell Fisher that he works for a paddle board company in Maui.



1 contest the lawfulness of the seizure may move to suppress use of the property as evidence.” A  
2 motion to suppress brought by a claimant in a civil forfeiture proceeding is akin to one brought by a  
3 defendant in a criminal case. *See One 1958 Plymouth Sedan v. Pa.*, 380 U.S. 693, 696-702 (1965)  
4 (holding that the Fourth Amendment is applicable to forfeiture proceedings); *see also* Civil Asset  
5 Forfeiture Reform Act of 2000, 18 U.S.C. § 981(b)(2)(B) (requiring that seizures be made pursuant  
6 to a warrant or based upon probable cause and pursuant to a lawful arrest or search). As such, the  
7 exclusionary rule applies in civil forfeiture cases. *One 1958 Plymouth Sedan*, 380 U.S. at 702;  
8 *United States v. \$493,850.00 in U.S. Currency*, 518 F.3d 1159, 1164 (9th Cir. 2008). The rule  
9 “bars the admission of evidence obtained in violation of the U.S. Constitution, as well as ‘fruits of  
10 the poisonous tree.’” *\$493,850.00 in U.S. Currency*, 518 F.3d at 1164 (quoting *United States v.*  
11 *Ramirez-Sandoval*, 872 F.2d 1392, 1395 (9th Cir. 1989)). “[U]nder the ‘fruits of the poisonous  
12 tree’ doctrine, evidence obtained subsequent to a violation of the Fourth Amendment is tainted by  
13 the illegality and is inadmissible.” *Id.* at 1164-65 (quoting *United States v. Washington*, 490 F.3d  
14 765, 774 (9th Cir. 2007)).

15 It is well settled that a traffic stop is a seizure within the meaning of the Fourth  
16 Amendment. *See Delaware v. Prouse*, 440 U.S. 648, 653 (1979); *Whren v. United States*, 517 U.S.  
17 806, 809-10 (1996). In the context of an investigatory traffic stop, an officer need only have  
18 reasonable suspicion to justify the seizure. *See United States v. Lopez-Soto*, 205 F.3d 1101, 1104-  
19 05 (9th Cir. 2000) (concluding that *Whren* did not alter the well settled law that reasonable  
20 suspicion is enough to support an investigatory traffic stop under the Fourth Amendment); *Brendlin*  
21 *v. California*, 551 U.S. 249, 263 (2007) (concluding that a seizure began at the moment the car  
22 came to a halt on the side of the road). Reasonable suspicion requires “specific, articulable facts  
23 which, together with objective and reasonable inferences, form the basis for suspecting that the  
24 particular person detained is engaged in [a traffic violation].” *United States v. Michael R.*, 90 F.3d  
25 340, 346 (9th Cir. 1996) (quoting *United States v. Garcia-Camacho*, 53 F.3d 244, 246 (9th Cir.

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1 1995)). Reasonable suspicion “can rest on a mistaken understanding of the scope of a legal  
2 prohibition.” *Heien v. North Carolina*, 135 S. Ct. 530, 536 (2014)

3 While an officer “may conduct certain unrelated checks during an otherwise lawful traffic  
4 stop. . . he may not do so in a way that prolongs the stop, absent the reasonable suspicion  
5 ordinarily demanded to justify detaining an individual.” *Rodriguez v. United States*, 135 S. Ct.  
6 1609, 1615 (2015). An officer’s prolongation of a traffic stop to conduct a dog sniff “violate[s] the  
7 Fourth Amendment unless the officer had independent reasonable suspicion to support the  
8 prolongations.” *United States v. Evans*, No. 14-10024, 2015 WL 2385010, at \*1 (9th Cir. May 20,  
9 2015). “Like a *Terry* stop, the tolerable duration of police inquiries in the traffic-stop context is  
10 determined by the seizure’s ‘mission’—to address the traffic violation that warranted the stop, and  
11 attend to related safety concerns.” *Rodriguez*, 135 S. Ct. at 1614. “In assessing whether a  
12 detention is too long in duration to be justified as an investigative stop,” it is proper “to examine  
13 whether the police diligently pursued a means of investigation that was likely to confirm or dispel  
14 their suspicions quickly.” *United States v. Sharpe*, 470 U.S. 675, 686 (1985). Ultimately, the  
15 analysis remains one of reasonableness, and thus the court must examine the “totality of the  
16 circumstances” surrounding the stop to determine whether the length is reasonable. *See United*  
17 *States v. Turvin*, 517 F.3d 1097, 1101 (9th Cir. 2008).

### 18 **III. Discussion**

#### 19 **A. Reasonable Suspicion for the Traffic Stops**

20 The Supreme Court held recently that reasonable suspicion “can rest on a mistaken  
21 understanding of the scope of a legal prohibition.” *Heien*, 135 S. Ct. at 536. The Court noted that  
22 “[t]o be reasonable is not to be perfect, and so the Fourth Amendment allows for some mistakes on  
23 the part of government officials.” *Id.* In order to be valid under the Fourth Amendment, an  
24 officer’s reasonable mistake of law must be “*objectively* reasonable,” and courts should not  
25 “examine the subjective understanding of the particular officer involved.” *Id.* at 539 (emphasis in  
26 original).

