

EXHIBIT 1

The Aden Group, LLC



**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS
CIVIL ACTIONS:
6:19-cv-01343-EFM-GEB
6:20-cv-01067-KHV-GEB**

IN THE MATTERS OF

**Blaine Franklin Shaw, Samuel James Shaw and Joshua Bosire, individually and
on behalf of class,
Plaintiffs,**

v.

**Herman Jones in his official capacity as the Superintendent of the Kansas
Highway Patrol, Master Trooper Doug Shulte in his individual capacity, and
Technical Trooper Brandon McMillan in his individual capacity,
Defendants.**

and

**Mark Erich and Shawna Maloney,
Plaintiffs,**

v.

**Herman Jones in his official capacity as the Superintendent of the Kansas
Highway Patrol and Trooper Justin Rohr, in his individual capacity,
Defendants.**

EXPERT WITNESS REPORT OF HASSAN ADEN

INTRODUCTION

I have nearly three decades of experience in law enforcement. I have served in every position starting as a recruit officer and ending as chief. My areas of expertise in policing include but are not limited to: police use of force; pursuits; police administration; training; police operations; criminal investigations; interviews and interrogations; civil rights violations and investigations; internal/administrative investigations; criminal investigations; police discipline; citizen complaints; and police policies and procedures. I currently work for two federal judges who oversee consent degrees with police departments in major cities. In one I am the lead monitor and in the other, I am the deputy monitor. A copy of my curriculum vitae, which sets forth my experience in detail, is attached as Exhibit A.

I have been retained by the Kansas ACLU and Spencer Fane LLP (jointly, Counsel) to provide an expert opinion in this matter. Specifically, Counsel has asked me to provide my expert opinion regarding the proper policies and procedures to be followed by Kansas Highway Patrol (KHP) troopers when stopping, detaining and searching motorists. This report will examine whether the KHP troopers involved in this case, applied the reasonable articulable suspicion standard when conducting traffic stops; whether the detentions of the named plaintiffs were lawful; whether KHP training on the Fourth Amendment and other relevant constitutional principles is adequate; whether KHP's policies on stops, searches and arrests contain the necessary elements; whether documentation by the KHP of traffic stops that result in a detention and search, but no arrest, are adequate; and whether KHP's accountability, oversight, and supervision methods are adequate.

BACKGROUND

The following report reflects my analysis of materials and documents related to two civil complaints. One was filed by Blaine Franklin Shaw, Samuel James Shaw and Joshua Bosire, individually and on behalf of a class, against Herman Jones in his official capacity as the Superintendent of the Kansas Highway Patrol, Master Trooper Doug Shulte in his individual capacity, and Technical Trooper Brandon McMillan in his individual capacity. The second was filed by Mark Erich and Shawna Maloney, against Herman Jones, in his official capacity as the Superintendent of the Kansas Highway Patrol and Trooper Justin Rohr, in his individual capacity. I understand that Trooper Rohr has been dismissed from the case.

The opinions expressed in this expert report are based upon:

- Review and analysis of materials and documents
- Professional law enforcement experience
- Research of law enforcement policy and practices
- Generally accepted best practices in law enforcement

All opinions in this report are made within a reasonable degree of certainty within the field of police practices.

CASE EXAMINATIONS

Review of Civil Complaint by Blaine Franklin Shaw, Samuel James Shaw and Joshua Bosire.

The plaintiff's Complaint and Jury Demand (consisting of 32 pages) makes several allegations against Kansas Highway Patrol Superintendent Herman Jones, Master Trooper Doug Shulte and Technical Trooper Brandon McMillan.

According to the complaint, the plaintiffs allege they were subjected to the KHP's practice of targeting motorists traveling on I-70 for unlawful prolonged detentions based on their out-of-state licence plates and or travel plans to or from Colorado. The KHP has designated I-70 as a "drug corridor", and has trained its troopers to scrutinize motorists traveling to and from Colorado due to that state's legalization of medicinal and recreational marijuana.

Based on the KHP's continued practice of unlawfully detaining drivers for questioning beyond the purpose of traffic stops and inquiring about their travel plans, the plaintiffs allege that they were unlawfully detained, without reasonable articulable suspicion and subjected to canine drug searches and prolonged detentions without consent.

As KHP Superintendent, Defendant Herman Jones has ultimate statutory authority, through proper training, education and discipline, to oversee and direct the conduct of KHP troopers and specifically to prevent future unlawful detentions of the named plaintiffs and similarly situated individuals.

Review of Civil Complaint by Mark Erich and Shawna Maloney.

The plaintiffs' Complaint and Jury Demand (consisting of 16 pages) makes several allegations against Kansas Highway Patrol Superintendent Herman Jones and Trooper Justin Rohr.

According to the complaint, the plaintiffs allege they were subjected to the KHP's practice of targeting motorists traveling on I-70 for unlawful prolonged detentions based on their out-of-state licence plates and or travel plans to or from Colorado. The KHP has designated I-70 as a "drug corridor", and has trained its troopers to scrutinize motorists traveling to and from Colorado due to that state's legalization of medicinal and recreational marijuana.

Mr. Erich and Ms. Maloney, allege that on March 9, 2018, they were illegally stopped, detained and searched as they drove on a family trip in their Winnebago motorhome on eastbound I-70 in Kansas. They further allege that the prolonged detention and subsequent search, resulted in major damage to their vehicle totaling \$3000.00 and that no contraband was found.

Based on the KHP's continued practice of unlawfully detaining drivers for questioning beyond the purpose of traffic stops, the plaintiffs allege that they were unlawfully detained, without reasonable articulable suspicion and subjected to canine drug searches and prolonged detentions without consent.

As KHP Superintendent, Defendant Herman Jones has ultimate statutory authority, through proper training, education and discipline, to oversee and direct the conduct of KHP troopers and specifically to prevent future unlawful detentions of the named plaintiffs and similarly situated individuals.

MATERIALS REVIEWED

I have received and reviewed the materials listed in Exhibit B from Counsel. I have relied upon this material and my expertise in rendering my opinion in this matter. This report is based on materials reviewed to date. Should any subsequent information cause me to expand, add, or revise any of my opinions, I will supplement this report.

OPINIONS AND ANALYSIS

1. Based on my law enforcement experience and expertise, two of the subject stops were lawful but one was not.

Opinions:

a. Based on my training and expertise, the stops of the Shaw brothers and of Mr. Bosire were based on observed traffic violations and therefore lawful.

b. Based on my training and expertise, Trooper Justin Rohr did not have sufficient reason to initiate the traffic stop of Mr. Erich. Trooper Rohr should have observed the vehicle for a longer period of time prior to initiating the traffic stop.

c. While legality of the stops is not directly at issue in this case, this is the first step in my policing analysis of an encounter with a motorist. Further, illegality of a stop shows the KHP's general disregard toward the rights of motorists in Kansas.

Basis and Reasons for These Opinions:

Kansas law (K.S.A. § 8-1552), requires a vehicle to be driven as nearly as practical within a single lane and shall not be moved from such a lane until the driver has determined that the movement can be done safely. Unlike many other Kansas traffic infractions, K.S.A. § 8-1552 is not a strict liability offense. Courts require that a law enforcement officer articulate that a vehicle's deviation from the traffic lane be substantial, sustained and not be caused by any environmental factors such as roadway debris, wind, or traffic conditions. In his deposition, Trooper Rohr agreed that a single pass over the fog or lane marker, was not enough to initiate a traffic stop based on the law, yet maintained that based on the time of day, he considered the stop lawful. (193:17-19) The Courts also consider the proximity or approach of a law enforcement vehicle a factor in why a vehicle

might cross the for or lane marker. Trooper Rohr's testimony indicates he saw the RV driving in the opposite direction on I-70, and based on the time of day and type of vehicle, he crossed the grassy highway divider and quickly approached the left side of the RV driven by Mr. Erich and observed it cross the fog lane once before initiating a traffic stop. Trooper Rohr's testimony makes it clear that he did not have sufficient reason to initiate the traffic stop based on K.S.A. § 8-1552. His testimony also indicates that he operated in a manner that is outside of the law and that he is so focused on finding drugs that the line between lawful and unlawful stops and searches is blurred and is a matter of no concern to him.

Mr. Erich was operating an older RV that was boxy and wide. Based on the vehicle size, a certain amount of lane creep is reasonable and does not indicate that the driver is impaired or sleepy. In this circumstance, the trooper may have been able to ascertain more accurately a need to stop the RV had he observed for further indications.

2. Based on my law enforcement experience and expertise, the detentions of the plaintiffs were not lawful.

Opinion: Each of the prolonged detentions resulting from the stops were unlawful as were the searches that followed, which were based on the plaintiffs' travel origins and destinations and not on reasonable articulable suspicion. While an officer can explore and question a driver beyond the reason for the stop if there is reasonable suspicion, once the business of a traffic stop and the ensuing interaction is over and the motorist is free to leave, the officer cannot extend the interaction absent reasonable suspicion. Further, a motorist's refusal to consent to a search does not give the officer reasonable articulable suspicion for a detention. During traffic stops, consent must be requested and given when a driver is free to go and the business of the traffic stop has been concluded. At this point in the traffic stop it is reasonable to believe that the officer does not have reasonable articulable suspicion to further detain the driver and has not developed the probable cause necessary to conduct a warrantless search of the vehicle. Refusal to give police consent to search a vehicle after the traffic stop has been concluded (when all documents have been returned and the enforcement action or warning have been issued) should result in the driver being free to go. To the extent the involved troopers violated these basic law enforcement principles, the prolonged detentions and searches were not lawful.

Basis and Reasons for These Opinions:

Traffic Stop and Detention of Blaine Shaw and Samuel Shaw:

On December 20, 2017, Master Trooper Schulte stopped Blaine Franklin Shaw and his brother, Samuel James Shaw, for speeding. Examination of the KHP in-car camera video system, as well as Blaine Shaw's phone video, revealed that Master Trooper Schulte contacted the Shaws, explained the reason for the stop and advised the Shaws about the appropriate way to respond when a motorist sees police emergency lights and it is apparent that the person is being pulled over. Master Trooper Schulte

returned to his patrol car and wrote a speeding citation before returning to the Shaws' vehicle. Upon returning to the Shaws' vehicle Master Trooper Schulte immediately handed Blaine Shaw his license and insurance card and explained the court date, and that Mr. Shaw could prepay the citation by following the instructions on the citation. Master Trooper Schulte then told Mr. Shaw to "have a safe trip, drive safely." With this, all business relating to the stop was completed. Master Trooper Schulte turned toward his cruiser, took a step or two in that direction and, after approximately two seconds, turned back to the driver's side window and asked if Mr. Shaw would answer a question. Master Trooper Schulte asked Mr. Shaw where he was going, to which Mr. Shaw responded, "Denver" and that he had family there. Master Trooper Schulte then asked whether Mr. Shaw had any contraband in the car, to which Mr. Shaw replied that he did not. Master Trooper Schulte then asked for consent to search, which Mr. Shaw refused, saying, "I don't consent to searches, I'm a criminology major and that's like the number one golden rule." Master Trooper Schulte then stated, "Please wait right here and I'll be right back with you." At this point, with the traffic stop concluded, the unlawful detention began.

After several minutes passed, Master Trooper Schulte returned to the vehicle and advised Mr. Shaw that because he refused to the consent search, there was a canine officer in route. In his deposition, Trooper Schulte confirmed he detained the Shaw brothers partly because they refused to consent to a search. In his deposition, after discussing the fact that Blaine Shaw was a criminal justice major, Trooper Schulte says, "I have no problem if I was stopped and asked for a search, I would let them search my vehicle. I have no problem with that. Makes me suspicious of his activity." 210:16-19. Trooper Schulte later confirmed his reliance on Blaine Shaw's refusal on page 213 of his deposition. The testimony thus makes clear that Trooper Schulte found Blaine Shaw's refusal to consent to a search suspicious and, based in part on the refusal, Trooper Schulte decided to search the vehicle. As noted above, law enforcement officers cannot rely on refused consent in forming reasonable articulable suspicion to detain. As such, the detention was not lawful.

