

AUG. 4. 2016 10:04AM

13TH JUDICIAL DIST

NO. 5661 P. 2

1 IN THE CIRCUIT COURT OF THE STATE OF OREGON

2 FOR THE COUNTY OF KLAMATH

3
4 STATE OF OREGON,

Case No. 16CR08876

5 Plaintiff,

Police No. KFO 16-43469

6 v.

DA Case No. 0093429

7 DAVID ROY HUCKABY,

JUDGMENT AND ORDER TO DISMISS

8 Defendant.

9
10 IT IS HEREBY ORDERED that the above entitled case is dismissed without
11 prejudice charging the offense(s): Unlawful Possession of More Than Four
12 Ounces of Marijuana, Unlawful Delivery of Marijuana for Consideration

13 FOR THE REASON THAT:

- 14 ☐ Defendant pleaded GUILTY to;
- 15 ☐ State cannot prove beyond a reasonable doubt;
- 16 ☐ It is in the best interests of Justice;
- 17 ☐ Defendant successfully completed a Diversion Agreement;
- 18 ☐ Case is too old to prosecute effectively;
- 19 ☐ Defendant failed to appear and cannot be found to serve the outstanding
arrest warrant.
- 20 ☒ Other: The Court excluded necessary evidence.

Signed: 7/6/2016 09:23 AM

21 DATED _____

22 
Circuit Court Judge Roxanne Osborne

23 Page 1 - JUDGMENT AND ORDER TO DISMISS (DA No. 0093429)

AUG. 4. 2016 10:04AM 13TH JUDICIAL DIST

NO. 5661 P. 3

Phil Studenberg, OSB 784468
 230 Main Street, Klamath Falls, OR 97601
 Tel (541)880-5562 | Fax (541)880-5564

IN THE CIRCUIT COURT OF THE STATE OF OREGON
 FOR THE COUNTY OF KLAMATH

THE STATE OF OREGON,

Plaintiff,

vs.

DAVID HUCKABY,

Defendant

Case No. 16CR08876

ORDER GRANTING
 MOTION TO SUPPRESS

THIS MATTER having come before the court on Defendant's Motion to Suppress the court having heard testimony and arguments, the Court adopts the proposed findings of facts submitted by the State.

THE COURT CONCLUDES that the articulated reasons for the search of the truck did not give the officers necessary probable cause to search the vehicle and therefore the Defendant's motion is hereby granted and all evidence in the above-entitled case is hereby suppressed.

SO MOVED this ____ day of _____, 2016.

Signed: 8/22/2016 03:41 PM

Roxanne Osborne

THE HONORABLE ROXANNE B. OSBORNE
 CIRCUIT COURT JUDGE

1 IN THE CIRCUIT COURT OF THE STATE OF OREGON
2 FOR THE COUNTY OF KLAMATH
3

4 STATE OF OREGON,

Case No. 16CR08876

5 Plaintiff,

Police No. KFO 16-43469

6 v.

DA Case No. 0093429

7 DAVID ROY HUCKABY,

8 Defendant.

RESPONSE TO DEFENSE'S MOTION
TO SUPPRESS

9
10
11 The State of Oregon, by and through its attorney, Andrew Kartchner,
12 Deputy District Attorney for Klamath County, Oregon, opposes the Defense's
13 above-referenced motion for the following reasons.

14 **I. BACKGROUND**

15 On February 12, 2016, Trooper Austin Hopson of the Oregon State
16 Police was on duty in his marked patrol vehicle near Bly, Oregon. Trooper
17 Hopson observed the Defendant driving what appeared to be faster than the
18 speed limit. The radar confirmed that the Defendant was driving 47 miles per
19 hour as he entered a 40 mile per hour zone. Trooper Hopson continued to
20
21
22

1 observe the Defendant as he entered a 25 mile per hour zone in Bly and
2 noticed that the radar showed the Defendant driving 39 miles per hour.