1 Monroe stated in his deposition that he decided to pull Gorman over for a “left-lane  
2 violation,” which he defined as a “slow-moving vehicle in the left lane” with traffic backing up  
3 behind it. Monroe Depo. at 46:3-9. Monroe was unable to identify the specific statute, but stated  
4 that “[w]hen you have traffic in the left lane that is impeding the flow of traffic, that’s where it  
5 becomes a violation.” *Id.* at 49:2-9. Nev. Rev. Stat. (“NRS”) 484B.627 provides that if a driver  
6 “drives a motor vehicle at a speed so slow as to impede the forward movement of traffic proceeding  
7 immediately behind the driver,” he or she must “drive to the extreme right side of the highway.”  
8 Fisher articulated two separate observed traffic violations to justify his investigatory traffic stop: (1)  
9 he “noticed the vehicle drift to the right and drive on the white fog line,” and (2) he “further noticed  
10 the driver had the curtain pulled forward on the driver’s side window which obstructs the driver’s  
11 view of the vehicle’s left blind area[,]” both in violation of Nevada law.<sup>6</sup> Doc. #18, Ex. A, 4:12-17.

12 As discussed below, the Court believes that the two traffic stops are inextricably connected  
13 and that Gorman’s total detention was unreasonably prolonged. However, the Court finds under  
14 *Heien* that both stops were supported by reasonable suspicion based on the officers’ belief that they  
15 observed traffic violations. These determinations were not objectively unreasonable.<sup>7</sup>

#### 16 **B. Prolonged Detention**

17 Gorman also challenges the legality of his “prolonged detention,” which he claims exceeded  
18 the scope and duration of the purported justification for the initial investigatory traffic stop.  
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20 <sup>6</sup> NRS 484B.223(1) states that drivers must drive “as nearly as practicable entirely within a single lane.”  
21 NRS 484B.163(3) provides that “a vehicle must not be operated upon any highway unless the driver’s vision  
22 through any required glass equipment is normal.”

23 <sup>7</sup> Fisher’s belief that a fog line violation occurred was likely mistaken. In *United States v. Lopez-Rojo*,  
24 this Court found that “[a]lthough the Nevada Supreme Court—or any other Nevada court—has not issued a  
25 opinion regarding what constitutes a failure to maintain a traffic lane, persuasive authority weighs in favor of  
26 finding that crossing over, *as opposed to touching*, a fog line constitutes [a violation of NRS 484B.223(1)].”  
No. 3:07-cr-0080, 2008 WL 2277495, at \*5 (D. Nev. May 29, 2008) (emphasis added). In *United States v.*  
*Delgado-Hernandez*, the Ninth Circuit concluded that the defendant did not violate NRS 484B.223(1) by briefly  
crossing over the fog line approximately twelve to fourteen inches one time. 283 Fed. Appx. 493, 496-99 (9th  
Cir. 2008). The Ninth Circuit found significant the fact that the defendant was not speeding or otherwise  
driving in an erratic manner. *Id.* at 497-98.

1 Assuming that the investigative stops were justified at their inceptions, the duration of the stops  
2 must be assessed for reasonableness. Gorman asserts that there was no continuing justification for  
3 the delay in conducting the canine sniff because Fisher had already completed his investigation  
4 regarding the suspected traffic violation, and Monroe had already conducted a records check. The  
5 United States contends that the canine sniff did not delay the investigative traffic stop any longer  
6 than was necessary because the records check was still in progress at the time of the canine sniff.<sup>8</sup>  
7 Doc. #25, 28:17-19. Fisher testified that the records check was still in progress at the time he  
8 performed an exterior canine sniff of the motor home. Fisher Decl. ¶7; Doc. #23 (“Second Fisher  
9 Decl.”), 4:20-22.

10 In *Rodriguez v. United States*, the Supreme Court considered an officer’s prolongation of a  
11 traffic stop in order to conduct a canine sniff. *Rodriguez*, 135 S. Ct. at 1612. The traffic stop in  
12 *Rodriguez* occurred after officer Struble observed a vehicle veer onto the shoulder of Nebraska  
13 State Highway 275 and then jerk back onto the road. *Id.* Struble is a K-9 officer, and his canine  
14 “Floyd” was on patrol with him that night. *Id.* Struble effectuated a traffic stop and asked the  
15 driver, Rodriguez (“Rodriguez”), why he was driving erratically, to which Rodriguez replied that he  
16 had swerved to avoid a pothole. *Id.* at 1613. Struble ran a records check on Rodriguez, and a  
17 second records check on Rodriguez’s passenger. *Id.* Struble then called for a second officer to join  
18 him at the scene and began writing Rodriguez a warning ticket for driving on the shoulder of the  
19 road. *Id.* After issuing the warning, Struble asked for permission to walk his canine around  
20 Rodriguez’s vehicle. *Id.* Rodriguez did not consent. *Id.* Struble then instructed Rodriguez to exit  
21 the vehicle and stand in front of the patrol car to wait for the second officer, who was in route. *Id.*  
22 When the officer arrived, twenty-seven minutes after Struble first effectuated the stop, Struble  
23 walked Floyd twice around Rodriguez’s vehicle. *Id.* Floyd alerted to the presence of contraband  
24 halfway through the second pass around the vehicle. *Id.* A subsequent search revealed a large bag

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26 <sup>8</sup> It is well established that a records check is an expected part of a traffic stop. See *United States v. Mendez*, 476 F.3d 1077, 1080 (9th Cir. 2007); *Berkemer v. McCarty*, 468 U.S. 420, 437 (1984).

