

2015

**State of Utah, Plaintiff and Appellee, v. Michael John Edgar,  
Defendant and Appellant.**

Utah Court of Appeals

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IN THE  
COURT OF APPEALS OF THE STATE OF UTAH

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State of Utah,  
*Plaintiff and Appellee,*

v.

Michael John Edgar,  
*Defendant and Appellant.*

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BRIEF OF THE APPELLANT

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On appeal from the Fourth Judicial District Court, Utah County,  
Honorable Lynn W. Davis, District Court No. 141400828

---

Appellant Michael Edgar is currently incarcerated.

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ORAL ARGUMENT REQUESTED

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## **Jurisdictional Statement**

This court has jurisdiction over this appeal pursuant to Utah Code § 78A-4-103(2)(e).

The district court issued its Sentence, Judgment, Commitment in *State v. Edgar*, District Court Case No. 141400828, on June 24, 2015. (Add. A, R. 250–52.) Appellant Michael Edgar filed a timely notice of appeal on July 23, 2015. (R. 253–54.)

## **Statement of the Issues**

**Issue:** Was Mr. Edgar’s counsel ineffective when he did not file a motion to suppress evidence found pursuant to an unconstitutionally prolonged traffic stop?

**Standard of Review:** “A claim of ineffective assistance of counsel raised for the first time on appeal presents a question of law that the court reviews for correctness.” *State v. Lucero*, 2014 UT 15, ¶ 11, 328 P.3d 841 (quotation omitted).

**Preservation:** This issue is not preserved. But an “exception to the preservation requirement is where trial counsel’s failure to preserve the issue in the trial court is the result of ineffective assistance of counsel.” *State v. Kozlov*, 2012 UT App 114, ¶ 35, 276 P.3d 1207.



## **Determinative Provisions**

“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” U.S. Const. amend. IV.

## **Statement of the Case**

### **1. Nature of the Case and Course of Proceedings**

The State charged Appellant Michael Edgar with two counts of possession of a controlled substance in a drug-free zone, one count of possession of paraphernalia in a drug-free zone, one count of possession of a weapon by a restricted person, and one count of unlawful possession of another’s identification. (R. 160–62.)

After a trial, a jury found Mr. Edgar guilty of three counts – possession of methamphetamine in a drug-free zone, possession of drug paraphernalia in a drug-free zone, and possession of a weapon by a restricted person – and not guilty of the remaining two counts. (R. 216–20.)

Mr. Edgar now appeals.



## 2. Statement of Facts

Because Mr. Edgar is challenging the constitutionality of a search, the facts of the search are set forth in great detail.

On March 15, 2014, at 7:34pm, a police officer observed a car changing lanes and “coming over without using his signal” although the car “[e]ventually used his signal.” (Add. B, R. 276: 160; Trial Ex. 4 at 19:34.)<sup>1</sup> The officer stopped the car at 7:35pm and approached the vehicle. (Trial Ex. 4 at 19:35.) The driver of the car was Mr. Edgar, and a passenger was in the front seat. (Add. B, R. 276:162.)

The officer spoke with the occupants of the car for approximately three minutes. (Trial Ex. 4 at 19:35–38.) During that time, the officer asked Mr. Edgar for his license and insurance, both of which were valid. (Add. B, R. 276:161.)<sup>2</sup> In his interactions with Mr. Edgar, the officer noticed that Mr. Edgar’s pupils were constricted, his voice was raspy, his hands were shaky, his facial features were relaxed, and he had a hard time getting his license out of his wallet. (Add. B, R.

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<sup>1</sup> At trial, the State entered into evidence the video from the police officer’s dash camera that was copied onto a disc. That video is referred to as “Trial Ex. 4,” and “19:34” and similar cites refer to the time stamp on the video. To view the video on the disc, first open the file titled “Player.” Once the Player has opened, click on “Open File,” and then on “19h33m20s[0].dav.” The time stamp on the video is in the upper right-hand corner.

<sup>2</sup> Mr. Edgar did not have a copy of his registration, but the officer checked his registration. (R. 276:161.)