3 Trooper Hopson pulled behind the vehicle, which had a Minnesota
4 license plate, and informed dispatch that he was going to be out on a traffic
5 stop. As Trooper Hopson was on the radio with dispatch, the Defendant pulled
6 into a gas station. Trooper Hopson followed the Defendant and activated his
7 overhead lights to initiate a stop.
8

9 When he approached the vehicle, Trooper Hopson observed a number
10 of suspicious things that, according to his training and experience, led him to
11 believe that the Defendant may be trafficking drugs. For example, the
12 Defendant had a single key on his key ring, which Trooper Hopson knew is
13 common for drug traffickers, who often use rental cars or dedicated drug-
14 running vehicles. Trooper Hopson also observed water bottles, various food
15 items, receipts, and empty food wrappers in the vehicle and noted that the
16 car had a "lived-in" look. This was significant to Trooper Hopson, who knew
17 from training and experience that drug traffickers do not like to make
18 frequent or long stops and spend a lot of time in their vehicles. Trooper
19 Hopson introduced himself, and the Defendant said, unsolicited, that he was
20 getting gas. Trooper Hopson looked at the gas gauge and noticed that the
21
22

1 Defendant's gas tank was nearly full. Trooper Hopson then asked the
2 Defendant to pull forward so as not to block the gas pump during the stop.

3 The Defendant complied, and Trooper Hopson then re-contacted the
4 Defendant and immediately asked for his license, registration, and proof of
5 insurance. As the Defendant searched for his paperwork, Trooper Hopson
6 asked him simple questions such as why he was in Oregon, how long he
7 stayed, and who he was visiting. The Defendant was vague and inconsistent
8 in his answers to these questions. First he said he was visiting family and
9 friends, then he said he was visiting friends, and finally he said he was
10 visiting friends of the family. Trooper Hopson also asked the Defendant if he
11 had ever been cited or arrested in Minnesota (where the Defendant was
12 from), to which the Defendant replied that he had been cited but never
13 arrested—something Trooper Hopson would later confirm was a lie. During
14 the conversation, Trooper Hopson noticed that the passenger compartment
15 of the car was abnormally full of items, including items that would normally
16 be in the trunk, such as luggage and an instrument case. This
17 understandably made Trooper Hopson suspect that there were drugs in the
18 trunk.
19
20
21
22

1 Despite Trooper Hopson's attempts to reassure the Defendant it was
2 only a minor traffic issue and not a big deal, Defendant's body language and
3 behavior showed that he was becoming increasingly nervous. He took a long
4 time to answer simple questions, stared blankly before answering questions,
5 and frantically flipped through documents looking for his registration as he
6 conversed with Trooper Hopson. At one point, the Defendant offered Trooper
7 Hopson a pink receipt and asked Trooper Hopson if it was his registration. It
8 obviously was not.
9

10 The Defendant's nervousness peaked when Trooper Hopson mentioned
11 that Highway 140 is a major drug trafficking highway and asked the
12 Defendant what he would say if Trooper Hopson asked him for consent to
13 search the vehicle. For the first time during the stop, the Defendant would
14 not make eye contact with Trooper Hopson. Instead, the Defendant stared
15 down at his paperwork as his hands began to shake uncontrollably. The
16 Defendant told Trooper Hopson that he did not see the need for this on a
17 simple speeding stop.
18

19 As Trooper Hopson returned to his vehicle, Trooper Cliff Hargis arrived
20 on the scene and briefly conferred with Trooper Hopson. Trooper Hargis
21 instructed Trooper Hopson to run the Defendant's information and prepare a
22

1 citation while Trooper Hargis conversed with the Defendant. The Defendant
2 told Trooper Hargis he was visiting family in Ashland, but when Trooper
3 Hargis inquired further, the Defendant said he was actually visiting a friend.
4 The Defendant also told Trooper Hargis that he was staying in a hotel and
5 not with his friend, despite the fact that he had driven several thousand
6 miles to make the visit. Trooper Hargis also asked the Defendant what he
7 does for work, to which the Defendant replied that he was unemployed.
8 When Trooper Hargis asked how he paid for the trip to Oregon from
9 Minnesota, the Defendant had no answer. Trooper Hargis asked the
10 Defendant if he smoked, to which the Defendant said that he did not.
11 Trooper Hargis noticed, however, that the driver's seat in the car had
12 cigarette burn marks.
13