1 of methamphetamine. *Id.* Between seven and eight minutes passed between the time Struble  
2 issued the warning and Floyd’s positive alert to contraband. *Id.*

3 The Court held that “[l]ike a *Terry* stop, the tolerable duration of police inquiries in the  
4 traffic-stop context is determined by the seizure’s ‘mission’—to address the traffic violation that  
5 warranted the stop, and attend to related safety concerns.” *Id.* at 1614 (internal citation omitted).  
6 “Authority for the seizure thus ends when tasks tied to the traffic infraction are—or reasonably  
7 should have been—completed.” *Id.* Ultimately, while an officer “may conduct certain unrelated  
8 checks during an otherwise lawful traffic stop. . . . he may not do so in a way that prolongs the stop,  
9 absent the reasonable suspicion ordinarily demanded to justify detaining an individual.” *Id.* at  
10 1615. The Court noted that an officer’s mission ordinarily includes “checking the driver’s license,  
11 determining whether there are outstanding warrants against the driver, and inspecting the  
12 automobile’s registration and proof of insurance.” *Id.* A dog sniff, which is aimed at “detect[ing]  
13 evidence of ordinary criminal wrongdoing,” is not an ordinary element of a traffic stop. *Id.*  
14 (quoting *Indianapolis v. Edmond*, 531 U.S. 32, 40-41 (2000)).

15 Applying *Rodriguez*, the Ninth Circuit held recently that an officer’s “prolongation of the  
16 traffic stop to conduct both an ex-felon registration check and a ‘dog sniff’ violated the Fourth  
17 Amendment unless the officer had independent reasonable suspicion to support the prolongations.”  
18 *Evans*, 2015 WL 2385010, at \*1. A traffic stop is not unreasonably prolonged if the officers  
19 “diligently pursued” their investigation in order to “confirm or dispel their suspicions quickly.”  
20 *Sharpe*, 470 U.S. at 686. The court must examine the “totality of the circumstances” surrounding  
21 the stop to determine whether the length was reasonable. *See Turvin*, 517 F.3d at 1101. Following  
22 *Rodriguez*, the central questions before the Court are whether the officers diligently pursued their  
23 investigation, and whether they had independent reasonable suspicion to justify any prolongation of  
24 Gorman’s seizure.<sup>9</sup>

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25  
26 <sup>9</sup> The Court also considers the Nevada Supreme Court’s ruling on the constitutionality of a similar stop  
to be persuasive. In *State v. Beckman*, the Nevada Supreme Court held that “[a] prolonged stop may be

1                                   **1. The Prolonged Stop Was Not Consensual**

2           As an initial matter, the Court notes that the extensions of Gorman’s stops were not  
3 consensual. This is important because both *Rodriguez* and *Evans* involved searches that occurred  
4 after the driver refused to consent to a dog sniff. *Rodriguez*, 135 S. Ct. at 1613; *Evans*, 2015 WL  
5 2385010, at \*3. Here, Gorman expressed frustration more than once about having been stopped so  
6 soon after the initial stop, and about Fisher asking the same questions that Monroe had asked only  
7 forty minutes earlier. Gorman also stated that he had “opposition” to Fisher’s canine sniff.

8           The Court is particularly troubled that the officers’ belief that Gorman would not consent to  
9 a search, and his opposition to the canine sniff, appears to have contributed to the officers’  
10 purported reasonable suspicion to extend the stop and continue the investigation. Individuals have  
11 a right to refuse consent for a search, and the existence of this right requires that denial of consent  
12 not be a basis to prolong a stop. *See Graves v. City of Coeur D’Alene*, 339 F.3d 828, 841 (9th Cir.  
13 2003), *abrogation on other grounds recognized by C.B. v. City of Sonora*, 769 F.3d 1005 (9th Cir.  
14 2014) (finding that refusal “to consent to a search cannot be a basis for the arrest unless [the  
15 officer] had a right to search” independent of the refusal); *Gasho v. United States*, 39 F.3d 1420,  
16 1439 (9th Cir. 1994) (noting that refusal to consent to a search “could not serve as a basis for  
17 finding criminal intent”); *United States v. Prescott*, 581 F.2d 1343, 1351 (9th Cir. 1978) (finding  
18 that refusing to consent to a search cannot be a crime, “[n]or can it be evidence of a crime”). The  
19 record indicates that Gorman did not consent to the dog sniff, and his refusal to consent does not  
20 justify his prolonged seizure.

21                                   **2. The Investigation Was Unreasonably Prolonged**

22           Gorman argues that his stops were unreasonably prolonged. Specifically, Gorman notes  
23 that Fisher “embarked upon an investigation entirely unrelated to the purpose and proper scope of  
24 the traffic stop,” including “repeated questions about his travel itinerary, the purpose of his road

25 \_\_\_\_\_  
26 reasonable in three limited circumstances: when the extension of the stop was consensual, the delay was de  
minimis, or the officer lawfully receives information during the traffic stop that creates a reasonable suspicion  
of criminal conduct.” 305 P.3d 912, 917 (Nev. 2013) (en banc).

1 trip, his employment, and his future plans; and thereupon proceeding to instead prepare a consent-  
2 to-search form for the motorhome.” Doc. #18 at 24. Courts have been reluctant to set a specific  
3 time limit for what would constitute unreasonable delay. *See Turvin*, 517 F.3d at 1102-03  
4 (discussing unreasonable delay and declining to adopt a bright-line rule). “An officer’s inquiries  
5 into matters unrelated to the justification for the traffic stop . . . do not convert the encounter into  
6 something other than a lawful seizure, so long as those inquiries do not *measurably* extend the  
7 duration of the stop.” *Arizona v. Johnson*, 555 U.S. 323, 333 (2009) (emphasis added). Here,  
8 Gorman was initially stopped for a minor traffic offense at approximately 9:03 a.m. and released at  
9 approximately 9:26 a.m. when Monroe concluded that he did not have probable cause to search the  
10 motor home. Gorman was stopped the second time, again for a minor traffic offense, at  
11 approximately 10:15 a.m., Doc. #23 at 10, and held for more than nine minutes before Fisher asked  
12 if he could conduct a canine sniff. Fisher knew that Monroe had previously ran a records check and  
13 lacked probable cause to hold Gorman, but nonetheless two additional records checks were  
14 conducted in order to prolong the detention and make time for a canine sniff. The positive alert  
15 occurred approximately twelve minutes after the second traffic stop occurred.