Mr. Shaw then responded by objecting and stating that he was not compelled to wait for a canine to search the car once the traffic stop was completed. Master Trooper Schulte then told him he was being detained. Nineteen minutes later the canine arrived, leading to a search of the vehicle that lasted 33 minutes and yielded no contraband. After a prolonged time, in total approximately one and half hours, including 19 minutes waiting for the canine to arrive and 33 minutes for the search to be completed. The Shaw brothers were ordered to respond to the KHP office prior to being released, adding to the unreasonable and unlawful nature of their detention. Mr. Shaw and his brother were released without being charged as no contraband was located.

Mr. Samuel Shaw was a passenger when his brother was stopped and detained. He was subjected to the same facts and circumstances and was likewise unlawfully detained by Master Trooper Schulte.

My analysis of the traffic stops and detention of the Shaw brothers consisted of examining the totality of the circumstances and the facts articulated by Master Trooper Schulte at three different stages of this case, reviewing the videos of the traffic stop, the deposition of Master Trooper Schulte and the Memorandum in Support of Motion for Summary Judgment Against the Plaintiff Shaws' Claims. As part of my examination, I considered the reason for the stop, and the tasks that Master Trooper Schulte would be expected to conduct, such as checking the validity of Mr. Shaw's driver's license, ensuring there were no open warrants on file and determining that the vehicle was properly registered and insured. Trooper Schulte completed those tasks appropriately and then issued a speeding citation. He ended the traffic stop and released Mr. Shaw, saying, "Have a safe trip, drive safely." Trooper Schulte then re-engaged Mr. Shaw and ultimately requested consent to search, which Mr. Shaw unequivocally denied.

The facts in this case are clear and point to the absence of reasonable articulable suspicion necessary to detain the Shaw brothers after there was a clear end to the traffic stop. The detention was initiated two seconds after the end of the stop, making it implausible that Master Trooper Schulte developed reasonable articulable suspicion in that timeframe. Master Trooper Schulte told Mr. Shaw that he was being detained because he refused to consent to a search of the vehicle. Based on the video of the stop, Trooper Schulte's deposition, and the Summary Judgment materials, Trooper Schulte appears to claim he had adequate reasonable suspicion based on the following facts:

- The Shaws were driving from Oklahoma to Colorado along I-70;
- The vehicle looked "lived in" according to Trooper Schulte;
- Blaine Shaw said he drove for Uber and was on his father's insurance for the car;
- Blaine Shaw's refusal to consent to a search;
- The Shaws were in an out-of-state vehicle;
- The Shaws did not immediately pull over when Trooper Schulte's vehicle's lights were activated when he was in front of the Shaws' vehicle;
- Blaine Shaw's criminal history that was over eight years old;
- The passenger, Samuel Shaw, did not speak with Trooper Schulte

The factors listed above provided by Trooper Schulte as the factors that he used to develop his reasonable articulable suspicion, are not factors that a reasonable officer would rely on to develop reasonable articulable suspicion for an extended detention during a traffic stop. Law enforcement officers across the country come in contact daily with people driving through their state with out of state registrations, in vehicles that look "lived in", who do not immediately stop due to the location where they are being stopped, who have criminal histories, who refuse to give consent to search and who have passengers who do not speak to the officer conducting the traffic stop. None of those factors alone or together, would give a reasonable officer the basis to reach the necessary reasonable articulable suspicion to detain and search.

Beyond the traffic stop, this case highlights numerous problems with the manner in which Master Trooper Schulte conducts traffic stops and carries out his duties as a state official,

to include clear violations of the Fourth Amendment. To establish reasonable articulable suspicion, Master Trooper Schulte was required to articulate a well-founded suspicion based on specific, objective, articulable facts that, taken together with his training and experience, established that the Shaw's had committed, were committing, or were about to commit a crime. He fell well short of that standard.

Traffic Stop and Detention of Joshua Bosire:

On February 10, 2019, Mr. Bosire was returning home from visiting his daughter in Denver, Colorado. Mr. Bosire was driving a rental car because it was winter, and he was concerned that his personal vehicle was not equipped to handle the harsh weather he might encounter traveling to Denver in February. Mr. Bosire was stopped for speeding (82 MPH in a 75 MPH zone) by Technical Trooper McMillan as he was traveling eastbound on I-70 in Ellis County, Kansas. Master Trooper Schulte served as the back-up officer to Technical Trooper McMillan.

Technical Trooper McMillan approached Mr. Bosire's vehicle, properly advised Mr. Bosire of why he was being stopped, and requested his driver's license and the rental agreement. Immediately upon receiving those documents, Technical Trooper McMillan asked Mr. Bosire where he was coming from and what his travel plans were. Mr. Bosire replied that he was coming from the west and going to the east. Mr. Bosire refused to answer any questions about his travel plans. On the video and audio of the encounter, Technical Trooper McMillan appears frustrated and says to Bosire, "I noticed you're not wearing your seatbelt." Technical Trooper McMillan returned to his cruiser, called in Mr. Bosire's driver's license information, and requested that unit 411 respond to the traffic stop location.

Once Master Trooper Schulte arrived on the scene, Technical Trooper McMillan advised him that Mr. Bosire had cameras mounted in the car and that he was recording on his phone. He also said he could not smell anything emanating from the car and asked Master Trooper Schulte to go up to the car to see if he could smell anything, Master Trooper Schulte unequivocally refused to do so. At this point, there was no reasonable articulable suspicion to detain Mr. Bosire, beyond the tasks necessary to complete the traffic stop. Technical Trooper McMillan received notice from dispatch that Mr. Bosire's license was valid and that there were no other detainers or warrants for him. Prior to reapproaching Mr. Bosire's car, Technical Trooper McMillan has a conversation with Master Trooper Schulte where he clearly states that he could not smell anything coming from the car and that he did not think he could hold him for a canine search. At this point Technical Trooper McMillan knew there was no reasonable articulable suspicion to detain Mr. Bosire beyond the scope of the traffic stop.

Technical Trooper McMillan re-engaged Mr. Bosire from the passenger side of his car and asked him about a person back at a gas station that Mr. Bosire spoke with while pumping gas. Mr. Bosire responded that the person in question was a gas station attendant that came out of the building to help him with a faulty gas pump. Technical Trooper McMillan advised Mr. Bosire that he was not issuing a speeding citation, but

that he was making him nervous by not answering his questions about his travel plans and the presence of video cameras mounted in the vehicle. Technical Trooper McMillan then stated, "Listen, you make me suspicious by the way you're not telling me what your travel plans are, leading me to believe that you are transporting something that you shouldn't be. Is that the case? So, you don't mind if I look?" Mr. Bosire's response is inaudible on the video, but he later reported that he declined to give consent for a search. At that point, Technical Trooper McMillan informed Mr. Bosire that he was calling a canine to the scene.

Mr. Bosire was detained for 36 minutes until the canine arrived and for an additional seven (7) minutes during which he was taken out of the vehicle, patted down and the canine searched the outside of the vehicle without alerting, which ended the unlawful detention as Mr. Bosire was released shortly thereafter.

Based on my review of Trooper McMillan's deposition, the dash-cam video, his statement to the PSU, and Memorandum in Support of Summary Judgment, it appears he based his reasonable suspicion on the following factors:

- A perception that Mr. Bosire was travelling with someone else he saw at the gas station;
- The smell of marijuana at the Love's gas station;
- The fact that Mr. Bosire was driving a rental vehicle;
- A belief that Mr. Bosire had made a quick trip to Colorado;
- Mr. Bosire's refusal to answer questions about his travel plans;
- Mounted cameras in the rental vehicle;
- Mr. Bosire partially rolled down the window when Trooper McMillan first approached;
- A partially covered notebook in the vehicle.

As an initial matter, it is unclear how Trooper McMillan formed many of his beliefs. He does not explain why he believed the other car at the gas station was associated with Mr. Bosire or could have been caravanning with him. And Trooper McMillan does not explain why he felt Mr. Bosire could have been associated with the smell of marijuana at the gas station.

Beyond that, at least two of the main factors Trooper McMillan based his reasonable suspicion on were disproved during the stop. Even if Trooper McMillan believed Mr. Bosire was the source of the marijuana smell at the gas station, he later admitted he smelled no marijuana during the stop. Similarly, if Trooper McMillan believed a partially rolled down window was indicative of criminal activity because suspects try to hide the odor of drugs, his suspicions should have been dispelled after Mr. Bosire fully rolled the window down at Trooper McMillan's request. Once the window was down, Trooper McMillan smelled no marijuana, so he should have known then that Mr. Bosire was not trying to hide anything.

Taking away indicators that Trooper McMillan either cannot explain, or were dispelled during the stop, leaves only the fact that Mr. Bosire would not freely discuss his travel

plans, had cameras in the car, was driving a rental vehicle, and had a partially covered notebook (which turned out to be a bible) in the car. These facts alone would not cause a reasonable officer to form reasonable suspicion and would not justify a prolonged detention.

Based on my law enforcement training and expertise, I do not believe that Trooper McMillan had reasonable articulable suspicion for the detention, which lasted over 36 minutes. As noted above, Trooper McMillan made a lawful stop for speeding and conducted the appropriate activities that are associated with that traffic stop; however, Mr. Bosire should have been released immediately following the traffic stop due to the clear absence of reasonable articulable suspicion for any offense beyond speeding, or a lawful consent to search the vehicle. To establish reasonable articulable suspicion, Technical Trooper McMillan was required to articulate a well-founded suspicion based on specific, objective, articulable facts, taken together with his training and experience, that Mr. Bosire had committed, was committing, or was about to commit a crime—he did not reach that standard. While it is permissible for an officer to explore and question a driver beyond the reason for the stop if reasonable suspicion is present, when the business of a traffic stop and the ensuing interaction is complete and the motorist is free to leave, the officer cannot extend the interaction absent reasonable suspicion. Additionally, as noted above, Mr. Bosire's refusal to consent to a search did not create reasonable articulable suspicion to detain him.

Mr. Bosire filed a complaint with the KHP Professional Standards Unit (PSU), the unit that performs internal investigations for the KHP. The results of the case indicated that Technical Trooper McMillan was found to have unlawfully detained Mr. Bosire. Superintendent Jones wrote to Mr. Bosire stating:

This contact with you was not what we would consider standard under the confines of investigative reasonable suspicion regarding criminal interdiction. And although as stated above, we cannot get into the mind of our officers at the time they were confronted with the facts, we feel the length of time you were detained roadside was unnecessary given the suspicions [Trooper McMillan] articulated.

In a disposition letter, the KHP also informed Trooper McMillan that Mr. Bosire's complaint of a prolonged detention was sustained: "It was determined that under accepted protocols for criminal interdiction investigation, and the burdens of proof needed therein, there was not reason to detain Mr. Bosire further for a K-9 unit to respond to the scene for a drug sniff. **This caused you to hold Mr. Bosire for a longer duration than is legally acceptable.**" (Emphasis supplied.) The disposition letter was under Superintendent Jones's name but was actually signed by a Captain Jason Vanderweide, the Troop T commander. These findings confirm my opinion that Trooper McMillan's detention of Mr. Bosire was not lawful.