276:126.) The officer used his flashlight to look in the backseat of the car before he returned to his vehicle, but at trial the officer did not remember looking in the car, and he did not testify that he saw anything of import. (Trial Ex. 4 at 19:38; Add. B, R. 276:163.)

The officer returned to his patrol vehicle at 7:38 and called for backup for a DUI investigation and a drug-sniffing dog. (Trial Ex. 4 at 19:38; Add. C, R. 276:81; Add. B, R. 276: 128.) At 7:41, a voice over the radio asked if a K-9 unit was needed. (Trial Ex. 4 at 19:41.) The dispatcher responded affirmatively and gave the location where Mr. Edgar's car was stopped. (*Id.* at 19:41–42.) At 7:42, the voice stated that he could be there in "fifteen, maybe ten." (*Id.* at 19:42.)

The officer remained in his patrol vehicle until a backup officer arrived at 7:44. (*Id.* at 19:44.) At that point, both officers approached Mr. Edgar's car; the backup officer questioned Mr. Edgar, and the original officer questioned the passenger. (*Id.*)

The backup officer questioned Mr. Edgar in his car about where he was going to and where he was coming from. (Add. C, R. 276:82.) The backup officer also noticed that Mr. Edgar had a raspy voice and was nervous, and his pupils were constricted. (Add. C, R. 276:82–83.) The backup officer questioned Mr. Edgar for about two minutes, until 7:46. (Trial Ex. 4 at 19:45–19:46.)

Both officers then left Mr. Edgar's car. (Trial Ex. 4 at 19:47.) The officers interacted with some pedestrians on the sidewalk for approximately one minute. (*Id.* at 19:47–48.) Then the officer who initiated the traffic stop moved his vehicle and parked behind another police car. (*Id.* at 19:48.) The dash camera's view of the Mr. Edgar's car is substantially blocked by another police cruiser for approximately two minutes, until 7:50, when that police cruiser moved. (*Id.* at 19:48–50.)

After the police cruiser moves, the dash camera shows another police vehicle parked behind Mr. Edgar's car and two police officers walking around Mr. Edgar's car and one officer walking back and forth on the sidewalk. (*Id.* at 19:50–52.) Another police car arrives at 7:52. (*Id.* at 19:52.)

The officers removed the occupants from the car around 7:55pm. (*Id.* at 19:55.)<sup>3</sup> The drug-sniffing dog approached Mr. Edgar's car at 7:58 and left the car

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<sup>3</sup> There is a time discrepancy in the original officer's testimony. The officer testified that the backup officer removed Mr. Edgar from the car to perform field sobriety tests when the original officer moved his car. (Add. B, R. 267:128.) According to the dash camera video, the original officer moved his car at 7:48. (Trial Ex. 4 at 19:48.) However, the original officer also testified that the backup officer was performing field sobriety tests on Mr. Edgar while the dog sniff was occurring at 7:58, nearly ten minutes later. (Add. B, R. 267:128; Trial Ex. 4 at 19:58–20:00.) The dash camera does not show the occupants of the vehicle outside of the car until 7:55. (Trial Ex. 4 at 19:55.) The original officer qualifies his testimony by saying that he didn't "know the time frame" when the K-9 officer arrived. (Add. B, R. 267:128.) Given the lack of clarity of the original officer's testimony, Mr. Edgar has chosen to rely on what can be seen in the dash camera video.

at approximately 8:00. (*Id.* at 19:58–20:00.) The officers performed field sobriety tests on Mr. Edgar at the same time the dog was sniffing the vehicle. (Add. B, R. 267:128.)

The dog alerted to the presence of drugs in the car. (Trial Ex. 4 at 19:58–20:00.) The police found heroin, drug paraphernalia, and an axe in the car. (R. 276:129, 131–34, 136–37, 139–40, 142–43, 145.) The police arrested Mr. Edgar, searched him incident to arrest, and found methamphetamine. (R. 276:85, 149, 152–53.)