14 Trooper Hargis, who, like Trooper Hopson, noticed that the passenger
15 compartment of Defendant's car was filled with trunk-appropriate items,
16 then asked the Defendant what was in the trunk. The Defendant paused
17 before answering, and then said that there were a few bags and dog toys in
18 the trunk. Trooper Hargis thought it was strange for a single man and his
19 dog on a one-week trip to have an entire trunk and passenger compartment
20 full of things. At this point, Trooper Hargis noticed the Defendant's carotid
21
22

1 artery bulging from his neck and his hands shaking more than would be
2 expected in a normal traffic stop.

3 Trooper Hargis asked if he could speak with the Defendant by Trooper
4 Hopson's patrol unit and asked him to continue searching for his documents
5 there. After the Defendant exited the vehicle with his stack of papers, he
6 placed the papers on the ground and began to sit on the ground. This struck
7 Trooper Hargis as strange, stress-induced behavior, and he told the
8 Defendant that he could place the papers on the hood of Trooper Hopson's
9 patrol unit while he continued to search for his registration.
10

11 Trooper Hargis then asked for consent to search the Defendant's
12 vehicle, which the Defendant refused. Trooper Hargis also asked about the
13 friend the Defendant was allegedly visiting in Ashland. The Defendant said
14 his name was "Nathan," but refused to provide Trooper Hargis with any
15 contact information by which Trooper Hargis could verify the story.
16

17 Meanwhile, Trooper Hopson ran the Defendant's information and
18 learned that the Defendant had been arrested and convicted of DUII in
19 Minnesota, in contradiction to what the Defendant had told him.

20 Trooper Hopson returned to the Defendant, read him his *Miranda*
21 rights, and asked when he last filled up his vehicle with gas. After a pause,
22

1 the Defendant replied that he had not stopped for gas since leaving Ashland.
2 This was obviously not true, as the gas tank was nearly full.

3 Notably, the area where Trooper Hopson stopped the Defendant is an
4 area known by Troopers Hopson and Hargis to be a frequent drug trafficking
5 highway. Moreover, Ashland, where the Defendant had been "visiting," is an
6 area known by the Troopers for mass production of high quality marijuana.
7

8 Based on the totality of the circumstances, the Troopers concluded
9 that they had probable cause that criminal activity was afoot and informed
10 the Defendant that they were going to search his vehicle. As a result of the
11 vehicle search, the Troopers found and seized over 100 pounds of marijuana
12 from the trunk, a backpack full of cash, various paperwork, and two cell
13 phones.
14

15 **II. DISCUSSION**

16 The Defense's Motion to Suppress makes two arguments: first, that "it
17 appears that there was no probable cause for the initial stop"; and second,
18 that "the expansion [of the stop] to a criminal investigation violated the
19 law/Constitution." Mot. to Suppress at 1, 2. Although the Defense does *not*
20 allege the Troopers lacked probable cause at the point the Troopers
21
22

1 searched the Defendant's vehicle, the State will address that issue in this
2 brief as well.

3 **A. The initial stop was supported by Trooper Hopson's**
4 **observations of the Defendant speeding.**

5 Under Oregon law, a police officer is authorized to "stop and detain a
6 person for a traffic violation for the purposes of investigation reasonably
7 related to the traffic violation, identification and issuance of citation." ORS
8 § 810.410. "In order to stop and detain a person for a traffic violation, an
9 officer must have probable cause to believe that the person has committed a
10 violation." *State v. Stookey*, 255 Or. App. 489, 297 P3d 548 (2013); see
11 also *State v. Boatright*, 222 Or. App. 406, 410, 193 P3d 78, rev den, 345 Or.
12 503, 200 P3d 147 (2008).¹ Probable cause means that "the officer must
13 believe that the infraction occurred, and that belief must be objectively
14 reasonable under the circumstances." *State v. Matthews*, 320 Or. 398, 4034,
15 884 P2d 1224 (1994). "The objective component of the probable-cause
16 inquiry asks whether the facts, as perceived by the officer, constitute a
17
18
19