A second letter from the PSU to Trooper McMillan imposed consequences for the sustained Fourth Amendment violation. The consequences outlined in the letter were of the lowest possible in any progressive discipline philosophy. Master Trooper McMillan

was ordered to complete a one-hour legal review with legal counsel and directed to ride with a Troop N supervisor for a shift where the legal review will be put into practical application to ensure his understanding of the search and seizure laws. When asked what he learned from the investigation and findings, Trooper McMillan responded, "I didn't learn anything." P. 229. In his one-hour (not a whole shift as was required), they did make some stops but they conducted no detentions, searches or canine sniffs. pp.234-35 The level of discipline imposed for a sustained Fourth Amendment violation coupled with Trooper McMillan's defiant attitude and inability to learn how to constitutionally enforce the law, is indicative of the culture that exists within the KHP and the inability or unwillingness by Superintendent Jones to change it and hold the organization accountable.

Traffic Stop and Detention of Mark Erich and Shawna Maloney:

On March 9, 2018, at approximately 5:00 a.m., Mark Erich and Shawna Maloney were traveling eastbound on Interstate 70 in a recreational vehicle (RV) with temporary tags when they saw a vehicle behind them, which turned out to be Trooper Rohr's KHP cruiser. Trooper Rohr activated his lights a few seconds after he observed the RV and pulled it over onto the right shoulder of the highway. It should be noted that Trooper Rohr initially observed the RV as he was travelling westbound on I-70. Review of Trooper Rohr's in-car video shows Trooper Rohr recklessly traversing the grass median on the interstate in order to change his travel direction to eastbound. As noted above, Trooper Rohr then quickly pulled the RV over for no observable traffic violation.

After initiating the traffic stop, Trooper Rohr can be seen and heard approaching the driver's side of the RV. Trooper Rohr initiated a conversation with Mr. Erich, asking whether Mr. Erich was sleepy and or otherwise ok. Mr. Erich responded that he was ok. Trooper Rohr immediately asked their destination, to which Mr. Erich responded that they were heading to Alabama. Trooper Rohr then asked for Mr. Erich's driver's license, proof of insurance and vehicle registration, which Mr. Erich provided. As he walked back to his KHP cruiser, Trooper Rohr asked the recruit trooper who was riding with him whether he smelled "bondo or paint" near the rear of the RV. The recruit answered in the negative and then proceeded to get closer to the vehicle and could be observed sniffing in the rear quarter and left quarter panels of the RV. The recruit returned to the cruiser and he and Trooper Rohr discussed that they could see an area in the back of the RV that had been painted, Mr. Erich may have had some paint on his hands, and that, when asked by Trooper Rohr whether the RV had been recently painted, responded that it had not.

Another Trooper responded to the scene as a back-up officer and Trooper Rohr is heard asking him if he had enough to check for a compartment. Trooper Rohr is heard telling him that it looked like Mr. Erich had white paint on his hands, but that he was not 100% sure of that. The back-up trooper's response is inaudible due to traffic noise and the dispatcher relaying status information regarding Mr. Erich.

Trooper Rohr completed the required business of the traffic stop and issued a warning ticket for "Improper driving on roadway/Use of center lane". Trooper Rohr re-

approached the RV, issued the warning ticket, returned all of the documents and told them to have a safe trip and drive carefully (at 10:50 on the ICV). Trooper Rohr then steps away from Mr. Erich and turns toward his cruiser, takes three steps toward his cruiser and turns around to reengage Mr. Erich. He states, "Hey sir, may I ask you some questions?" Trooper Rohr stepped away and returned to the vehicle in four seconds. He then proceeds to ask, without getting a response from Mr. Erich, questions that focused on their destination and how long they would be in Alabama. Mr. Erich asks whether he had to answer his questions. Trooper Rohr responded that he did not have to answer any questions, but asked, "Can I talk to you any further?", to which Mr. Erich responded by asking if he was free to leave, to which Trooper Rohr responded, "You are free to go." He then immediately stated that he was detaining Mr. Erich based on his belief that there might be a false compartment in the RV. For the next 30 minutes, Mr. Erich, Ms. Maloney and her two children were detained while Trooper Rohr ran his K-9 around the RV and stated that the K-9 alerted near the rear of the vehicle multiple times, and then conducted a full internal and external search of the RV. The search revealed no drugs, paraphernalia or other items associated with drug possession or trafficking activities. Trooper Rohr advised Mr. Erich and Ms. Maloney that they are free to leave, only to unlawfully detain them again in order to search the top of the RV, also with negative results. It is important to note that the second detention was also unlawful as Trooper Rohr concluded the traffic stop and initial detention and search.

Based on my law enforcement training and expertise, I do not believe that Trooper Rohr had reasonable articulable suspicion for the detention and search, which lasted over 42 minutes. Trooper Rohr brought a list of his reasonable suspicion factors with him to his deposition. They were:

- The smell of bondo or paint;
- Paint of Mr. Erich's hands;
- An area on the back of the vehicle that seemed to have been worked on;
- A recently purchased vehicle;
- The time of day the vehicle was travelling;
- Traveling from Colorado to Alabama.

To begin, the smell of bondo or paint appears not to have been confirmed by others, both Troopers and the vehicle occupants. In addition, Mr. Erich explained he was a painter, resulting in the paint on his hands. These qualifications and explanations should have dispelled any suspicion based on at least the first three factors Trooper Rohr identified. Regardless, the factors as a whole do not support Trooper Rohr's prolonged detention and search of the Mr. Erich, Ms. Maloney, and their children. None of the factors articulated by Trooper Rohr and indicators of criminal behavior.

Trooper Rohr's lack of reasonable suspicion is confirmed by the manner in which the stop began. He targeted Mr. Erich and Ms. Maloney before ever observing any traffic violation or having any reason to suspect them of criminal behavior, and he appears to have been determined to stop or search them from the moment he saw their vehicle. This is because,

not only did the prolonged detention lack reasonable suspicion, but Trooper Rohr was so determined to stop and search Mr. Erich's vehicle that he violated the law in catching up to them, and stopped them illegally as well. The stop initiated by Trooper Rohr for improper driving was unlawful and based on location, time of day and type of vehicle rather than an observed traffic violation.

Trooper Rohr was asked in his deposition whether, after making a U-turn in the grassy median in order to pursue the RV, he exceeded the speed limit trying to catch up to the RV. (84:12-85:8) Trooper Rohr simply answered, "Yes" and then referred to a law that allows law enforcement to exceed the speed limit in such circumstances. My research revealed K.S.A. § 8-1506, which sets out the exemptions afforded to police in such situations. It states the following:

8-1506. Authorized emergency vehicles; rights, duties and liability of drivers thereof. (a) The driver of an authorized emergency vehicle, when responding to an emergency call or when in the pursuit of an actual or suspected violator of the law, or when responding to but not upon returning from a fire alarm, may exercise the privileges set forth in this section, but subject to the conditions herein stated.

(b) The driver of an authorized emergency vehicle may:

- (1) Park or stand, irrespective of the provisions of this article;
- (2) Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;
- (3) Exceed the maximum speed limits so long as such driver does not endanger life or property;
- (4) Disregard regulations governing direction of movement or turning in specified directions; and
- (5) Proceed through toll booths on roads or bridges without stopping for payment of tolls, but only after slowing down as may be necessary for safe operation and the picking up or returning of toll cards.

(c) The exemptions herein granted to an authorized emergency vehicle shall apply only when such vehicle is making use of an audible signal meeting the requirements of K.S.A. 8-1738 and visual signals meeting the requirements of K.S.A. 8-1720, except that an authorized emergency vehicle operated as a police vehicle need not be equipped with or display a red light visible from in front of the vehicle.(d) The foregoing provisions shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the driver from the consequences of reckless disregard for the safety of others.

Trooper Rohr observed the RV Winnebago traveling in the opposite lane but did not observe any traffic violations. Despite this, he conducted a dangerous U-turn maneuver across the grassy median and reported that he exceeded the posted speed limit to catch up to Mr. Erich's RV. Trooper Rohr's own statements establish that he violated traffic laws, not Mr. Erich. Trooper Rohr's observations did not meet the requirements in K.S.A. § 8-1506(a), which sets out the exemptions afforded to law enforcement personnel.

Even if the stop of Mr. Erich and Ms. Maloney had been legal, they should have been released immediately following the traffic stop due to the clear absence of reasonable articulable suspicion or a lawful consent to search the vehicle. To establish reasonable articulable suspicion, Trooper Rohr was required to have an articulable and well-founded suspicion based on specific, objective, articulable facts, taken together with his training and experience, that Mr. Erich and/or Ms. Maloney had committed, were committing, or were about to commit a crime. He did not reach that standard. The only thing Trooper Rohr was able to articulate was that he smelled paint; that alone is absolutely not a basis for a prolonged detention, search and ultimately the destruction of some \$3,000 of property.

3. Based on my law enforcement experience and expertise, the KHP does not regularly and effectively train its troopers on changes and developments in important Constitutional matters such as the Fourth Amendment.

Opinions: Based on my training and expertise, the KHP does not effectively train its troopers on changes or developments in the relevant Constitutional matters. Specifically, the import of the Tenth Circuit's *Vasquez v. Lewis* case was not adequately communicated to KHP troopers.

Basis and Reasons for These Opinions:

The KHP is a decentralized agency, meaning that it is organized via several Troops (Barracks) located throughout the state in an effort to provide coverage across a large geographic area. This decentralization means that many troopers do not have regular roll calls, check-ins with supervisors and have a lot of flexibility in their work hours and type of work in which they want to engage.

In a highly decentralized working environment, as exists with the Kansas Highway Patrol, training is critically important due to the absence of regular roll calls and check-ins with supervisors. Roll calls serve as platforms for frequent short training opportunities to address issues relating to policing nationally, as well as local issues pertaining to the agency.

Training has to be one of any agency's top priorities and, for state police or highway patrol agencies, training on Constitutional stops is of the utmost importance and must be prioritized by training units and the agencies' legal departments or advisors. Particularly in an agency such as the KHP in which the number of stops, searches, arrests and seizures are incentivized through assignment, promotion and public recognition and awards.

In reviewing training documents and curricula produced by the KHP, it appears that KHP troopers are primarily trained through instructor-led lectures accompanied by PowerPoint presentations. In addition, some material is distributed through Power DMS, KHP's Policy and E-learning Platform, which is also used for the Commission on Accreditation for Law

Enforcement Agencies (CALEA) policy reviews during the accreditation cycles and on-site assessments. Based on review of the materials produced in the case, KHP's training lacks adult learning methods that further the absorption of the training goals and principles by the trainees. Police training has evolved over the last 20 years to include methods for adult learners that involve and acknowledge differences between generational groups and that create a learning environment for all. Adults prefer methods of learning that include auditory, visual and kinesthetic, a learning method that involves scenario-based exercises.

For routine training to be effective, it should be delivered through a variety of means, including e-learning, classroom training, at roll calls, and through practical or scenario-based training out in the field. All of these methods should be used in the KHP routinely to train troopers and civilians for academy training, in-service training, annual legal updates, and as needed to reinforce Constitutional policing matters. There have also been internal investigations into Constitutional violations, and the sustained finding into Trooper McMillan's stop of Josh Bosire, resulted in very little discipline and virtually no remedial training to ensure the offending trooper understood the severity of the violation.