### **Summary of the Argument**

Mr. Edgar's attorney was ineffective when he did not file a motion to suppress evidence found pursuant to an unconstitutionally prolonged traffic stop. Although the traffic stop was lawful at its initiation, and the police had reasonable suspicion that Mr. Edgar was driving impaired, the police had no reasonable suspicion that Mr. Edgar had drugs in his car. The police delayed 12 minutes from the time they formed reasonable suspicion that Mr. Edgar was driving impaired until the time they performed field sobriety tests. During that time, the police were not diligently pursuing their investigation; rather, the dash camera video appears to show the police delaying the field sobriety tests until the drug-sniffing dog arrived.

Because the dog sniff of Mr. Edgar's car was contrary to the Fourth Amendment, the evidence seized as a result of that search should have been suppressed. Mr. Edgar was prejudiced because had his attorney moved to suppress the evidence, the motion would have been granted. Had the motion been granted, all the drug, drug paraphernalia, and weapon evidence would have been suppressed and Mr. Edgar would not have been convicted.

### **Argument**

#### **1. Mr. Edgar's counsel was ineffective.**

Mr. Edgar's trial counsel was ineffective when he did not file a motion to suppress the evidence found in the car. For claims of ineffective assistance of counsel, Mr. Edgar must satisfy the *Strickland*<sup>4</sup> standard, which requires him to prove "(1) that counsel's performance was so deficient as to fall below an objective standard of reasonableness and (2) that but for counsel's deficient performance there is a reasonable probability that the outcome of the trial would have been different." *State v. Larrabee*, 2013 UT 70, ¶ 18, 321 P.3d 1136 (quotation omitted). "Where defense counsel's failure to litigate a Fourth Amendment claim competently is the principal allegation of ineffectiveness, the defendant must also prove that his Fourth Amendment claim is meritorious and that there is a reasonable probability that the verdict would have been different absent the

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<sup>4</sup> See *Strickland v. Washington*, 466 U.S. 668, 687 (1984).

excludable evidence in order to demonstrate actual prejudice.” *State v. Stewart*, 2014 UT App 289, ¶ 11, 340 P.3d 802 (quotation omitted).

**1.1 Mr. Edgar’s counsel was deficient for not moving to suppress the evidence found in the car.**

Under the Fourth Amendment to the United States Constitution, police officers may temporarily detain a vehicle without a warrant if the officers have reasonable suspicion of criminal activity. *See* U.S. CONST. amend. IV; *State v. Baker*, 2010 UT 18, ¶ 11, 229 P.3d 650. To determine whether a traffic stop is reasonable, courts decide (1) whether the “police officer’s action was justified at its inception” and (2) whether the “detention following the stop was reasonably related in scope to the circumstances that justified the interference in the first place.” *Id.* ¶ 12 (quotations omitted).

“The length of a detention associated with a traffic stop can be properly extended if, during the scope of the traffic stop, the officer forms new reasonable articulable suspicion of criminal activity.” *State v. Simons*, 2013 UT 3, ¶ 17, 296 P.3d 721 (quotation omitted). “[E]ven if reasonable suspicion of more serious criminal activity does arise, the scope of the stop is still limited.” *State v. Lafond*, 2003 UT App 101, ¶ 14, 68 P.3d 1043 (quotation omitted). But in such a case where an officer forms new reasonable suspicion, the officer must “expediently investigate his new suspicion.” *Simons*, 2013 UT 3, ¶ 17 (quotation omitted).

“[O]fficers must diligently pursue a means of investigation that is likely to confirm or dispel their suspicions quickly.” *Id.* (quotation omitted). “There is no bright-line test that indicates an appropriate length for a traffic-stop detention; rather, [courts] consider the totality of the circumstances surrounding the stop to determine whether the length and scope of the detention were reasonable.”

*Baker*, 2010 UT 18, ¶ 17.