20 ¹ The Fourth Amendment to the U.S. Constitution, on the other hand, requires only
21 reasonable suspicion before a traffic stop may be lawfully initiated. See *Brendlin v.*
22 *California*, 551 US 249 (2007); see also *United States v. Twilley*, 222 F3d 1092 (9th Cir
2000); *United States v. Becerra-Garcia*, 397 F3d 1167, 1174 (9th Cir 2005).

1 violation of a statute." *State v. Stookey*, 255 Or.App. 489, 297 P.3d 548
2 (2013).

3 Notably, to justify a traffic violation stop, the State does not need to
4 prove that the driver in fact committed the violation. *Matthews*, 320 Or. at
5 403-04; *State v. Doherty*, 92 Or. App. 105, 757 P2d 860, *rev den*, 306 Or.
6 660 (1988). Nor does the fact that the driver may have a defense to the
7 violation defeat probable cause. *State v. Isley*, 182 Or. App. 186, 48 P3d
8 179 (2002); *State v. Chilson*, 219 Or. App. 136, 182 P3d 241, *rev den*, 344
9 Or. 671 (2008).
10

11 Here, Trooper Hopson's observations clearly gave him probable cause
12 that justified the initial stop. Trooper Hopson's radar showed that the
13 Defendant was driving 47 miles per hour in a 40 mile per hour zone and 39
14 miles per hour in a 25 mile per hour zone. Upon making these observations,
15 Trooper Hopson had a subjective belief that the Defendant had violated a
16 traffic law. This subjective belief was objectively reasonable because "the
17 facts, as perceived by the officer, constitute[d] a violation of a statute."
18 *State v. Stookey*, 255 Or. App. 489, 297 P.3d 548 (2013); ORS § 811.100
19 ("A person commits the offense of violating the basic speed rule if the person
20 drives a vehicle upon a highway at a speed greater than is reasonable and
21
22

1 prudent"); ORS § 811.105 ("Any speed in excess of a designated speed
2 posted by authority granted under ORS 810.180 is prima facie evidence of
3 violation of the basic speed rule under ORS 811.100."). Therefore, Trooper
4 Hopson had probable cause that the Defendant had violated ORS § 811.100
5 when he initiated the stop.

6 **B. All of the drug investigation was done during an**
7 **unavoidable lull.**

8 It is well established that during an "unavoidable lull" of a traffic stop,
9 officers may ask questions unrelated to reason for the stop. *State v. Dennis*,
10 250 Or App 732, 737, 282 P3d 955 (2012); *State v. Berry*, 232 Or. App.
11 612, 222 P3d 758 (2009), *rev dismissed*, 348 Or 71 (2010); *State v. Foland*,
12 224 Or. App. 649, 199 P3d 362 (2008); *State v. Raney*, 215 Or. App. 339,
13 168 P3d 803 (2007), *modified on other grounds*, 217 Or. App. 470, *rev den*,
14 344 Or. 671 (2008). The "unavoidable lull" occurs in the period of time while
15 the officer is awaiting "information necessary to go forward with the next
16 step in processing the infraction." *Dennis*, 250 Or. App. at 737.

17
18 Here, Trooper Hopson asked the Defendant for his license, registration,
19 and proof of insurance at the beginning of the stop. The Defendant had
20 significant trouble finding his proof of insurance and registration, and Troopers
21 Hopson and Hargis never hindered the Defendant's search for those
22

1 documents. In fact, the Troopers continually encouraged the Defendant to
2 continue searching for his papers throughout the stop.