All training sessions—in-service, academy, legal updates, etc.—focusing on Constitutional violations should be in person and conducted by using the above referenced adult learning methods. Asked how training is implemented after policy changes or for legal updates, Superintendent Jones testified, "But if it's something very significant, it's going to be formal training either in person or, with technology of today, we put it on Power DMS. Individuals have to go in. They will go through a PowerPoint, whatever it is, ask questions or whatever it is. But we use technology." (59:13-18)

In *Vasquez v. Lewis* (Tenth Circuit 2016), the central issue presented to the United States Court of Appeals for the Tenth Circuit was whether, under the totality of the circumstances, KHP troopers had reasonable articulable suspicion to detain and search Mr. Vasquez's car. Vasquez was stopped by KHP troopers for a traffic violation, then detained and his car was searched without reasonable articulable suspicion. The troopers justified the detention and the search by relying on the fact that Mr. Vasquez resided in Colorado, was alone driving on Interstate 70, was operating a recently purchased older model car despite owning a newer car, and claimed to be moving to a different state but had no luggage. The district court found the troopers' actions appropriate. In determining the validity of the search, the district court took a keen interest in the weight given to the state of origin of the driver and the vehicle. The Tenth Circuit disagreed and concluded that the troopers acted without reasonable articulable suspicion and violated clearly established precedent. The Tenth Circuit explicitly concluded that the troopers impermissibly relied on the fact that the vehicle was licensed in Colorado and that Mr. Vasquez was a Colorado resident. The Tenth Circuit specifically directed the KHP that no reasonable articulable suspicion existed in the *Vasquez* case and concluded that the troopers violated Vasquez' Fourth Amendment Rights in searching his car. The Tenth Circuit considered the legality of the officers' conduct and then remanded the case to the District Court to do the correct analysis.

Sarah Washburn serves as a staff attorney in the KHP's General Counsel's Office and, at times relevant to this matter, was responsible for providing legal advice and training to KHP personnel. She has been employed by the KHP for over six years, teaches at the training academy and in-service training sessions, and provides legal updates as directed by the KHP and the Kansas Law Enforcement Training Center (KLETTC). She also teaches the legal aspects of Interdiction and Advanced Interdiction courses to troopers.

Ms. Washburn is also responsible for handling cases involving asset forfeiture, which primarily result from stops made by the KHP. This indicates she is highly knowledgeable about the tactics used to initiate stops, affect detentions and the subsequent searches that result in the seizures. In a high functioning and constitutional law enforcement agency, Ms. Washburn's role would be the primary source of training directives involving constitutional policing and, the internal barometer as to the constitutionality of the practices used by and taught to the KHP.

Vasquez involved KHP troopers and the very same issue as is presented in this litigation. It is an important case addressing the use of state-license and travel on so-called "drug corridors" in officers' formation of reasonable suspicion for the purpose of prolonged roadside detentions. It is remarkable that, in her deposition, Ms. Washburn played down the *Vasquez* case as not worthy of a legal update or updated training for KHP troopers, even though the Tenth Circuit found that the KHP troopers violated *Vasquez's* Fourth Amendment rights. 31:24-32:17, 33:4-8. A critical function of any legal department in a law enforcement agency is to ensure that its members do not expose the agency to liability through unlawful conduct and unconstitutional policing practices. The failure of the KHP's legal department to take any proactive action after the *Vasquez* case suggests that KHP did not respond to or even acknowledge the Tenth Circuit's rebuke and that the agency instead remained deliberately indifferent to motorists' Fourth Amendment rights.

The below excerpt from Ms. Washburn's deposition highlights the above points.

Q. When the Vasquez case was decided by the 10th Circuit, did you incorporate that into your training?

A. No.

Q. Do you recall as you sit here – strike that. Let me rephrase this question. I think you mentioned that the Vasquez case was a case involving the Kansas Highway Patrol in which the highway patrolman was a defendant; is that right?

A. I believe so, yes.

Q. Do you remember what the holding of the Vasquez case was?

A. My understanding is that it was totality of the circumstances, repeating of RV Zoo (sp), repeating of Wood, so no new case law, but essentially directing law enforcement to articulate the factors and again reinforcing some of the weight that courts were giving some of those factors.

Q. Do you recall that one of those factors was the existence of out-of-state license plates?

A. I recall that being a large part of what the media concern was, yes.

Q. The immediate or media?

A. Media.

Q. Okay.

A. And I recall that that was mentioned in the decision, but I believe it was given greater weight in the media than it was in the actual decision.

Q. When Vasquez was decided and – and handed down, in response to that, in response to the opinion itself, did you make changes to any of your training materials?

A. I don't believe so.

Q. Do you recall whether you authored or distributed a legal update as a result of the Vasquez case?

A. I don't recall. I'm sorry.

Washburn Dep. pp. 31-34.

At the time the Vasquez case was pending and when the Tenth Circuit opinion was issued, Randy Moon was the Assistant Superintendent of the KHP. Regarding the Vasquez case Assistant Superintendent Moon testified as follows:

Q. So, when the Vasquez case was decided by the 10th Circuit, that would have only been communicated to the troopers at the next in-service training; is that what you're saying?

A. Primarily.

Q. Okay. Was there a secondary or a tertiary way?

A. Well, I mean, sure, I mean, the troopers could learn about it themselves independent of KHP training. And certainly some who had the initiative, who had that interest in that type of law or in that type of -- those type of activities might themselves know about that because that particular case was, you know, fairly publicized. So, they could gain some knowledge that way.

But in terms of perhaps teaching the more legalistic pieces of that or the more technical pieces, they would learn that at in-service.

Q. So other than something that they might have done personally, was the only way that the KHP was communicating a change of law, like the Vasquez case, to the troopers, that would happen at the in-service training?

...

A. I just could simply answer that by telling you that the primary means in which they would learn about that would be in-service. That's not to say that they might not learn about it in other ways.

Moon Dep. pp. 108-110.

In fact, Assistant Superintendent Moon testified that no internal policies of the KHP were changed when the Vasquez decision was issued. Moon Dep. 110:22-25. The KHP's

command staff, of which Moon was a member, was briefed by KHP Legal about *Vasquez*. Moon understood that the Tenth Circuit made a decision that the KHP troopers violated the law, the *Vasquez* stop and search violated the United States Constitution, and this decision applied to all future stops that happened in the state of Kansas such that the KHP needed to make sure that its troopers did not continue to make the same Constitutional violation. Nonetheless, after *Vasquez* the command staff chose to change nothing and left it to the Captain of Troop J to determine if there should be a change in the KHP's training protocol. Moon Dep. pp. 112-116. Moon did not recall ever being trained on the *Vasquez* case. Moon Dep. p.117.

Via a newspaper interview given by Assistant Superintendent Moon in 2017, well after the *Vasquez* decision, the KHP reasserted that since Kansas is right next to Colorado where marijuana was legal, it was not unreasonable for KHP troopers to consider state citizenship, out-of-state plates and travel to or from a drug source city or state in its drug interdiction efforts. Moon Dep. pp.94-95.

In addition, in his deposition, Captain Hogelin testified that he was unaware of any change to KHP policy or procedure following the *Vasquez* decision. (Hogelin Dep. p. 53). Captain Hogelin testified that *Vasquez* was incorporated into KHP training, including *Vasquez*'s statement that it is time to abandon the pretense that state citizenship is a permissible basis to justify the detention and stop of out-of-state motorists. (Hogelin Dep. pp. 57-59). However, Captain Hogelin could not specify when *Vasquez* was first incorporated into KHP training. He testified that training could have reflected *Vasquez* within a year of the decision, or during a 2019 training on criminal interdiction and search and seizure law. (Hogelin Dep Pp. 59-65). Captain Hogelin also testified that *Vasquez* – a 2016 case – was added to KHP 2020 advanced interdiction training only three weeks before the training took place. (Hogelin Dep. pp. 111-112). According to Captain Hogelin, Superintendent Jones himself requested that the 2020 training include *Vasquez* – an unusual occurrence in which Superintendent Jones was directly involved in decisions about training content. (Hogelin Dep. pp. 112-113).

The depositions of individual troopers confirm that they received no training on *Vasquez*. Trooper Schulte was only vaguely familiar with the *Vasquez* decision and did not recall if he had been trained on it. (Schulte Dep. pp.176-177) Trooper McMillan remembered the *Vasquez* case but could not remember training on it either. (McMillan Dep. pp.146-153) And the following exchange in Trooper McMillan's deposition makes clear that the *Vasquez* decision did not change Trooper McMillan's policing practices.

Q. [H]ow did Vasquez and what Vasquez said specifically affect your practice when it came to conducting searches?

A. I just made sure I had reasonable suspicion for a search or for – I just – I – I don't know how else to answer that.

Q. You said make sure you have reasonable suspicion to do a search?

A. Well, no, I said that, but that's not what I meant.

Q. What did you mean?

A. I'm trying to understand your question. Let me think about it for a minute, please.

Q. Sure, take your time.

A. I don't know how to answer that other than just you need to have reasonable suspicion to detain somebody.

McMillan Dep. p.153. These questions and answers raise serious doubts about Trooper McMillan's understanding of the law after *Vasquez* and make clear he cannot explain how his behavior changed—if at all—as a result of the case.

Trooper Ryan Wolting also testified could not remember hearing of the *Vasquez* case and that he did not remember if it changed his policing tactics. (Wolting Dep. p.120)

Superintendent Jones purports to be a seasoned and experienced law enforcement executive with a significant background in training and a deep understanding of the important role it plays in effectively managing a law enforcement agency. The below excerpt from Superintendent Jones' deposition establishes some of his training experience.

Q. All right. You said that you taught primarily classes in accident investigation. Did you teach other classes?

A. Yes, I did.

Q. What were those?

A. It would have been police operations such as patrol, typical patrol, different techniques of patrol, handcuffing, some defensive tactics, and quite a bit of driving instructing, defensive driving, and technical driving.

Q. Okay. Were you -- how long were you employed by KU as an instructor at the Law Enforcement Academy?

A. Approximately eight years.

Jones Dep p.15.

Despite his expertise in the impact of training to address misconduct and unlawful conduct, Superintendent Jones had not taken steps to correct the rampant unlawful stops, detentions, and searches occurring at the hands of KHP troopers.

A law enforcement executive, in this case, Superintendent Jones, is a highly visible leader in state government, as such, he should takes credit for enabling the successes of the KHP as well as accepting the responsibility for its failures.

Superintendent Jones has final authority in all aspects of managing and leading the KHP, to include final decision-making authority on hiring, transfer, promotion, discipline, training

and budget matters aligned with setting agency goals and direction. Many of the things Superintendent Jones is responsible for, are highlighted as failures in this case, and while others committed the actions and violations in this case, he alone is responsible for ensuring appropriate corrective action, including training and discipline, as well as setting a clear direction on accountability for all within the KHP. In my review of his deposition, it was clear to me that Superintendent Jones does not take responsibility for ensuring clear direction from his office down to the road troopers carrying out enforcement actions and who are responsible for protecting the constitution instead of violating it. Rather, Superintendent Jones relies on career KHP senior commanders, who are KHP career officers, to do so. That expectation is unreasonable and irresponsible as they are not ultimately responsible for charting the course and the culture of the KHP, they are a strong part of the KHP culture that needs to be reformed.

4. Based on my law enforcement experience and expertise, the KHP's policies addressing stops, searches, seizures and arrests are insufficient.