Because dog sniffs are not considered searches under the Fourth Amendment, “a drug-trained dog may walk the perimeter of a lawfully detained vehicle even if police have no reasonable suspicion that the vehicle occupants are engaged in drug-related activity so long as the dog sniff search does not extend the duration of the stop.” *Id.* ¶ 29. But a seizure “can become unlawful if it is prolonged beyond the time reasonably required to complete that mission.” *Id.* (quotation omitted). “[E]ven a small intrusion beyond the legitimate scope of an initially lawful search is unlawful under the Fourth Amendment.” *Id.* ¶ 28 (quotation omitted).

In this case, Mr. Edgar does not dispute that the traffic stop was justified at its inception — a police officer testified that he observed Mr. Edgar committing a traffic violation by changing lanes before turning on his signal. (Add. B, R. 276:



160.)<sup>5</sup> Nor does Mr. Edgar dispute that the police officers formed new reasonable suspicion that Mr. Edgar was driving impaired when they observed Mr. Edgar's constricted pupils, raspy voice, and shaky hands. (Add. B, R. 276:126.) The issue here is the length of time it took the officers to dispel their suspicion; more specifically, the question is whether the officers delayed their administration of the field sobriety tests until the drug-sniffing dog arrived.

The traffic stop began at 7:35pm. (Trial Ex. 4 at 19:35.) Three minutes later, at 7:38, the initiating officer returned to his patrol vehicle having formed new reasonable suspicion that Mr. Edgar was driving impaired. (*Id.* at 19:38; Add. B, R. 276:126.) The officer immediately called for backup and for a drug-sniffing dog. (Add. B, R. 276:128.) At 7:42, the officer was informed that it would take 10 or 15 minutes for the drug-sniffing dog to arrive. (Trial Ex. 4 at 19:42.) A backup officer arrived at 7:44, and by 7:46, that officer had questioned Mr. Edgar and formed reasonable suspicion that Mr. Edgar was driving impaired. (Add. C, R. 276:82-83.)

By 7:46, both officers had questioned Mr. Edgar, and both had formed reasonable suspicion that he was driving impaired. (Add. C, R. 276:82-83; Add B, 276:126; Trial Ex. 4 at 19:35-38, 45-46.) But it took the officers about 12 minutes to

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<sup>5</sup> "A police officer is constitutionally justified in stopping a vehicle if the stop is incident to a traffic infraction committed in the officer's presence." *State v. Gurule*, 2013 UT 58, ¶ 23, 321 P.3d 1039 (quotation omitted).

perform the field sobriety tests, which were performed while the dog was sniffing the car. (Trial Ex. 4 at 19:55, 58–20:00; Add. B, R. 267:128.) In total, the officers waited approximately 12 minutes from the time they formed reasonable suspicion that Mr. Edgar was driving impaired until they performed the necessary field sobriety tests to investigate their suspicion.<sup>6</sup>

During that approximately 12-minute interlude, the officers interacted with pedestrians for about one minute (Trial Ex. 4 at 19:47–48), moved and

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<sup>6</sup> In this analysis, Mr. Edgar has relied on the dash camera video and reconciled it with the original officer's testimony, even though that testimony is not entirely clear. But even if the officer's testimony is viewed in a very generous light, the evidence shows that Mr. Edgar's detention was impermissibly prolonged until the drug-sniffing dog arrived. If the original officer was correct and the backup officer started performing field sobriety tests on Mr. Edgar at 7:48, the backup officer was still performing those tests at 7:58 when the drug sniffing dog arrived and continued to perform those tests for another two minutes until the dog finished. (Trial Ex. 4 at 19:48, 19:58–20:00; Add. B, R. 267:128.) That means it took 12 minutes for the backup officer to perform the field sobriety tests. Although there is no evidence on the record on what tests the officer performed, the standard field sobriety tests consist of three short tests – a Horizontal Gaze Nystagmus where the officer sees if a person can follow his finger as he moves it horizontally across the person's field of vision; the Walk-and-Turn test where the officer directs the person to walk heel-to-toe for a short number of steps and then turn around and walk another short amount of steps; and the One-Leg Stand where the person stands on one leg for 30 seconds. NAT'L HIGHWAY TRAFFIC SAFETY ADMINISTRATION, ADVANCED ROADSIDE IMPAIRED DRIVING ENFORCEMENT (2007), found at <http://oag.dc.gov/page/sfst-training-manuals>. One court noted that field sobriety tests take less than one minute. *See Best v. Berard*, 837 F. Supp. 2d 933, 941 (N.D. Ill. 2011). Here, there is no evidence that Mr. Edgar was not compliant, no evidence about how Mr. Edgar performed on each test, and no evidence explaining why a relatively short procedure last 12 minutes.