3 Importantly, Trooper Hopson made all of his observations and asked all
4 of his drug-related questions while the Defendant was searching for his
5 documentation. Thus, Trooper Hopson did his drug investigation while he was
6 awaiting "information necessary to go forward with the next step in
7 processing the infraction." *Dennis*, 250 Or. App. at 737. Therefore, the
8 investigation was done during an unavoidable lull and did not unlawfully
9 extend the stop.
10

11 Trooper Hargis questioned the Defendant and made observations while
12 Trooper Hopson was running the Defendant's information and preparing a
13 citation (and, notably, while the Defendant continued to search for his papers).
14 Waiting for records checks is the quintessential example of an unavoidable lull.
15 See *Dennis*, 250 Or. App. at 734. Therefore, Trooper Hargis did not unlawfully
16 extend the stop.
17

18 Accordingly, because the entire drug investigation was done during an
19 unavoidable lull—while the Defendant was searching for his papers and while
20 Trooper Hopson ran the Defendant's information and prepared a citation—the
21 Troopers did not unlawfully extend the scope of the traffic stop.
22

1 **C. Trooper Hopson had reasonable suspicion that**
2 **independently justified expanding the scope of the stop**
3 **beyond the traffic infraction.**

4 Even if the Court determines that the Troopers' drug-related questions
5 and observation did not all come during an unavoidable lull, Trooper Hopson
6 developed reasonable suspicion very early in the stop, before asking any drug-
7 related questions. That reasonable suspicion independently justified expanding
8 the scope of the stop to include a drug investigation.

9 The scope of an investigation during a traffic stop can be expanded to
10 other matters so long as the officer has "reasonable suspicion that defendant
11 ha[s] committed illegal acts." *State v. Aguilar*, 139 Or. App. 175, 180–81, 912
12 P2d 379 (1996); ORS § 131.615(3)(b); ORS § 810.410(3)(c). Reasonable
13 suspicion "means that a peace officer holds a belief that is reasonable under
14 the totality of the circumstances existing at the time and place the peace
15 officer acts[.]" ORS § 131.605(5) (emphasis added). "Thus, reasonable
16 suspicion must be based on a subjective belief by the stopping officer that a
17 crime has been committed, and that subjective belief must be objectively
18 reasonable under the totality of the circumstances." *State v. Busacker*, 154
19 Or. App. 528, 534, 962 P2d 723, *rev den*, 327 Or 620 (1998); *see also State*
20 *v. Acuna*, 264 Or App 158, 331 P3d 1040 (2014).

1 Importantly, "[a]cts that may not raise the suspicions of a lay person
2 may, nevertheless, be culpable when viewed from the perspective of an
3 experienced police officer." *State v. Morgado*, 962 P.2d 698, 154 Or. App. 296
4 (1998) (citing *State v. Blount*, 143 Or. App. 582, 587, 924 P.2d 860, rev. den.
5 324 Or. 488, 930 P.2d 852 (1996)). "Likewise, the significance of particular
6 facts to the determination of probable cause may be evaluated on the basis of
7 an officer's training and experience." *Id.* (citing *State v. Reid*, 107 Or. App.
8 352, 354–55, 811 P.2d 1380 (1991)). Moreover, courts are permitted to
9 apply common sense when analyzing the facts upon which an officer bases his
10 or her reasonable suspicion or probable cause. *State v. Cole*, 87 Or. App. 93,
11 741 P.2d 525 (1987). Crucially, all facts known or observed by the officers
12 must be analyzed in their totality rather than in isolation. *See Busacker*, 154
13 Or. App. at 534.

14
15
16 Here, Trooper Hopson became reasonably suspicious that the
17 Defendant had drugs in his car based on a number of observations Trooper
18 Hopson made almost immediately after initiating the stop. For example,
19 Trooper Hopson noticed that the Defendant's gas gauge was nearly full,
20 despite the Defendant's statement that he needed gas. Trooper Hopson also
21 immediately noticed that the Defendant had a single key, signifying that the
22