Basis and Reasons for These Opinions:

A modern, well-trained law enforcement agency should have policies that are clear and match best practices, while providing clear guidelines and processes for carrying out the duties and responsibilities of the agency. Policies governing stops, searches and arrests are some of the most important policies in the agency as it pertains to one of the most intrusive powers of the government and as a result, it should contain, at a minimum, the following:

- A Policy Statement about how the organization respects the fundamental rights of all people and how its members will conduct searches in accordance with the rights secured and protected by the Constitution.
- Core Principles explicitly declaring that searches are to be conducted in compliance with the Fourth and 14th Amendments, as well as all applicable State laws.
- Definitions of key detailed items, including, at a minimum, descriptions of probable cause, reasonable articulable suspicion, and search and search warrants.
- Descriptions of the kinds of searches that troopers may become involved in and under what circumstances they can engage in the different types of searches. Examples include probable cause searches, searches incident to arrest and consent searches. The policy should specify in great detail what qualifies as reasonable articulable suspicion and probable cause. Training should be tied to and correspond with this policy. BOTH the written policy and training should be updated regularly and immediately when Courts establish new case law.
- General Procedures need to be laid out comprehensively explaining the requirements and the prohibitions involving the various types of searches in which

a trooper might become involved. This section should contain a specific explanation of what a consent search is, and that the person who has been stopped may revoke consent or not give it at all, without the fear of being further detained or otherwise punished by the trooper (e.g. additional traffic charges, etc.).

KHP's policy OPS-39 provides guidance on Criminal Procedures, Arrests, and Search and Seizures. It was revised and effective on June 30, 2017, post-*Vasquez*. The policy is primarily technical in nature, and while it does explain important legal standards such as Probable Cause, it fails to explain more nuanced standards such as reasonable articulable suspicion. Since OPS-39 was revised after the Tenth Circuit decision in *Vasquez*, it appears to have been revised based on the CALEA policy revision schedule, rather than what was a critical court decision focused squarely on the KHP and what constitutes reasonable articulable suspicion that can be relied upon by its troopers. The technical aspects are clearly necessary to guide troopers in the tactics, process, and procedures for the things they have to accomplish through the course of their work. However, certain policies should also give guidance and provide a legal perspective on the actions taken by the KHP. A perfect example of a policy that lacks such guidance, and that has direct relevance to this case, is the KHP's Consent to Search Policy (HP-102). The KHP's policy is three sentences with the text contained in the Consent to Search form that persons granting consent are supposed to sign. During his deposition, Captain Hogelin testified that use of the Consent to Search form is not required in consensual searches. Hogelin testified that OPS-39's statements that "Consent may be given orally", that "Consent may be documented in writing wherever possible," and that the Consent to Search form "is available for use for that purpose." Captain Hogelin testified that since OPS-39 does not say the written consent form "shall" be used, the use of the form is not required when KHP obtains consent to search. (Hogelin Dep. Pp. 45-47).

There are no reminders of the parameters around consent searches, of which there are many. In police organizations that take the Constitution seriously, the Consent to Search policy is comprehensive and establishes the basis for accountability should it not be followed. The KHP policy is strictly geared at how to complete correctly the required form.

The majority of KHP policies and training materials that address areas involving stops, searches and arrests, do not provide expressive guidance to troopers on constitutional standards, the Consent to Search policy is a prime example of that lack of guidance.

5. Based on my law enforcement experience and expertise, the KHP should require its troopers to document traffic stops that result in a detention and search, even if there is no arrest.

Opinions: The KHP should require its troopers to document all police enforcement actions in order to maintain a clear record and account of what an officer observes, his or her analysis of the situation and the course of action the officer decides to take. Further, the KHP should require that all troopers requesting the assistance of canine teams create a record of every such a request, including the purpose for the request and the result of it,

even if the canine search does not result in an alert, search or arrest. Finally, the KHP should require that when its canine teams deploy and/or use force, those interactions should be documented.

Basis and Reasons for These Opinions:

Since all searches are investigative in nature, troopers should record every search on their In Car Video (ICV). Specifically, they should articulate and record the activity on which they base their reasonable suspicion, to the extent that is practicable and safe. This is consistent with the KHP's policy that mandates that they activate their ICV at the onset of any call for service or activity that is investigative, or enforcement related in nature. The KHP should also require that troopers create a written record of the reason for the stop, the reasonable articulable suspicion for the detention, search, and the reason for the release without an arrest. There should be a clear policy outlining this requirement, the process for creating and filing such records, and the circumstances requiring such a report. The entire KHP should be trained on this policy.

At the time of the plaintiffs' stops, there was no policy that required a report and/or a process for documenting stops, detentions, and searches when no arrest was made. The lack of such policy and guidance from the KHP, allowed troopers to make up or supplement the reasonable articulable suspicion after the fact, in order to justify their actions.

The KHP has recently drafted policies on Criminal Interdiction Traffic Enforcement (ENF-07) and the associated Vehicle Detention Report (FOR-44). ***As of the submission date of my Expert Report, these policies are not yet in effect and training, followed by implementation has not been contemplated or scheduled.***

While the Enforcement Guidelines, ENF-01 (Exh. 132) state that there should be no distinction in enforcement between Kansas residents and nonresidents of Kansas, the fields to be filled out on the Vehicle Detention Report, FOR-44 (Exh. 133) include a field to document the registration of the detained vehicle. Captain Hogelin testified that this does not indicate that KHP considers the state of issuance for the vehicle in determining reasonable suspicion. Rather, he says that this information is included on the Vehicle Detention Report because KHP wanted to mirror the fields in "DigiTickets' warnings" for "tracking and analytical purposes." Captain Hogelin testified that the Vehicle Detention Report fields on the state where the vehicle is registered "is not a determination. It's just a matrix.... This is pure information. It's not to be utilized in the fashion you are trying to describe." (Hogelin Deposition P33:1-6) Hogelin testified that KHP wanted the information about the state in which the vehicle is registered "so we could perform analytic measures to see what percentage of out-of-state vehicles may be subject to detentions, enforcement operations, as it relates to this form." (Hogelin Deposition P33:11-14)

Captain Hogelin further testified that the passengers' travel origin is not an appropriate consideration to in determining reasonable suspicion for purposes of a vehicle canine

sniff. FOR-44 includes a field about “origin”, with a notation about “where the occupants claim they began their trip”. Captain Hogelin first explained this as a way to gauge whether motorists cannot answer simple questions because they may be under the influence, and, when pressed, said the questions could help to determine truthfulness.

Documenting police actions in all enforcement actions, is a national best practice as it maintains a clear record and account of what the officer observed, his or her analysis of the situation and the course of action decided. The resulting documentation provides the elements needed to assess whether the law enforcement action was lawful, within policy, and provides a window into whether training or other performance measures are necessary in the spirit of continuous improvement. Additionally, the records also provide transparency, which is a key reform being sought out in many communities as a part of the national police reform movement underway in the United States.

With regard to this case, the issue of transparency is a key factor as the complete record of the decisions made by Troopers Schulte and McMillan to call for canine units’ assistance in their traffic stops is incomplete. The KHP requires documentation of the probable cause or reasonable articulable suspicion only when an arrest is made as a result of canine deployments. In cases when an arrest is not made, it becomes very difficult to determine how often canine teams were requested, deployed and the results of those deployments. The lack of this documentation is exacerbated by the frequent use of county and local canine teams, when KHP canine teams are unavailable. In the spirit of continuous improvement and transparency, the KHP should require that all troopers requesting the assistance of canine teams create a record of such a request, even when the canine search does not result in an alert, search or arrest. This case highlights the necessity for such compliance with maintaining records of police actions that are intrusive and could potentially expose patterns by some law enforcement officers.

Almost all police departments in the United States mandate that canine teams document every deployment and use of force. This is a best practice that the major police canine associations in the United States support, train and advocate departments to follow. The mere fact that KHP troopers often rely on non-KHP canine teams heightens the need for the KHP to create a policy mandating that when canine teams are requested, from any jurisdiction, the reasons for the request and outcome of the canine search be documented by the requesting trooper, regardless of whether an arrest is made. Agencies should carefully record and review all canine actions. This documentation provides supervisors and command staff with an accurate picture of what’s occurring in the field and demonstrates transparency to the public. By closely reviewing canine usage and individual cases, supervisors can commend good cases and correct mistakes. (policeforum.org/assets/Canines.pdf)

- 6. Based on my law enforcement experience and expertise, first line supervisors and commanders must provide effective and thorough oversight and supervision for officers in a decentralized work environment such as the KHP.**

Opinions: Based on the review of depositions taken during this case, the KHP has an optimal span of control of, on average one supervisor to four troopers. Unity of command, the concept of having supervisors work the same shifts and areas as the troopers that report to them, is far less optimal. Aligning Span of Control and Unity of Command should be a priority for the organization in order to be able to support troopers in the field through good supervision, training, check-ins and discipline when necessary.

The Superintendent lacks awareness of the data generated by the KHP's activities, in order to be informed of patterns and trends that may indicate problems in the organization. This is critical for holding commanders and line troopers accountable to the mission of the KHP and constitutional requirements.

Basis and Reasons for These Opinions:

Leaders of law enforcement agencies must be able to regularly, accurately and effectively review data produced by the organization regarding stops, searches, and arrests to be able to hold officers accountable to the law, policies, and procedures. Additionally, policies may need to be changed if practices indicate that there are problems, often manifested by legal actions against the organization. As the head of the agency, Superintendent Jones is responsible for all matters pertaining to policies, training, supervision, accountability, and the overall management of the KHP to ensure that KHP troopers police in a Constitutional manner.

Superintendent Jones makes it very clear throughout his deposition that he is a "hands off" kind of leader and that he leaves the data analysis and its use to manage the organization, up to his commanders. See the below excerpt from his deposition:

*Q Okay. And maybe I didn't ask this question as accurately as I wanted to. Is there a -- in those situations you described, is there a formal process or is there a structure inside the Kansas Highway Patrol to take data -- and, again, say we are talking about stops or searches and seizures or whatever -- to take data and make policy or practice determinations for the troopers on the road?
A I don't deal with that personally.*

Jones Dep. pp. 48-49.

Q Okay. If you want that information, if you want to know whether, say, searches and seizures are trending either up or down or whatever, how do you get that information?

A I would probably go to the commanders, to majors, that have oversight of that field personnel and inquire.

Q When it comes to trends like that, searches and seizures or seizures of certain kinds of contraband, is that something that is on your radar screen as superintendent?

A Probably not every day. Probably on an occasional we get a report out. Once a month I will get a report as to what types of activities are happening.

Q Okay.

A But as far as every day, that's why I have people to do that.

Jones Dep. pp. 57-58.

Additionally, and very important to this case, Superintendent Jones does not personally get involved in matters pertaining to legal standards and his organization's compliance to those legal standards. Another excerpt from his deposition characterizes his lack of commitment to the accountability structures, processes and policies governing all members of the KHP:

Q So in a case like Vasquez that's constitutional, once that is trained on or educated on, how do you make sure that the mandates of a case like Vasquez are followed?

A That would be incumbent upon their supervisors, their immediate supervision.

Q So how do you instruct those supervisors, those commanders, to make sure that the mandates of a case like Vasquez are followed?

A Well, I mean through our commanders' meetings. Just to illustrate or at least articulating to our folks that we should be holding our folks accountable to abiding by the laws of the state and of the US.

Q Oh, I think you are describing what the supervisors and commanders do. My question had to do with you. How do you instruct your commanders, supervisors, to ensure that a case like Vasquez is followed by troopers?

A As far as that, working through our legal counsel and other commanders to make sure that's done.

Q Tell me what you mean by "working with our legal counsel."

A Well, legal counsel -- if there's any irregularities of the issues like that, that he would report out or something that he would report to me, and then we would move forward to whatever actions we have to. That could be a number of things.

Q Is that to say that that's not an instruction that comes from you?

A It is a collaboration, again, of instructions that would come from my office but also in collaboration with Legal, commanders, training, other folks like that.

Q I guess I'm trying to get a little bit more clarity about what you do as superintendent.

A Sure.

Q And I'm trying to understand whether -- again, I'm going to use this Vasquez example, where a case like that comes down and has constitutional implications. My question is: What do you do as superintendent in order to make sure that the dictates of Vasquez are followed by KHP personnel?