parked a police cruiser (*Id.* at 19:48), and waited outside Mr. Edgar's car and walked back and forth on the sidewalk. (*Id.* at 19:50–52.) The officers performed field sobriety tests on Mr. Edgar while the dog was sniffing the car. (Add. B, R. 276:128.)

The Utah Supreme Court has made very clear that police officers cannot conduct dog sniffs on vehicles after the lawful purposes of the stop have concluded. *Baker*, 2010 UT 18, ¶ 33. But “a de minimis extension of a traffic stop is not unconstitutional.” *Simons*, 2013 UT 3, ¶ 38. Yet in this instance, the police officers improperly extended the lawful purposes of the stop so that the dog could conduct its sniff. Contrary to the Utah Supreme Court's direction, the officers did not “expediently investigate [their] new suspicion” or “diligently pursue a means of investigation that [was] likely to confirm or dispel their suspicions quickly.” *Id.* ¶ 17 (quotations omitted). Although the law does not require officers to “move a top speed,” the “officer's overall course of action during a traffic stop, viewed objectively and in its totality, must be reasonably directed toward the proper ends of the stop.” *Id.* ¶ 33 (quotations omitted).

Here, the officers' course of conduct during the traffic stop was not reasonably directed towards ending the stop or quickly investigating their suspicion of impaired driving. Instead, their actions indicate delay until the arrival of the drug-sniffing dog. At 7:42, the officers knew that it would take 10 to

15 minutes for the drug-sniffing dog to arrive. Both officers formed their reasonable suspicion at 7:46, but did not perform the sobriety tests until 7:58, when the dog was sniffing the car.

The officers waited 12 minutes to pursue an investigation that would confirm or dispel their suspicions quickly – the field sobriety tests. And the dash cam video does not establish that during those 12 minutes the officers were diligently pursuing their investigation; rather, the video shows the officers moving a car and walking around on the sidewalk. (Trial Ex. 4 at 19:48, 50–52.) Nothing in the video or the officers’ testimony at trial justifies the 12-minute delay in the administration of the sobriety tests. Those crucial minutes constitute a “nontrivial period of [Mr. Edgar’s] detention from the initial stop to the dog alert when the officers were not conducting proper follow-up.” *United States v. Vazquez*, 555 F.3d 923, 929 (10th Cir. 2009).

Courts have held that officers extending or delaying their investigation to wait for the arrival of a drug-sniffing dog – without additional reasonable suspicion – violates the Fourth Amendment. For example, the Sixth Circuit held that an officer asking six minutes of extraneous questions and waiting for an additional three and a half minutes for a canine sniff unreasonably prolonged the stop, especially when there was insufficient evidence that the police were diligently pursuing their investigation. *United States v. Stepp*, 680 F.3d 651, 663-64

(6th Cir. 2012); *see also United States v. Hight*, No. 15-CR-00060-LTB, 2015 WL 4239003, at \*5 (D. Colo. June 29, 2015) (reasoning that an officer sitting in his car for 11 minutes, where most of his time was spent filling out forms and waiting for an officer to arrive to investigate an unrelated crime, unconstitutionally extended the duration of the stop); *United States v. \$167,070.00 in U.S. Currency*, No. 3:13-CV-00324-LRH, 2015 WL 3658069, at \*9 (D. Nev. June 12, 2015) (reasoning that officers conducting redundant records checks to prolong stop to allow for a canine sniff without additional reasonable suspicion made the prolongation of the stop unreasonable).