16 All tolled, Gorman was detained for a total of approximately thirty-five minutes without  
17 convincing independent reasonable suspicion—before the officers conducted a canine sniff of the  
18 motor home and obtained probable cause for the search. Of course, “an individual who has already  
19 been seized can still be *further* seized for purposes of the Fourth Amendment.” *Hopkins v.*  
20 *Bonvicino*, 573 F.3d 752, 772 n.12 (9th Cir. 2009). But a second stop requires additional  
21 reasonable suspicion independent of the reasonable suspicion present in the first stop. *Evans*, 2015  
22 WL 2385010, at \*1; *see United States v. Ruelas-Lopez*, 220 Fed. Appx. 707, 708 (9th Cir. 2007)  
23 (noting that the defendant was correct that the second stop “must be supported by ‘reasonable  
24 suspicion’ independent of any suspicion that was dispelled as a result of the first stop”). As  
25 discussed below, such additional reasonable suspicion was not present here.

26 ///

1 The Court must analyze a prolonged stop for reasonableness. Based on the totality of the  
2 circumstances, the Court finds that the officers' prolonged investigation was unreasonable because  
3 it involved more than thirty-five minutes of detention before the canine sniff, all without sufficient  
4 independent reasonable suspicion to prolong Gorman's seizure beyond the reasonable amount of  
5 time necessary to complete the purpose of the traffic stops. Importantly, the Supreme Court held in  
6 *Rodriguez* that an ordinary traffic stop includes "checking the driver's license, determining whether  
7 there are outstanding warrants against the driver, and inspecting the automobile's registration and  
8 proof of insurance." 135 S. Ct. at 1615. Fisher was aware that Monroe had already conducted  
9 these checks, but conducted additional redundant checks in order to prolong the stop to allow for a  
10 canine sniff, all without additional reasonable suspicion. The Court finds under *Rodriguez* that this  
11 prolongation was unreasonable.

### 12 3. The Prolongation of the Second Stop Was Not Supported by Independent 13 Reasonable Suspicion

14 Finally, Gorman argues that nothing in Gorman's interaction with Monroe or Fisher gave  
15 Fisher reasonable suspicion to prolong the traffic stop. Fisher knew that Monroe had already  
16 stopped Gorman, conducted a records check, and concluded that he lacked probable cause to search  
17 the motor home.<sup>10</sup> Doc. #18 at 25. Gorman argues that Fisher's articulated reasons for expanding  
18 the investigation following the records checks were not supported by any additional reasonable  
19 suspicion. Specifically, Fisher stated that his EPIC check indicated that Gorman "had multiple  
20 border crossings with the most recent in 2012 from Madrid, Spain, into the United States" and that  
21 Gorman "transferred \$11,000 cash to another subject with an unknown name." *Id.*, Ex. A at 5.  
22 Gorman states that "these are entirely innocuous circumstances common to untold numbers of law  
23 abiding citizens." *Id.* at 26. Fisher also referred to Gorman's refusal to answer questions and

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24  
25 <sup>10</sup> Of course, just because an officer concluded "that he did not have enough evidence to seek a federal  
26 search warrant does not establish that probable cause was lacking." *United States v. Crawford*, 657 F.2d 1041,  
1047 (9th Cir. 1981). Here, the Court considers Monroe's determination that he lacked probable cause for a  
search in the context of Gorman's argument that his traffic stops were unreasonably prolonged, not to conclude  
that probable cause for the ultimate search was lacking.



1 “abrupt initial contact” in support of his probable cause explanation. *Id.*, Ex. A at 5.

2 Fisher’s purported additional reasonable suspicion falls short. Fisher referred frequently to  
3 Gorman’s abrasive demeanor, and stated that this seemed suspicious. Courts often rely on  
4 conclusions of police officers because their experiences enable them to notice factors that “might  
5 well elude an untrained person.” *United States v. Cortez*, 449 U.S. 411, 418 (1981). Citing federal  
6 law, the Nevada Supreme Court has held that personality factors “such as nervousness are part of a  
7 reasonable suspicion analysis but, standing alone, carry little weight because many citizens become  
8 nervous during a traffic stop, even when they have nothing to hide.” *Beckman*, 305 P.3d at 918  
9 (citing *United States v. Arvizu*, 534 U.S. 266, 275 (2002)). Similarly, it is not surprising that an  
10 individual traveling through a remote stretch of an interstate highway would be frustrated about  
11 being pulled over twice and detained for minor traffic infractions in a fifty mile stretch of highway.  
12 In the context of Fisher’s knowledge at the time of the stop—he knew that Monroe stopped  
13 Gorman less than an hour before—there was little about Gorman’s reaction to support a reasonable  
14 suspicion to detain him further.<sup>11</sup> Accordingly, Fisher did not have sufficient reasonable suspicion  
15 to prolong the second stop in order to conduct the canine sniff.

16 In its supplemental briefing, and after it became evident that the two stops were connected,  
17 the United States argues that “Monroe’s earlier traffic stop is wholly irrelevant to the Fourth  
18 Amendment analysis applicable to Gorman’s motion to suppress.” Doc. #62 at 16. Specifically,  
19 the United States contends that “Fisher’s traffic stop was based on his own observations of traffic  
20 violations being committed by Gorman, without regard to any information provided” by Monroe.