A Other than communicating that through a meeting, instructional information that's disseminated out by way of communications I have from my office. I will send something out or maybe an email or those type of things such as that.

Jones Dep. pp. 127-129.

Q Okay. How do you supervise those supervisors?

A Through my executive staff.

Q Okay. What do you mean "through your executive staff"? Give me –

A If I send out a directive –

Q Uh-huh.

A -- it goes, again, to the lieutenant colonel and then goes through -- disseminated through the majors, and then they will push that out.

Q And that is the mechanism that exists for you to essentially supervise the supervisors.

A Yes.

Q Correct?

A Yes.

Jones Dep. p. 131.

Q Yeah. And the question is whether there is -- whether there's direction from you as the superintendent about follow-up after training occurs --

A Sure.

Q -- and compliance with rules like Vasquez?

A Yes.

Q Describe that, please.

A If it's -- if it's an issue or so that would go through our Professional Standards or maybe even of a supervisor, we would just look to see what we could do to have the corrective action or whatever if we felt it was aberrant to what the policies or what the law would say.

Q That's on an incident-by-incident basis?

A Yes.

Q Okay. So is that to say that there's not really a systematic compliance mechanism inside highway patrol to ensure compliance with things like Vasquez?

A Well, I think it is. It's just that we have policies, and we have supervisors to hold the individuals accountable for that. It's not like we would check in and do like robots.

Q Okay. And that process that you just described, that doesn't depend on direction by you; correct?

A Sure.

Q That exists anyway; is that a fair statement?

A Whether I'm here or someone else, that exists because of the accountability of our agency. That's why we have the policies. If we follow that, that becomes a part of holding individuals accountable for their actions.

Jones Dep. pp. 135-136.

Q If you would, tell me all the steps that you took as superintendent once that complaint was sustained to determine whether this was a patrol-wide problem or whether this was an individual problem?

A I think generally in a case such as this you speak with your -- I speak with executive staff to see if this is one incident or if this is an issue over and beyond.

And of that, if it's something bigger and broader with that, that's where we go back to training, education, and accountability.

Q Yeah. I understand that. I understand that process. In this case my question to you is specifically: Once that complaint was sustained, did you take any action to determine whether this was a KHP-wide issue or whether it was an individual trooper's mistake?

A I think through the process we would determine if it was wide or just one specific right there, and of that -- I'm trying to recall of this right here. But from what I recall of this specifically is that the understanding that this case is to have a better understanding. If this individual doesn't understand the elements that became an issue, let's make sure everybody else has the understanding from there.

Q Okay. So did you direct people under your command to take steps in that direction?

A Yes.

Q What did you direct them specifically to do?

A Training.

Q Okay. Tell me more about the training.

A With the Legal to go out and sit down and make sure people have an understanding -- better understanding of what the legalities are when it comes to dealing with someone on the roadside and dealing with your reasonable suspicion, search, whatever it is going to be.

Q That was your directive. Was that last year?

A Yes.

Q Okay. What form does that directive take?

A I'm not sure.

Q Is that you saying verbally, "Hey, here is what I want," or is that you sending an email or writing a memo? What form does that direction take?

A In a meeting of saying, "This is where we need to go. Make it happen."

Q All right. Who did you say that to in this?

A That would be our executive staff.

Q Okay. The executive staff is the group of persons you described earlier? Lieutenant Colonel -- I can't --

A Lt. Col. DeVore and the majors.

Q Thank you. And describe for me, if you will, the process. After you give that directive to your lieutenant colonel and the majors, what's the process or what was the process that was followed?

A Upon determining that we have an issue with that, that would be a point of our Legal connecting or making a connection with our training staff to come up with the time and what we need to do to have that disseminated to staff as a whole, all the employees. So it would be Legal formulating the curriculum, setting the time to go with that, and I believe at that particular time we had Covid so it was set up by way of the virtual world.

Q Colonel, was it your instruction to your lieutenant colonel and majors to conduct additional training or was it their recommendation to you?

A I think it was collective, but I said, "Make it happen."

Q And that was a directive that you gave -- maybe you answered this. You gave that verbally to them?

A Yes. We talked about it.

Q Did you memorialize that at all in an email or anything?

A No.

Q And your directive went beyond just the one incident with the individual trooper; correct? That's a bad question. Your directive to your lieutenant colonel and your majors had to do with the practice beyond just that one traffic stop; is that a fair statement?

A Yes.

Q Okay. Because it led to department-wide -- sorry -- patrol-wide training?

A Right.

Q Did you see that it was -- excuse me. Do you see it as your responsibility to be proactive in that regard?

A Yes.

Jones Dep. pp. 142-146.

Q Do you ever -- you may have answered this. But do you ever get specific information about motions to suppress in cases involving investigations by highway patrol troopers?

A I will not get every one of those. No.

Q Does that information ever make its way to you by way of your counsel or your other executive staff?

A Very seldom will I get that information. That's generally handled locally or by our counsel or legal staff.

Q You could get that information if you requested it; correct?

A Yes, I could.

Q But you don't request it.

A No.

Q Do cases where the practices of highway patrol troopers are challenged and sustained -- those concern you?

A Yes.

Q What do you do -- when you learn of that, when you learn of a case, where, for instance, evidence is excluded or suppressed because of the conduct of a highway patrol trooper, as superintendent what is your instruction to your executive staff about situations like that?

A We want to correct it so it doesn't repeat itself. So that becomes working with counsel to understand what were the legalities, what were the barriers that allowed us -- that prevented us from having a success in a case. Then we would look at what avenues we need to take to make sure that doesn't happen. Generally speaking, it is dissemination or articulation of the case so people have a better understanding so it doesn't repeat itself. And then a correction on that by way of training.

Q And is that by way of instruction from you to your executive staff or is that a function that initiates itself somewhere else?

A It could be a -- it could be a combination of, but most of the time -- most of the time it comes up by way of our Legal or command staff that brings that to our attention and then we move forward with it.

Jones Dep. pp. 147-149.

Captain Hogelin testified that while supervisors' review of troopers' traffic stop reports "could" include a one-to-one evaluation by the supervisor of how the trooper conducted the stop, such an evaluation is not required. (Hogelin Dep. P. 77). Any supervisory review of how the trooper evaluated reasonable suspicion or probable cause factors would occur only in the context of the supervisors' review of the trooper's report, and would not be documented on any separate form. (Hogelin Dep. P. 79). Additionally, Captain Hogelin testified, that even if evidence seized during a stop by a KHP trooper is later suppressed by a court because the stop was unconstitutional, video of the stop "could" be reviewed by a supervisor and "could" result in in-service training for the trooper, but nothing in KHP policy requires that the trooper receive training after the evidence is suppressed. (Hogelin Dep. P. 80, pp. 95-96). Not drafting strong policies with consequences for constitutional violations is a missed opportunity for the KHP and furthers a culture where troopers are emboldened to continue searching for drugs and contraband without concern for constitutional boundaries.

To demonstrate just how ineffective Superintendent Jones' leadership and style is in the area of accountability, one has to go no further than Trooper Rohr's deposition. Trooper Rohr has been promoted to Lieutenant and now oversees troopers as a first line supervisor. Here is an excerpt of his deposition where he responds to some training and supervision questions:

Q. I want you to now look at OAG29176, another few pages ahead; do you see that?

A. I do.

Q. Again, the slide topic is RS versus PC and How They Apply to Traffic Stops; right?

A. Yes.

Q. Again, that's referring to reasonable suspicion and probable cause; right?

A. Yes.

Q. And the author of the slide writes: Recent Kansas Supreme Court and Court of Appeals cases have called into question law enforcement tactics as they relate to detentions. Did I read that correctly?

A. Yes.

Q. The author goes on: We have taught for 8 years the best practice is to conclude the traffic stop portion of the encounter and then go into a consensual encounter even if we have reasonable suspicion. Did I read that correctly?

A. Yes.

Q. Was that what you were trained to do?

A. Yes.

Q. *The author of the slide goes on: The courts are starting to believe we only detain people because they refuse consent and not for reasonable suspicion. The courts also believe we are misleading people by implying they are free to go and then detaining them after they refuse consent. They believe it looks like we're using the refusal as part of our reasonable suspicion. Did I read that correctly?*

A. Yes.

Q. *If you turn the page: To alleviate these two problems. One, when you can solidly articulate reasonable suspicion, return to the violator's car, explain your concern and ask for consent to search without concluding the stop (don't do it too early and cheat yourself out of indicators). Did I read that correctly?*

A. Yes.

Q. *If they refuse, detain them and call fora dog?*

A. Yes.

Q. *Best practice is to call the dog, have them en route before you ask for consent, you can always call them off if necessary; right?*

A. Yes.

Q. *Please flip the page. If you have some indicators but don't feel you articulate sufficient reasonable suspicion and feel you need to ask more questions: One, attempt a consensual encounter, like we have always done. Remember consent must be knowingly, intelligently and voluntarily given, based on the totality of the circumstances.*

Did I read that correct?

A. Yes.

Q. *If you gather more reasonable suspicion during the conversation and reach the level of reasonable suspicion you can still detain if they refuse consent; correct?*

A. Yes.

Q. *Three, if they refuse consent and you don't have probably suspicion, send them down the road. Did I read that correctly?*

A. Yes.

Q. *Did that differ from how you were trained?*

A. *This part, no.*

Q. *Okay, what part does?*

A. *The page before that, where it talked about if you have reasonable suspicion prior to ending the traffic stop, that's been something that's been started recently.*

Q. *Is that something that you do now?*

A. Yes.

Q. *Is that something you require of your officers that report to you to do?*

A. *I do not.*

Q. *Okay, why is that?*

A. *It's not something I talk to my officers about.*

Q. *Have you received a training like this with this information, if you haven't seen this very one?*

A. No.

Rohr Dep. pp. 187-191. (Lieutenant Rohr goes on to say that he learned about the change in policy through conversations with other troopers).

Lieutenant Rohr is very clear about the fact that he does not see it as his responsibility to speak to troopers under his command about new policy mandates pertaining to stops, searches and arrests. Lieutenant Rohr is one of the supervisors that Superintendent Jones says he relies on to hold troopers accountable through effective supervision, training and discipline.

When questions were posed to Lieutenant Rohr regarding numerous Police Service Dog Reports, he stated that the purpose of supervisory review was to ensure proper grammar, spelling etc., and not for the lawfulness of the stops. If this is all that KHP supervisors do, it raises many questions regarding the structures for internal accountability, including supervisory review of reports, and how effective they are if supervisors only review for grammar and spelling and do not delve into probable cause, reasonable articulable suspicion and other factors that are under scrutiny in the KHP. This also calls into question the systems of accountability that Superintendent Jones relies on so heavily and uses to justify his lack of hands on managing of the organization.

Oversight and supervision are paramount to improving law enforcement services. The KHP is a decentralized agency, meaning that it is organized via several Troops (Barracks) located throughout the state in an effort to provide coverage across a large geographic area. This decentralization means that many troopers do not have regular roll calls, check-ins with supervisors and have a lot of flexibility in their work hours and type of work in which they want to engage. In the KHP, lieutenant is the first supervisory rank that is responsible for overseeing troopers' day-to-day activities. The KHP generally has one supervisor per 4-7 troopers, which is impressive. An acceptable ratio is one supervisor per 8-12 law enforcement officers. An area that is equally as important for optimal oversight and supervision, is Unity of Command, which is generally defined in policing as officers working the same geographic area and report to the same first line supervisor with a common start time and shift, as well as the same day off rotation. The KHP does not have a schedule that assigns troopers to a same time or day off schedule as their lieutenant. The absence of Unity of Command in the KHP is problematic and greatly diminishes one of the key systems to provide oversight, accountability and support to KHP troopers. Having their assigned lieutenants available at times when troopers are working patrol and encountering situations requiring counsel or direction, is essential to good policing. Unity of Command also allows for shift level training, face to face interaction with their supervisor, giving supervisors an opportunity to mentor and support in ways that might improve performance, guide ethical, lawful and effective policing on a regular basis. The decentralization of KHP troopers is a necessity based on the number of troopers available for assignment in such a large geographic area, but inadequate oversight and supervision because of the deployment scheme, is a disservice to troopers who are inclined to serve in a Constitutional manner but are not properly being trained how to do so. Unity of Command can be achieved in state organizations such as the KHP, and is essential for consistent supervision, rollcall and associated brief training, and the ability to easily check in with their supervisor in complex situations.