1 Defendant may be driving a rental car or dedicated drug-running vehicle.
2 According to Trooper Hopson's training and experience, drug traffickers often
3 use rental cars or vehicles designated solely for drug runs. Further, Trooper
4 Hopson noticed that the car had a "lived-in" look, with food, water, receipts,
5 and wrappers strewn about the vehicle. According to Trooper Hopson's
6 training and experience, drug traffickers do not like to make frequent or
7 extended stops, so they take their food and drinks with them on the road
8 and spend a great deal of time in their vehicles. There were also items in the
9 passenger compartment that would normally be in the trunk—a cello case
10 and a suitcase—which led Trooper Hopson to suspect that the trunk of the
11 vehicle may be filled with drugs or other illegal materials.
12

13 In addition to these observations, Trooper Hopson knew that the
14 Defendant was driving on a known drug trafficking highway in an out-of-
15 state vehicle. Trooper Hopson also knew that Ashland—where the Defendant
16 was coming from—produces mass quantities of high-quality marijuana.
17

18 At this point—within the first minute or two of the stop—Trooper
19 Hopson subjectively believed that the Defendant was illegally transporting
20 drugs. This belief was objectively reasonable because it was supported by
21 Trooper Hopson's above-noted observations, training, experience, and
22

1 knowledge. Therefore, Trooper Hopson had reasonable suspicion that
2 independently justified expanding the traffic stop into a criminal drug
3 investigation.

4 **D. The Troopers developed probable cause that criminal**
5 **activity was afoot, justifying the warrantless vehicle**
6 **search.²**

7 If a law enforcement officer has "probable cause to believe that a
8 lawfully stopped automobile which was mobile at the time of the stop contains
9 contraband or crime evidence," then a warrantless search of the automobile is
10 justified "despite the absence of any additional exigent circumstances." *State*
11 *v. Brown*, 301 Or. 268, 277, 721 P.2d 1357 (1986). "The probable cause
12 requirement means that the facts . . . must lead a reasonable person to
13 believe that seizable things will probably be found in the location to be
14 searched." *State v. Anspach*, 298 Or. 375, 380-81, 692 P2d 602 (1984).
15

16 While furtive or nervous behavior alone will not normally create
17 reasonable suspicion, courts have held that a suspect's nervousness, rapid
18

19 ² The State again emphasizes that the Defense's Motion does *not* allege that the Troopers
20 lacked probable cause to search the vehicle. Therefore, if the Court finds that the Troopers'
21 drug investigation was lawful, the State should not be required to prove probable cause to
22 search the vehicle. See UTCR 4.010 ("Motions for pretrial rulings . . . must be in
writing . . ."); 4.060(1)(b) ("All motions to suppress . . . must sufficiently apprise the court
and the adverse party of the arguments relied upon."). Nevertheless, the State presents its
probable cause argument here out of an abundance of caution.

1 speech, inability to stand still, and untrue or inconsistent statements can
2 contribute to an officer's reasonable suspicion or probable cause that the
3 suspect is in possession of controlled substances. *Id.*; *United States v.*
4 *Sokolow*, 490 US 1 (1989); *State v. Edmiston*, 211 P.3d 340, 229 Or. App.
5 411 (2009); *State v. Holdorf*, 355 Or 812, 333 P3d 982 (2014); *State v.*
6 *Guggenmos*, 225 Or. App. 641, 202 P3d 892, *reversed on other grounds*, 350
7 Or. 243 (2011); *State v. Frias*, 115 Or. App. 149, 836 P2d 136 (1992).

9 Likewise, the presence of a suspect in an area known for drug dealing is
10 relevant to the inquiry of whether an officer has reasonable suspicion or
11 probable cause that drug crimes are taking place. *State v. Austin*, 145 Or.
12 App. 217, 929 P2d 1022 (1996).

13 Here, Trooper Hopson's suspicion (explained above) soon grew into
14 probable cause, if it had not already reached it. As Trooper Hopson asked
15 questions, the Defendant gave vague and conflicting answers to simple
16 questions like how long he had stayed in Oregon and whom he was visiting.
17 He lied about when he last filled up with gas and about his DUII arrest and
18 conviction. The Defendant also told Trooper Hargis that he did not smoke,
19 which was belied by the cigarette burn marks on the driver's seat in the
20 Defendant's car. According to the Troopers' training and experience, people
21
22

1 caught committing a crime tend to try and distance themselves from any
2 appearance of wrongdoing, even something as innocuous as a prior DUII
3 conviction or smoking.