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21  
22 <sup>11</sup> Although not mentioned in the warrant application, Fisher stated at the evidentiary hearing that he  
23 also found it suspicious that Gorman met him at the door of the motor home with his identification and  
24 insurance information, and that he was wearing a winter jacket, hat, and gloves. Considering that Gorman had  
25 been so recently pulled over, it was mid-January in northern Nevada, the temperature was below thirty degrees,  
26 and Fisher knew of the previous outdoor detention of Gorman, the Court finds that this conduct was not  
objectively suspicious. Fisher also stated at the evidentiary hearing that Gorman’s use of a motor home was  
suspicious because he doesn’t see many motor homes on I-80 in the winter. As there are many innocent reasons  
why the traveling public might drive a motor home on an interstate highway in January, Gorman’s vehicle type,  
by itself, does not establish reasonable suspicion to prolong the stop. Moreover, it is the sheerest of speculation  
to assume a late model motor home over any other type of vehicle creates suspicion of criminal conduct.

1 *Id.* These statements cannot be reconciled with the testimony by Monroe and Fisher, or an  
2 independent review of the evidence before the Court. Fisher testified that Monroe told him that the  
3 white motor home was driving in his direction with a Delaware license plate, that he suspected that  
4 the motor home was carrying large amounts of currency, and that a canine sniff would likely be  
5 needed to obtain probable cause for a search. Fisher also testified that it is highly unusual for a  
6 motor home to be driving cross-country through this portion of I-80 in January, which indicates that  
7 he could quickly identify the vehicle to which Monroe referred. Considering the entirety of this  
8 history, and the fact that it was virtually certain that Gorman would drive past Fisher's location, the  
9 two stops are closely related.

10 The Tenth Circuit Court of Appeals has held that information gleaned from one stop cannot  
11 constitute the sole basis for reasonable suspicion to justify a second stop. In *United States v.*  
12 *Peters*, a case remarkably similar to this case, an officer pulled over a vehicle that had been  
13 weaving between lanes of traffic. 10 F.3d 1517, 1519 (10th Cir. 1993). Due to the nervous  
14 demeanor of the vehicle's occupants, the officer concluded that they were likely transporting illegal  
15 drugs. *Id.* The officer requested a canine unit but none was available. *Id.* After obtaining consent,  
16 the officer conducted a search of the vehicle but did not discover evidence of drugs or other illegal  
17 activity. *Id.* Still, the officer was not satisfied with the effectiveness of his search and continued to  
18 suspect that the vehicle contained illegal contraband. *Id.* After releasing the suspects, the officer  
19 reported the stop to his superior, who relayed the information to the local DEA office. *Id.* The  
20 DEA then passed information about the stop to a border patrol agent with a description of the truck  
21 and its occupants, and a full description of the prior stop. *Id.* at 1520. The second officer then  
22 stopped the vehicle, and while questioning the occupants, noticed evidence of a counterfeit social  
23 security card, which led to the driver's confession that he was in the country illegally. *Id.* No drugs  
24 were discovered. *Id.* The court concluded that the second stop was unconstitutional because an  
25 officer who conducts a search cannot wait until the suspect "has traveled down the road a few  
26 miles, and then make a second *Terry* stop based solely on the conduct that has already proved to be

1 illusory.” *Id.* at 1522. It follows that an officer who conducts a stop and concludes that reasonable  
2 suspicion is not present for a search “cannot circumvent *Terry* and *Place* by calling upon a different  
3 officer to make the second intrusion in his stead.” *Id.*

4 The Court agrees with this analysis,<sup>12</sup> and finds that based on the present facts, the second  
5 stop was not based on independent reasonable suspicion sufficient to justify the prolonged  
6 investigation. No matter how this can be viewed, the two stops were for minor traffic violations  
7 and they both were extended beyond the legitimate purposes for such traffic stops.

8 Importantly here, the evidence indicates that Fisher never would have pulled Gorman over  
9 if Monroe had not relayed information about the first stop, a description of the white motor home,  
10 Monroe’s suspicion that the vehicle contained large amounts of currency, and that a canine sniff  
11 would likely be required in order to obtain probable cause for a search. After speaking with  
12 Monroe, Fisher positioned his vehicle between the 302 and 303 mile markers on I-80 and waited  
13 until he saw the motor home, at which point Fisher began to follow the vehicle and thereafter  
14 effectuated the traffic stop. Fisher, a sergeant and canine handler, was normally assigned to felony  
15 investigations, and his duties normally did not involve traffic patrol. The second detention was  
16 therefore a foregone conclusion based on the information passed to Fisher by Monroe, rather than  
17 an investigation based on Fisher’s independent determination that reasonable suspicion existed to  
18 conduct the second stop based upon a suspected traffic violation.

19 The Court finds based on the foregoing that the officers’ prolonged investigation was not  
20 consensual, reasonable, or conducted with independent reasonable suspicion. Accordingly, the  
21 second traffic stop was unreasonably prolonged under the Fourth Amendment. *Rodriguez*, 135 S.

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22  
23 <sup>12</sup> Gorman also argues that the second stop was unconstitutional under *United States v. Johns*, 891 F.2d  
24 243, 245-46 (9th Cir. 1989). Doc. #61 at 35. In *Johns*, the Ninth Circuit suppressed evidence because an initial  
25 illegal traffic stop “was the impetus for the chain of events leading to the marijuana and thus [was] too closely  
26 and inextricably linked to the discovery for the taint to have dissipated.” *Johns*, 891 F.2d at 245-46. *Johns* is  
distinguishable because it involved an initial stop that was wholly illegal. Here, the Court has found that under  
*Heien*, Monroe’s stated belief that he had reasonable suspicion to conduct the initial traffic stop was not  
objectively unreasonable. However, it appears that the first traffic stop was also unduly prolonged under  
*Rodriguez*.

1 Ct. 1615; *Evans*, 2015 WL 2385010 at \*1. Based on this Fourth Amendment violation, the Court  
2 grants Gorman’s Motion to Suppress.