Stemming from Unity of Command and Span of Control is the ability to use discipline as an important tool to ensure Trooper accountability. The KHP as an organization is well aware of the past issues it has faced with Constitutional policing violations and other

misconduct. As such, KHP leadership must strongly and routinely message, through the chain of command, training, discipline and regular supervisory interaction with troopers, that Constitutional violations and misconduct, are intolerable and will be addressed with rigor and severity. This is not to advocate that mistakes should not be tolerated; mistakes will happen in such a complex profession. Rather, with the appropriate supervisory structure, mistakes that are made can and should be effectively addressed by the first line supervisors in a commitment to constant improvement and training for their troopers.

Oversight must also involve data collection and analysis derived from the KHP's activities, in the case of troopers, those activities primarily consist of stops, searches and arrests. The KHP does not have the capacity, competence and/or will, to establish the systems necessary to critically self-assess itself and create regular internal audits to examine troopers' activities. Even in law enforcement agencies with strong accountability measures, accountability cannot truly be achieved without data collection and analysis. In the KHP, which is void of effective supervision and command, data analysis is even more critical.

The KHP has data that it gathers regarding stops, seizures, asset forfeiture and other enforcement activities, but the data is not collected, organized or distributed in a cogent way, and it appears that only a few people within the agency know where the data exists and how to access or extract it for purposes of internal audits and accountability.

Captain Clark testified that although KHP policy requires that PSU provide KHP administrative command with an "annual administrative report" of complaints about KHP employees, Captain Clark does not know what, if anything, executive command does with this information. (Clark Dep. Pp. 95-96). The annual administrative report is also supposed to identify KHP employees who receive a "relatively high number of complaints," but Captain Clark testified that his report for 2020 (the first year he was responsible for preparing it) did not include this information. Captain Clark testified that 2020 was the first year for which he was responsible for preparing the administrative report, and that he followed the format of a prior years' reports, which failed to identify KHP employees with a relatively high number of complaints. (Clark Dep. Pp. 96-97). Captain Clark also testified that he could not recall whether his annual administrative report for 2020 complied with KHP policy by including common causes of complaint which could be addressed through public information, policy, training, equipment, or disciplinary issues. (Clark Dep. Pp. 97-98).

However, notably, the data the KHP does collect, does not include relevant data on stops and searches, particularly if the search does not net a seizure or an arrest. This lack of organizational capacity in data collection is exacerbated by the lack of a systemic process to analyze data in order to identify patterns and trends in the statewide stops made by KHP troopers. It follows that the KHP has no data driven way to identify patterns of unlawful behavior by its troopers working in the field. Once the KHP is trained on and implements the Criminal Interdiction Traffic Enforcement policy (ENF-07) and the Vehicle Detention Report (FOR-44) they will hopefully set the KHP on a path to understanding

their data and using it to guide the organization. The Vehicle Detention Form still contains some problematic data fields relating to origin and destination of the occupants.

Superintendent Jones is a law enforcement executive who has served in several law enforcement agencies and capacities, including as an elected Sheriff and as the Superintendent of the KHP, which is a political appointment. He acknowledges that he is responsible for all aspects of accountability in the KHP, which includes training, discipline, and policy. He described his role as a “vice president” that answers to the governor, indicating that he was initially uncomfortable with taking full responsibility for the KHP. See the below excerpt from his deposition.

Q. Okay. So, as superintendent, how do you – how do you define the role? You know, you talked a little bit about your position as Shawnee County Sheriff and what that involved. How do you define the role of superintendent and specifically what are you responsible with --what are you responsible for with regard to policy and discipline?

A. Well, when it comes to that, basically I would say it's the CEO, but the CEO I answer to is the Governor. So I take it as a vice-president of that that has operation oversight of our unit. And for that then, when there's discipline or the policies, I have the final say on yea or nay, but I take that in collaboration with those that are in the executive staff. I take upon their consultation and their -- I would say their deliberations that they have had. They bring it before me, and then we debate even further.

Jones Dep. pp.29-30.

The documents I reviewed seemed to suggest that discipline is decided and meted out by Troop commanders. An example is the closing letter that Technical Trooper McMillan received at the conclusion of the internal investigations case resulting from the complaint that Mr. Bosire filed with the KHP PSU. This letter was signed by a Captain Jason Vanderweide, the Troop T commander and had Superintendent Jones in the CC line. The closing letter set forth the consequences for a sustained violation of the Fourth Amendment.

The results of the case indicated that Technical Trooper McMillan was found to have unlawfully detained Mr. Bosire—a violation of Mr. Bosire’s constitutional rights. As noted in the section __ above, the disposition letter that Trooper McMillan received from Superintendent Jones used ambiguous language to explain the sustained violation. The closing letter, coming from Trooper McMillan’s trooper commander, set forth the consequences imposed by the KHP for Trooper McMillan, mentioned above. These consequences are of the lowest possible levels in any progressive discipline philosophy.

According to KHP’s own policies, remedial training is among the first response to minor policy violations, inadequate job performance or deficient work habits. (Clark Dep. Pp. 148-149). As Captain Clark testified, there is “a big difference” between corrective action and discipline, describing corrective action as “the ability to counsel, verbal reprimands, remedial training”, as distinct from discipline, which can involve suspension

or demotion. (Clark Dep. P. 154). In fact, Captain Clark testified that the consequences for Trooper McMillan after the PSU investigation of Mr. Bosire's complaint constituted "corrective action," rather than discipline. (Clark Dep. P. 154). Captain Clark further testified that he was unaware of anything but corrective action having been meted out as a consequence following a KHP finding of a violation of constitutional rights during his 17 months as the head of the PSU. (Clark Dep. P. 155).

In my opinion, this not only was not discipline, it was an insufficient consequence, especially as Trooper McMillan testified that he learned nothing new during this process and did not participate in any detentions or searches during the training. Post *Vasquez*, the lack of serious consequences for KHP troopers' unconstitutional treatment of motorists does not align with an agency that wants to reform itself after documented and persistent Constitutional violations.

CONCLUSIONS

As noted above, I was asked to evaluate both the detentions and searches of the named plaintiffs, and systemic issues regarding training, policies, accountability. My conclusions are that Master Trooper Schulte and Technical Troopers McMillan and Rohr improperly detained and searched the named plaintiffs, and that the systemic practices and policies of KHP regarding traffic stops and searches are inadequate. I also have concluded that the KHP violated its own policies in addressing Trooper McMillan's violations of Mr. Bosire's constitutional rights. Post-*Vasquez*, the lack of serious consequences for any KHP trooper's unlawful conduct is not aligned with an agency that wants to reform itself after documented and persistent Constitutional violations.

Superintendent Jones failed to mandate appropriate training addressing known Constitutional violations on the part of KHP troopers and showed a deliberate indifference to the continuation of the unlawful practices carried out by KHP troopers on Kansas roadways. Limited training was provided to members of the KHP, but the training was not comprehensive or provided to all troopers with law enforcement responsibilities. Additionally, he failed to hold the KHP accountable to policies and laws pertaining to search and seizures carried out by KHP troopers.

The Superintendent is responsible for all matters pertaining to policies, training, supervision, accountability, and the overall management of the KHP to ensure that KHP troopers police in a Constitutional manner. The review and analysis of the KHP's policies, procedures and training revealed numerous deficiencies (highlighted above), coupled with the lack of demonstrable accountability on the part of the Superintendent, created an environment where the lack of supervision and accountability left the rank-and-file troopers free to act with a pattern and create their own practices that regularly violate the Constitution.

This report highlights the distinct areas that offered repeated opportunities for the KHP to stop the unlawful conduct—it did not do so. My findings point to the KHP’s failure to supervise its troopers and the lack of commitment to the effective oversight of their daily activities, as a primary factor that has led to routine disregard for the Constitution, specifically the Fourth Amendment. Effective supervision and oversight require that effective systems to do so exist, including the ability to collect and analyze data on troopers’ activities, supervision methods to include unity of command, and the ability to properly intake misconduct complaints, classify them, investigate, and resolve the findings through training, discipline, or policy changes.

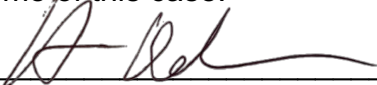
Effective oversight, particularly in a highly decentralized environment such as the one the KHP operates in is essential to ensure that the traffic stops made by KHP troopers do not result in unlawful detentions and searches. The KHP, and specifically the Superintendent, has ultimate responsibility to develop and enforce adequate policies, training, and supervision to ensure accountability for patterns of unconstitutional policing, unlawful conduct, and general misconduct.

Additionally, the KHP does not collect data relevant data on stops and searches, particularly if the search does not net a seizure or an arrest. This lack of organizational capacity in data collection is exacerbated by the lack of a systemic process to analyze the data in order to identify patterns and trends in the statewide stops made by KHP troopers.

My findings led me to the conclusion that the pattern of Constitutional violations stemmed from the KHP’s performance and reward systems that focused on the frequency and volume of drug seizures. Several KHP commanders and supervisors acknowledged in their depositions that the number of vehicle stops and drug seizures factored in troopers’ performance evaluations, promotions, and specialized assignments.

I state the opinions in this document with a very high degree of certainty.

NOTE: I reserve the right to amend this report should more material become available. I have not testified at trial or in deposition during the last four years. In the interim, as required by Federal Rule 26, I have attached my Curriculum Vitae. As agreed, my rates for this matter are \$275.00 per hour for time expended in review, consultation, analyses, and report writing. My compensation is not contingent or otherwise dependent on the outcome of this case.



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02/28/2022
Date

EXHIBIT A

CAREER BRIEF

Hassan Aden is a seasoned administrator with extensive experience leading and managing organizations. A skilled “Change Agent,” Aden has experience in developing and implementing comprehensive Change Management Plans. I have a strong history of internal and external collaboration with stakeholders in the development and implementation of public policy and programs, as well as strong verbal and written communications skills accompanied by an excellent analytical capacity. I am a multilingual - Italian (fluent) and Spanish (conversational) - speaker.

PROFESSIONAL BACKGROUND

October 2017-present
Consultant/Deputy Monitor
21st Century Policing, LLC
Chicago, Illinois

I served as the deputy monitor for the Baltimore Consent Decree monitoring team. I managed projects of the Baltimore Monitoring Team to ensure that required assessments, interviews, updates, and court documents are completed on time and are of high quality. I serve as one of the primary liaisons between the monitoring team, the United States Department of Justice, the City of Baltimore and the Baltimore Police Department. I keep the Court appointed Monitor up to date on upcoming deadlines and priorities while coordinating, reviewing, and submitting the work of the monitoring team.

April 2016-October 2019
Deputy Monitor
Forward PLLC
New York, NY

I served as primary liaison between the monitoring team, the United States Department of Justice, the Seattle Police Department, and the City of Seattle staff attorneys and elected officials. I kept the Court appointed Monitor up to date on upcoming deadlines and priorities while coordinating, reviewing, and submitting the work of the monitoring team.