This court has considered a 10- to 15-minute detention of passengers while waiting for dog sniff to be “a substantial period.” *State v. Hurt*, 2010 UT App 33, ¶ 11-12, 227 P.3d 271. And the Utah Supreme Court held that officers’ call to request a canine unit and their call to Adult Probation and Parole was not a de minimis extension of a lawful traffic stop because the officers did not have reasonable suspicion that the detained driver possessed or distributed illegal drugs. *State v. Gurule*, 2013 UT 58, ¶¶ 38, 40, 321 P.3d 1039.

It is true that officers may prolong a stop for the arrival of a drug-detection dog if the officers have reasonable suspicion that the occupants of the car are transporting drugs. *See State v. Juma*, 2012 UT App 27, ¶8, 270 P.3d 564 (“[G]iven that during the course of the traffic stop the officer developed the additional

reasonable suspicion that Juma and the driver might be transporting drugs, he therefore had a lawful basis to temporarily continue to detain them to investigate . . . . his suspicions by deploying his drug-detection canine.”); *United States v. Vaughan*, 700 F.3d 705, 712 (4th Cir. 2012) (noting that approximately 7-minute delay of stop to do dog sniff was not unreasonable because officers had reasonable suspicion of drug activity based on occupant’s conflicting explanations for travel).

But here, the officers did not have reasonable suspicion that Mr. Edgar possessed or distributed drugs. “[R]easonable suspicion must be supported by specific and articulable facts and rational inferences, and cannot be merely an inchoate and unparticularized suspicion or hunch.” *Gurule*, 2013 UT 58, ¶ 32 (quotation omitted). Admittedly, the officers here did have reasonable suspicion that Mr. Edgar was *driving impaired*. But the officers did not have reasonable suspicion that the car contained drugs or that Mr. Edgar was involved in the transport of drugs.

Here, the officers noticed that Mr. Edgar’s pupils were constricted, his voice was raspy, his hands were shaky, his facial features were relaxed, he had a hard time getting his license out of his wallet, he was nervous, and he was distracted. (Add. C, R. 276:81–82; Add. B, R. 276:126.) These behaviors, according

to the original officer, were a “possible indication of drugs” and he called for backup for a DUI investigation. (Add. B, R. 276:126.)

But beyond behaviors that indicated that Mr. Edgar was driving impaired, the officers did not testify about any specific facts or rational inferences that led them to believe that Mr. Edgar had drugs in the car. The dash camera video shows the original officer shining his flashlight to look in the backseat of the car after he initiated the traffic stop, but the officer testified at trial that he did not remember doing that; consequently, he did not testify that he saw anything of import in the car. (Trial Ex. 4 at 19:38; Add. B, R. 276:163.) Similarly, the backup officer shone his flashlight in Mr. Edgar’s car during his interaction with Mr. Edgar but did not testify that he saw anything in the car that was drug-related. (Add. C, R. 276:82–83.) The officers also did not testify that Mr. Edgar had any warrants or that Mr. Edgar had a history of drug distribution.

In short, nothing in the record indicates that the officers had articulable, reasonable suspicion to believe that Mr. Edgar had drugs in the car. Short of that, the officers could not prolong the traffic stop to wait for the arrival of a drug-sniffing dog. What the officers did suspect was impaired driving, but the officers waited approximately 12 minutes to investigate their suspicions by performing field sobriety tests. During those 12 minutes, the officers were not expeditiously or diligently pursuing their investigation; rather, the dash camera video and the



testimony at trial indicate that the officers were waiting for the drug-sniffing dog to arrive. The dog sniff of Mr. Edgar's car violated the Fourth Amendment.

Evidence "obtained in unreasonable searches and seizures in violation of the Fourth Amendment is excluded from criminal proceedings." *State v. Harker*, 2010 UT 56, ¶ 17, 240 P.3d 780. "The exclusionary rule applies not only to evidence obtained directly as a result of the illegal seizure, but also to evidence obtained by exploitation of the illegality, unless the evidence was obtained by means sufficiently distinguishable to be purged of the primary taint." *State v. Ramirez*, 817 P.2d 774, 786 (Utah 1991) (quotations omitted).