3 **C. Search of the Motor Home**

4 Before the officers received a response from dispatch on the records search, Fisher asked  
5 Gorman if he had an objection to Fisher conducting a canine sniff around the motor home. Gorman  
6 responded “I have opposition, if that means anything.” Fisher then conducted a weapons pat-down  
7 search of Gorman, and asked him to stand twenty to thirty feet in front of the motor home. Next,  
8 Fisher released Euros from his vehicle and began the canine sniff. After circling the motor home,  
9 Euros sat down near the back right compartment of the vehicle. Fisher described this as a  
10 “committed sit and stare,” which he considered to be a positive alert. Gorman expressed disbelief  
11 that the dog would positively alert to the back right compartment, and then stated that the officer  
12 could search the compartment, noting that it had never contained drugs. Fisher declined and  
13 returned to his vehicle to request a search warrant, which an Elko County Justice of the Peace  
14 granted at approximately 11:15 a.m. Thereafter, the officers searched the entire motor home, rather  
15 than searching only the back rear compartment where Euros positively alerted, and found the  
16 defendant currency throughout the motor home.

17 Gorman argues that the search warrant was tantamount to a “general warrant” because it did  
18 not state the object of the search with particularity, instead referring to “any evidence of a crime at  
19 this time unknown which may come into view of the searching officers, including but not limited to  
20 any instrumentalities or objects consistent with controlled substance violations.” Doc. #18, Ex. C.  
21 The Fourth Amendment addresses the problem of general warrants—implicating an “exploratory  
22 rummaging in a person’s belongings”—“by requiring a ‘particular description’ of the things to be  
23 seized.” *Andresen v. Maryland*, 427 U.S. 463, 479 (1976) (quoting *Coolidge v. New Hampshire*,  
24 403 U.S. 443, 467 (1971)). In *Andresen*, the Court upheld a warrant authorizing a search of “other  
25 fruits, instrumentalities and evidence of a crime at this [time] unknown” only because it concluded  
26 with “a sentence containing a lengthy list of specified and particular items to be seized.” *Id.* The

1 Court finds that *Andresen* would also uphold the present warrant, which identifies “controlled  
2 substances, paraphernalia, articles of personal property tending to identify the person or persons in  
3 control of the vehicle to be searched, and/or any contraband, fruits, instrumentalities” before  
4 mentioning “any evidence of a crime at this time unknown which may come into view of the  
5 searching officers.” *See* Doc. #18, Ex. C.

6         However, even assuming that the officers had probable cause to search the back right  
7 compartment where the canine alerted, the Court is not convinced that the dog’s positive alert to the  
8 compartment gave the officers probable cause to search the *entire* motor home. Despite Gorman’s  
9 consent to search the compartment, the officers did not even begin their search of the motor home  
10 with the compartment, instead beginning with a search of the motor home’s main cabin. “Probable  
11 cause to believe that a container placed in the trunk of a taxi contains contraband or evidence does  
12 not justify a search of the entire cab.” *United States v. Ross*, 456 U.S. 798, 824 (1982); *California*  
13 *v. Acevedo*, 500 U.S. 565, 580 (1991). *Ross* also states that if “probable cause justifies the search  
14 of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that  
15 may conceal the object of the search.” 456 U.S. at 825. Of course, this language only applies if the  
16 officers had probable cause to search the entire vehicle in the first place. Here, the purported  
17 positive canine alert supported probable cause for the back right compartment of the vehicle, but  
18 not the entire vehicle, because Euros walked around the motor home and only alerted to the back  
19 right compartment. *Cf. United States v. Stewart*, 770 F.2d 825, 829 (9th Cir. 1985) (noting that  
20 *Ross* stands for the proposition that “if probable cause exists to search an entire vehicle, rather than  
21 merely a particular container in the vehicle, the search may extend to the entire vehicle”).

22         The parties have not briefed this issue, and the Court need not weigh in considering that the  
23 Court has held that the officers unreasonably prolonged their investigation prior to the canine sniff  
24 without the existence of additional reasonable suspicion.

25 ///

26 ///

1           **D.       Omissions by the Government**

2                   **1.   Omissions in Fisher’s Warrant Application**

3           Fisher’s original telephonic warrant application (Doc. #18, Ex. A), first declaration  
4 submitted to the Court (Doc. #12), and second declaration submitted to the Court (Doc. #23) each  
5 contain significant material omissions regarding Gorman’s seizure and search. First, the warrant  
6 application never mentions Monroe’s original stop, that Monroe called Fisher with information  
7 about Gorman and Gorman’s vehicle, or that Fisher was dispatched to investigate Gorman. *See*  
8 *generally* Doc. #18, Ex. A. This omission thereby represented to the magistrate that Fisher pulled  
9 Gorman over solely due to his traffic violations, as opposed to having been encouraged to  
10 investigate Gorman by NHP and Monroe. Second, Fisher represents in the warrant application that  
11 Gorman “indicated he had no job.” *Id.* at 5. This is unambiguously contradicted by the video of  
12 Fisher’s questioning of Gorman, in which Gorman states clearly that he works for a Maui paddle  
13 board company.