4 The Defendant's statements about his trip were particularly suspicious
5 to the Troopers. For example, the Defendant said he stayed in a hotel even
6 though he was allegedly driving all the way from Minnesota to visit friends
7 for a week. The Defendant refused to give Trooper Hargis any information
8 about this friend to corroborate the story except that his name was
9 "Nathan." The Defendant also claimed he was unemployed but could not say
10 how he was able to finance this long road trip, including the alleged week-
11 long hotel stay. Given the lived-in look of the Defendant's car and his
12 inconsistent statements regarding his trip, it seemed clear to the Troopers
13 that the Defendant had not been visiting anyone or staying in a hotel;
14 rather, the Troopers thought he had likely been transporting drugs and
15 spending a lot of time in his car like drug runners often do.
16

17
18 Troopers Hargis and Hopson could plainly see that the stop was
19 affecting the Defendant to an unusual degree. The Defendant took
20 abnormally long to answer simple questions, flipped frantically through
21 paperwork, and stared blankly when asked simple questions. At one point,
22

1 the Defendant handed Trooper Hopson a pink oil receipt that was obviously
2 not his registration. The Defendant's nervousness greatly intensified when
3 Trooper Hopson brought up a possible search of the vehicle, at which point
4 the Defendant would not look at Trooper Hopson and his hands began to
5 shake uncontrollably. Similarly, when Trooper Hargis asked what was in the
6 trunk, the Defendant's artery began to bulge and his hands began shaking
7 violently. And when Trooper Hargis asked the Defendant to continue his
8 search for documents at Trooper Hopson's patrol vehicle, the Defendant
9 strangely sat on the ground immediately outside his car and placed his
10 papers on the ground. These observations made it clear to both Troopers—
11 who collectively have conducted hundreds, if not thousands, of traffic
12 stops—that the Defendant was far more nervous and stressed than a typical
13 traffic stop subject.
14

15
16 These facts and observations, in combination with the facts,
17 knowledge, and observations that gave Trooper Hopson reasonable suspicion
18 at the beginning of the stop (see above), gave the Troopers probable cause
19 to search the Defendant's vehicle. Therefore, no warrant was necessary.
20
21
22

1 **III. CONCLUSION**

2 Troopers Hopson and Hargis did their job professionally, promptly, and
3 according to the law. The initial stop was lawful because Trooper Hopson
4 conducted it after confirming by radar that the Defendant was exceeding the
5 posted speed limit. The Troopers did all of their drug-related questioning
6 during an unavoidable lull *and* after obtaining reasonable suspicion that
7 criminal activity was afoot. By the time the Troopers searched the vehicle,
8 their knowledge, experience, training, and observations provided them with
9 probable cause that they would find drugs in the trunk of the Defendant's
10 vehicle. Therefore, the Troopers acted lawfully throughout the investigation
11 and the evidence they found and seized should not be suppressed.
12

13
14 DATED: April 15, 2016

15
16 /s/ Andrew Kartchner
17 Andrew Kartchner, OSB #135784
18 Deputy District Attorney
19
20
21
22

1 CERTIFICATE OF SERVICE

2
3 I HEREBY CERTIFY that I served a true and correct copy of the foregoing
4 Response to Defense Motion to Suppress on the following persons by the
method indicated below and addressed to the following.

5 Phil W. Studenberg
6 230 Main St
7 Klamath Falls, OR 97601
Fax: (541) 880-5564

- 8 ☒ File & Serve
9 ☒ Email
10 ☐ Hand Deliver (court box)
11 ☐ US Mail
12 ☐ Overnight Mail
13 ☐ Fax

14
15
16 Dated this 15th day of April, 2016

17
18 /s/ Andrew Kartchner
19 Klamath County District Attorney's Office