November 2016-present
Monitor
The Aden Group, LLC
Washington, D.C.

I serve as the monitor for the Cleveland Consent Decree monitoring team. I manage the Cleveland Monitoring Team to ensure that required assessments, interviews, updates, and court documents are completed on time and are of high quality. I serve as the primary liaison between the monitoring team, the United States Department of Justice, the City of Cleveland and the Cleveland Division of Police. I keep the U.S. District Court

Federal judge up to date on all matters pertaining to the implementation of the Consent Decree.

February 2016 – present

Founder

**The Aden Group, LLC
Washington, DC**

My firm provides consultancy to multiple national and international organizations-our services are aimed at optimizing the continuous improvement of public safety organizations' performance and strategic focus. We provide strategic guidance to departments in assessing their performance against the President's Task Force on 21st Century Policing recommendations and policy positions. We also serve as subject matter experts in police use of force, policy, internal investigations, and Constitutional policing.

February 2016 – January 2018

Senior Adviser

**Vera Institute of Justice
New York, NY**

I provided oversight and leadership on local, state, and federal law enforcement related projects. I worked with senior Vera leadership to develop and implement strategies designed to improve how law enforcement interacts and serves vulnerable populations through concepts and methodologies derived from the 21st Century Policing Task Force. Researched and developed funding strategies, as well as provided guidance to Vera staff on projects and proposal development across the portfolios. Guided project management methodologies and strategies. Supervise and/or write papers and collaborated on grant proposals.

February 2016- January 2018

Senior Adviser

**The Police Foundation
Washington, D.C.**

I served as the senior adviser to the President and senior executive team on all local, state, and federal law enforcement initiatives and related projects. I advised Police Foundation executives and staff on funding strategies, as well as provided direction and oversight on projects and proposal development. Guided project management methodologies and strategies. Represent the Police Foundation at meetings and conferences.

January 2015- February 2016

Director

**International Association of Chiefs of Police
(IACP) Alexandria, VA**

Served as the director of the Research and Programs Directorate of the International Association of Chiefs of Police and oversee a large portfolio of operational programs and research projects aimed at advancing professional police services, promoting enhanced administrative, technical, and operational police practices. Served on numerous advisory groups within the U.S. D.O.J. whose missions vary from policy development and law enforcement forecasting to grant funding. I developed and implemented two first of their kind organizations; the first is the IACP Center for Police Research and Policy, which in its first three-year phase, is designed to conduct three Randomized Controlled Trials as well as translate existing empirical research into a usable format for the profession. The second is the Institute for Community and Police Relations, which will serve as the front of mind organization for police departments who are assessing their current relationships with their stakeholders and looking for evidence-based approaches for addressing gaps in their relationships with the communities they serve. Both entities are aligned with the President's 21st Century Policing Task Force recommendations. Our work fosters cooperation and the exchange of information and experience among police leaders and police organizations of recognized professional and technical standing throughout the world.

November 2012- January 2015

Chief of Police

Greenville Police Department

Greenville, North Carolina

I was appointed Chief of Police on November 26, 2012. The City of Greenville has a static population of 95,000 residents and is geographically comprised of 35 square miles. The Greenville Police Department is nationally accredited through the Commission on Accreditation for Law Enforcement Agencies and has an authorized strength of 250 sworn and non-sworn employees. The Department had an annual budget of \$22 Million. The Greenville Police Department has been reorganized to facilitate the implementation of a community oriented policing philosophy with a strong emphasis on geographic accountability and effective problem-oriented policing tactics. During my administration significant reform occurred in the Greenville Police Department. Policies, practices, and training strategies were realigned to meet the needs of our internal and external stakeholders. The training we implemented across the organization focused on procedural justice, realignment of performance measures and community engagement, specifically in the area of building trust. The changes we implemented, and the derived positive results, were noticed on the national level as best practices. Post-Ferguson I was selected to be on the U.S. D.O.J. Collaborative Reform Initiative team that assessed the St. Louis County Police Department and its actions immediately following the Ferguson Police Department shooting of Michael Brown.

August 1987- November 2012

Deputy Chief of Police- Patrol Operations Bureau

Alexandria Police Department

Alexandria, VA

Commanding officer of police operations—Dedicated staff of 200 sworn and non-sworn employees providing service to city of 148,000. Served as Acting Chief of Police when called upon in the Chief's absence. Managed \$22 Million Patrol Operations Bureau budget. Assisted the Chief of Police in the development of the department's \$52 Million annual budget/ Worked with staff to develop and implement the Patrol Operations Bureau Strategic Plan and Mission and Vision statements. Led Patrol Operations Bureau COMPSTAT crime control strategies and problem-solving activities. 2011 Part One Crime rates are at historic 1965 levels. Served on the City Manager's Ethics Committee to address Citywide needs for training and accountability. Collaborated with employee groups to mutually resolve organizational issues. Taught the "Leadership Principles" course at the Alexandria Leadership and Management Institute. Managed research related partnerships for the department. Police Captain- Commander of Patrol Sector Three Commanding officer of the largest police district in the City. Built a highly functioning, effective and diverse team of officers responsible for affecting a tremendous turnaround in crime and public order issues in our sector. Facilitated the planning of strategic and tactical responses that have resulted in major reductions in crime, 43-year lows, as well as a demonstrable rise in the quality of life in our sector. Commanding officer of the Police Department's Defensive Tactics Training Unit. \$5.2 Million budget for sector expenditures.

Police Captain - Aide to the Mayor and City Council—Managed the Department's correspondence with the Mayor and members of City Council. Served as the Department's Freedom of Information Act (FOIA) officer. Provided counsel to the City's political leadership regarding police and related public policy matters. Collaborated with City Department heads to mitigate constituents' issues and concerns involving multiple City agencies. Commanded the Police Department's Field Training Unit responsible for preparing Police Academy graduates for their patrol duties and ensuring compliance with training standards.

Police Captain - Special Assistant to Chief of Police—Provided counsel and research services to the Chief of Police regarding public policy matters, strategic planning and internal investigations case review. Responsible for planning, developing and implementing programs as directed by the Chief of Police. Provided expertise in the area of COMPSTAT program development and assisted in developing the infrastructure for what later became the Strategic Response System (SRS).

Police Captain - National Institute of Justice—Served as a practitioner subject matter expert in the field of interoperable communications. Provided analysis and solutions regarding radio and data interoperability problems to police departments throughout the United States and Canada.

EDUCATION

2009 Master of Public Administration
American University School of Public Affairs; Washington, DC

GPA 3.86; Golden Key National Honor Society; Pi Alpha Alpha National Honor Society

2008 Master Certificate – Public Administration
American University; Washington, DC
GPA 3.9

PROFESSIONAL/LEADERSHIP TRAINING

2007 Boston University; Boston, MA
Police Executive Research Forum/Senior Management Institute for Police

2006 University of Richmond, Robins Business School; Richmond, VA
Professional Executive Leadership School

2003 to 2005
Leadership Institute City of Alexandria (LICA); Alexandria, VA
Leadership and Responsible Public Administration Studies

PROFESSIONAL ASSOCIATIONS AND MEMBERSHIPS

Commission on Accreditation for Law Enforcement Agencies (CALEA). Former commissioner on the governing board of CALEA. Currently continue to advise the Board on current issues in the policing field.

International Association of Chiefs of Police (IACP)

Police Executive Research Forum (PERF)

The National Academies of Sciences, Engineering and Medicine-Served on the Committee on Proactive Policing to inform on national research priorities related to law and justice.

EXHIBIT B

Documents Reviewed

Defense Documents

- Bates OAG 000001- OAG000024
- Bates OAG 000031- OAG000033
- Bates OAG 000034- OAG000036
- Bates OAG 000037- OAG000041
- Bates OAG 000042- OAG000049
- Bates OAG 000050- OAG000058
- Bates OAG 000059- OAG000062
- Bates OAG 000063- ENF-00
- Bates OAG 000064- 000067-ENF-03
- Bates OAG 000068-000070- ENF-07
- Bates OAG 000071-000073-FOR-52
- Bates OAG 000074-000075-OPS-00
- Bates OAG 000076-000080- OPS-03
- Bates OAG 000081-000086- OPS-20
- Bates OAG 000087-000094-OPS-39
- Bates OAG 000095-000172
- Bates OAG 000173
- Bates OAG 000174-000312
- Bates OAG 000313-000319
- Bates OAG 000320-000333
- Bates OAG 000334-000349
- Bates OAG 000350-000359
- Bates OAG 000360-000391
- Bates OAG 000392-000399
- Bates OAG 000400-000413
- Bates OAG 000414-000426
- Bates OAG000427-000434
- Bates OAG000435-000465
- Bates OAG000466-000467
- Bates OAG000468-000475
- Bates OAG000476
- Bates OAG000477-000509
- Bates OAG000510-000530
- Bates OAG000531-000856
- Bates OAG000857-001227
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- Bates OAG001229-001248
- Bates OAG001249-001286
- Bates OAG001287-001306
- Bates OAG001307-001338
- Bates OAG001339-001351
- Bates OAG001352-001365
- Bates OAG001366-001373
- Bates OAG001374
- Bates OAG001375-001503
- Bates OAG001504-001602
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- Bates OAG001607
- Bates OAG001608-001733
- Bates OAG001734-001859
- Bates OAG001860-001870
- Bates OAG001871-002386
- Bates OAG002387-002996
- Bates OAG002997-003877
- Bates OAG003878-005279
- Bates OAG005280-006597
- Bates OAG006598-007623
- Bates OAG007624-008097
- Bates OAG008184-008259
- Bates OAG028379
- Bates OAG028380- OAG028387

Depositions and Declarations

- July 12, 2021, R. Wolting Deposition
- July 8, 2021, John Douglas Rule Deposition
- Feb. 17, 2021, Trooper Brandon McMillan Deposition and exhibits
- July 8, 2021, Chandler Rule Deposition
- Feb. 25, 2021, Doug Shulte Deposition and exhibits
- July 28, 2021, Deposition of Randy Moon
- April 22, 2021, Declaration of Brandon McMillan (Dckt. 144-2)

- April 19, 2021, Declaration of D. Schulte (Dckt. 144-3)
- July 20, 2021, Greg Jirak Deposition
- April 19, 2021, Declaration of D. Schulte (Dckt. 140-2)
- Aug. 9, 2021, Sarah Washburn Deposition
- Oct. 2, 2020, Deposition of Samuel Shaw
- Oct. 2, 2020, Deposition of Blaine Shaw
- Oct. 6, 2021, Deposition of Herman Jones
- Dec. 10, 2021, Deposition of Justin Rohr
- Jan 27 and Feb. 4, 2022, 30(b)(6) Deposition and Exhibits
- Kansas Highway Patrol's website: www.kansashighwaypatrol.org
- Dec. 6, 2019, KORA response letter from Herman Jones and Sarah Washburn
- January 10, 2020, KORA response letter from Herman Jones and Sarah Washburn
- Erich and Maloney Complaint, Case No. 20-CV-01067
- March 9, 2018 Citation of Mark Erich
- March 9, 2018 J.C. Rohr Police Service Dog Report and Narrative
- March 9, 2018 CAD Incident Report
- Erich Maloney Initial Disclosures
- Transcript of Erich Maloney stop
- P000001-000002
- Dashcam videos recordings from Shaw, Bosire, and Erich stops
- *Vasquez v. Lewis*, 834 F.3d 1132 (10th Cir. 2016)
- Shaw Complaint, First Amended Complaint-Class Action 6:19-CV-01343

Other Material:

- *Guidance on Policies and Practices for Patrol Canines*, Police Executive Research Forum (May 2020).
<https://www.policeforum.org/assets/Canines.pdf>