14           “To prevail on a claim that the police procured a warrant through deception, the party  
15 challenging the warrant must show that the affiant deliberately or recklessly made false statements  
16 or omissions that were material to the finding of probable cause.” *United States v. Ruiz*, 759 F.3d  
17 1144, 1148 (9th Cir. 2014). “If the officer omitted facts required to prevent technically true  
18 statements in the affidavit from being misleading, the court determines whether the affidavit, once  
19 corrected and supplemented, establishes probable cause.” *Id.* (quoting *Ewing v. City of Stockton*,  
20 588 F.3d 1218, 1223 (9th Cir. 2009)). “If probable cause remains after amendment, then no  
21 constitutional error has occurred.” *Id.* (quoting *Bravo v. City of Santa Maria*, 665 F.3d 1076, 1084  
22 (9th Cir. 2011)). In *Ruiz*, the Ninth Circuit considered a warrant that was granted after the officer  
23 omitted evidence regarding witnesses’ prior crimes and evidence of dishonesty, where the  
24 witnesses’ statements helped establish probable cause for the search. *Id.* at 1147. The court held  
25 that these were serious material omissions, but that even without the information, there was  
26 “enough evidence in the record corroborating [the witnesses’] statements to ‘diminish[] the adverse

1 effect’ of their credibility issues in the context of the probable cause inquiry.” *Id.* at 1152 (quoting  
2 *United States v. Reeves*, 210 F.3d 1041, 1045 (9th Cir. 2000)).

3 Fisher stated in the warrant application that he decided to effectuate a traffic stop after he  
4 “noticed the vehicle drift to the right and drive on the white fog line. I further noticed the driver  
5 had the curtain pulled forward on the driver’s side window which obstructs the driver’s view of the  
6 vehicle’s left blind area.” Doc. #18, Ex. A at 4. Ultimately, Fisher stated that he believed probable  
7 cause existed to search Gorman’s vehicle because “Euros alerted to the right rear fender and cargo  
8 department by displaying changes in breathing, rapid sniffs, along with a committed sit and stare  
9 response, with a final committed down and final stay response, which indicated to Deputy Fisher  
10 that there may be controlled substances . . . inside the vehicle.” *Id.* at 6.

11 The Supreme Court has granted wide deference to positive alerts of canine units to justify  
12 probable cause to conduct a search of a vehicle. *See Illinois v. Caballes*, 543 U.S. 405, 409 (2005)  
13 (finding that a dog sniff supported a finding of probable cause for a search, and that “the use of a  
14 well-trained narcotics-detection dog . . . during a lawful traffic stop[] generally does not implicate  
15 legitimate privacy interests”); *United States v. Place*, 462 U.S. 696, 707 (1983) (noting that a  
16 canine sniff “does not expose noncontraband items that otherwise would remain hidden from  
17 public view”). Accordingly, Fisher’s warrant application likely included sufficient information to  
18 support a finding of probable cause based on Euros’ positive alert alone, and the omitted  
19 information, if added to the warrant affidavit, likely would not negate the finding of probable cause.

20 The parties have not briefed this issue, and the Court need not determine whether Fisher’s  
21 omissions in the warrant application—that could have led the magistrate to believe that the second  
22 stop rendered the officers’ investigation of Gorman unconstitutionally long—require suppression of  
23 the seized evidence because the Court has already held that the evidence must be suppressed based  
24 on the officers’ collective unreasonably prolonged successive traffic stops. Accordingly, the Court  
25 declines to rule on the validity of the search warrant based upon the errors and omissions in the  
26 search warrant application, and documents filed with the Court.

1                   **2. Omissions by the United States Attorney—Half of the Story**

2           The Court is disappointed that the United States would aggressively pursue this forfeiture  
3 action while all of its moving documents for summary judgment and supporting affidavits  
4 contained material omissions concerning the history leading to the traffic stop and canine sniff at  
5 issue. The government's Motion for Summary Judgment, with supporting affidavits from Deputy  
6 Fisher and the Assistant United States' Attorney, made no disclosure of anything which would have  
7 suggested that Fisher's stop was a follow-up on Monroe's stop and was based upon suspicion of a  
8 drug related offense. The government's Motion for Summary Judgment and supporting affidavits  
9 did not disclose the existence of any of the following:

- 10                   (a) that there was a stop by Monroe;
- 11                   (b) that Monroe called the Elko County Sheriff's office even before he had released  
12 the suspect Gorman and his motor home;
- 13                   (c) that Monroe was suggesting that a canine sniff be conducted on Gorman's motor  
14 home even though he recognized that probable cause at that point was lacking  
15 for a search;
- 16                   (d) that the reason Fisher was involved was because he was a canine officer;
- 17                   (e) that Fisher was a sergeant involved in felony investigations and was not  
18 normally a traffic officer;
- 19                   (f) that there was a cell phone conversation between Monroe and Fisher wherein the  
20 officers discussed Monroe's stop and the oncoming arrival in the Elko area of  
21 Gorman and the motorhome<sup>13</sup> and this included:
- 22                   (1) identification of Gorman, the motor home and its license plate;
- 23                   (2) that Monroe suspected that the motor home was carrying large amounts  
24 of currency related to drug activity; and
- 25                   (3) that a canine sniff would be necessary to establish probable cause for a  
26 search;

23 ///

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25           <sup>13</sup> Gorman was traveling on Interstate Highway 80 between Wells, Nevada, and Elko, Nevada, an  
26 isolated area of northern Nevada. This is an approximate 50 mile stretch of interstate highway with limited off  
ramps. The first populated area Gorman would be passing through after Monroe's stop would be Elko, and this  
would be shortly after Fisher and Monroe's conversation.



1 (g) that the purpose of Fisher and his canine positioning themselves between the 302  
2 and 303 mile markers on I-80 was to wait for Gorman to pass by in the motor  
home; and

3 (h) that upon seeing the motor home and following it, Fisher's purpose was to find a  
4 traffic violation which might support pulling over Gorman and thereafter  
initiating a canine sniff of the motor home.

5 None of this history was disclosed in the government's Motion for Summary Judgment or  
6 in it's reply in support of its Motion. The simple fact is that the two stops are inextricably linked.  
7 Notwithstanding this, the government's entire Motion for Summary Judgment presented to the  
8 court was framed in the context expressed on page three of the Motion:

9 \*\*\*Given the state of the evidence, summary judgment should now be entered in  
10 favor of the United States because the aggregate facts – taken as a whole – satisfy  
the United States' burden of proof in this case and those facts cannot be rebutted by  
11 Gorman.

## 12 II. STATEMENT OF FACTS<sup>1</sup>

13 1. On January 23, 2013, **ECSO Deputy Doug Fisher was monitoring**  
14 **west-bound traffic on Interstate 80 near Elko, Nevada.** At approximately 10:20  
15 am, he observed a white motorhome bearing Delaware license plates traveling  
westbound with the driver's side window obstructed by a window curtain which had  
16 been pulled forward. Deputy Fisher followed the white motorhome and observed the  
motorhome drift to the right on to the white fog line three times and remain on the  
fog line each time for a least 400 yards. Deputy Fisher also observed that the rear  
17 window of the motorhome was obstructed by blinds or curtains which were closed.  
See Fisher Decl., ¶3.

18 FN 1: The Statement of Facts is supported by the declaration of ECSO Deputy Doug  
Fisher (#12), filed herewith and the Declaration of Greg Addington (#13). Gorman's  
19 discovery responses are attached as exhibits to the Addington declaration.

20 *See United States' Motion for Summary Judgment, Doc. #11 at 3:12-24 (emphasis added).*

21 The government's nondisclosure of the information regarding Monroe's initial stop is  
22 troublesome for many reasons, but certainly because the relationship between the two stops is so  
23 obviously relevant to the legal issues before the Court. *See United States v. \$186,416.00 in U.S.*  
24 *Currency*, 590 F.3d 942, 953 (9th Cir. 2009) (granting claimant's motion for summary judgment  
25 because the information supporting probable cause to institute the civil forfeiture action was  
26 directly linked to an illegal search). In *\$186,416.00*, the Ninth Circuit emphasized that the dual

1 purposes of the exclusionary rule are “to deter police misconduct in the future and to preserve the  
2 integrity of the courts,” and that “the exclusionary rule is particularly well-suited to advance both of  
3 these goals in the context of civil forfeiture proceedings.” *Id.* at 950. Applying these principles,  
4 the Ninth Circuit found that a search of a medical marijuana clinic was illegal because when  
5 applying for a search warrant, the Los Angeles Police Department “was aware of extensive  
6 evidence to suggest” that the clinic was operating legally under California law but nevertheless  
7 “omitted any reference to this evidence when applying to a state magistrate for a search warrant  
8 under *state* law.” *Id.* at 952 (emphasis in original). The Court ruled in favor of the claimant  
9 because there was an “unbroken ‘causal chain’ link[age]” between what was not disclosed and what  
10 was.

11 As in *186,416.00*, Monroe’s stop and communication with Fisher should have been  
12 disclosed to the Court because “there indisputably is a strong connection between” Monroe’s stop  
13 and the forfeiture of Defendant currency. *Id.* at 951. Rather, the United States’ Motion for  
14 Summary Judgment omitted the entirety of the reasons why Deputy Fisher was monitoring the  
15 westbound traffic on I-80, why his canine was with him, and why the stop was drug oriented rather  
16 than a routine traffic stop. The Ninth Circuit has expressly approved of application of the  
17 exclusionary rule when currency was seized as a result of such government omissions, noting that  
18 the civil forfeiture context is “particularly well-suited” to advancing the exclusionary rule’s goals:  
19 to deter misconduct in the future and preserve the integrity of the courts. *Id.* at 950.

20 In particular, the government has a duty of candor and fair disclosure to the Court.<sup>14</sup> The  
21 Court expects and relies upon the United States Attorney’s Office to be candid and forthcoming  
22 with material information uniquely held only in possession of the government and clearly relevant  
23 to central issues before the Court. That did not occur here.

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25 <sup>14</sup> This district has recently emphasized the importance of candor to the Court at all stages of  
26 investigation. *See United States v. Wei Seng Phua*, No. 2:14-cr-0249, 2015 WL 1757489, at \*12 (D. Nev. Apr.  
17, 2015) (suppressing evidence obtained as a result of an unconstitutional ruse to obtain consent for a search,  
and material omissions in the warrant application).

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**E. Attorney Fees**

The Civil Forfeiture Reform Act (“CAFRA”) provides that a successful claimant in a civil forfeiture action can recover from the United States “reasonable attorney fees and other litigation costs reasonably incurred by the claimant.” 28 U.S.C. § 2465(b)(1)(A). Applying this provision of CAFRA, the Ninth Circuit has held that “attorney fees awarded under CAFRA are payable to the claimant, not to claimant’s attorney.” *United States v. \$186,416.00 in U.S. Currency*, 642 F.3d 753, 754-55 (9th Cir. 2011).

Gorman is undoubtedly the successful party here. If Gorman elects to file a Motion for Attorney Fees, the Court will entertain such a motion filed within fourteen (14) days of this Order. Gorman shall comply with Local Rule 54-16 in filing such a motion. The United States shall file any response within two weeks of Gorman’s motion. Gorman may file a reply within one week of the United States’ response.


**IV. Conclusion**

IT IS THEREFORE ORDERED that Gorman’s Motion to Suppress (Doc. #18) is GRANTED. The seized funds shall be returned to Gorman, or his designee, within thirty (30) days of the entry of this order.

IT IS FURTHER ORDERED that Gorman’s Motion for Leave to File Excess Pages (Doc. #60) is GRANTED.

IT IS SO ORDERED.

DATED this 12th day of June, 2015.

  
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LARRY R. HICKS  
UNITED STATES DISTRICT JUDGE