Because the dog sniff violated the Fourth Amendment, the evidence found in the car – specifically, the heroin, the drug paraphernalia, and the axe – should have been suppressed. Moreover, the officers arrested Mr. Edgar because of the drugs found in the car. (R. 276:166.) Incident to that arrest, the officers searched Mr. Edgar and found methamphetamine. (R. 276:85, 149, 152–53.) Because Mr. Edgar was arrested as a result of illegally obtained evidence, the evidence found on him during the search incident to arrest – the methamphetamine – should also be excluded.

Given the lengthy analysis above, Mr. Edgar's trial counsel performed deficiently by not bringing a motion to suppress the evidence found in the car. The impermissibility of prolonging a traffic detention without reasonable

suspicion was well-established in several Utah cases before Mr. Edgar's trial began. *See, e.g., Baker*, 2010 UT 18; *Simons*, 2013 UT 3; *Juma*, 2012 UT App 27; *Hurt*, 2010 UT App 33. Trial counsel should have been aware of these precedents and their application to this case. Because trial counsel failed to file a motion to suppress – which would have suppressed all the drug, drug paraphernalia, and weapon evidence in the case – trial counsel performed deficiently.

## **1.2 Mr. Edgar was prejudiced.**

“Once a defendant demonstrates that his trial counsel's performance was deficient, [a court] must then determine whether the deficient performance resulted in prejudice.” *State v. Lenkart*, 2011 UT 27, ¶ 38, 262 P.3d 1. “This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, and that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” *Id.* (quotations omitted). “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Id.*

Mr. Edgar was undoubtedly prejudiced by his counsel's failure to file a motion to suppress. As demonstrated above, the motion to suppress would have been granted, and consequently all the drug, drug paraphernalia, and weapon evidence would have been excluded. Without evidence of the

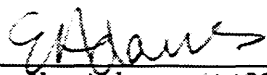
methamphetamine, the drug paraphernalia, and the axe, Mr. Edgar could not have been convicted of possession of the methamphetamine, possession of the drug paraphernalia, or possession of a weapon by a restricted person. The motion to suppress altered the "entire evidentiary picture," *id.*, and Mr. Edgar would not have been convicted.

### Conclusion

Mr. Edgar's attorney was deficient for not filing a motion to suppress evidence that was found in violation of the Fourth Amendment. Specifically, that evidence was found after a dog sniff of Mr. Edgar's vehicle, but Mr. Edgar's detention to wait for the dog sniff was impermissibly prolonged because the police officers lacked reasonable suspicion that Mr. Edgar was transporting drugs. Consequently, all the drug, drug paraphernalia, and weapon evidence should have been suppressed. Mr. Edgar was prejudiced by his counsel's failures because without the evidence, he could not have been convicted.

Mr. Edgar requests that his court overturn his convictions because his trial counsel was ineffective.

DATED this 14th day of December, 2015.

  
\_\_\_\_\_  
Emily Adams (14937)  
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*Attorney for Defendant/Appellant  
Michael Edgar*


**Certificate of Compliance With Rule 24(f)(1)**

I hereby certify that:

1. This brief complies with the type-volume limitation of Utah R. App. P. 24(f)(1) because this brief contains 4590 words, excluding the parts of the brief exempted by Utah R. App. P. 24(f)(1)(B).

2. This brief complies with the typeface requirements of Utah R. App. P. 27(b) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2015 in 13 point Book Antiqua.

DATED this 14th day of December, 2015.

\_\_\_\_\_

### Certificate of Service

This is to certify that on the ~~10~~<sup>6</sup>th day of December, 2015, I caused two true and correct copies of the Brief of Appellant to be served on the following via first class mail, postage prepaid:

Utah State Attorney General's Office  
Appeals Division  
160 East 300 South  
6<sup>th</sup> Floor  
P.O. Box 140854  
Salt Lake City, UT 84114

Also, in accordance with Utah Supreme Court Standing Order No. 8, a courtesy brief on CD in searchable portable document format was also filed with the Court and served on Appellee.

                    E. Adams

## **Addendum A**

Sentence, Judgment, Commitment in *State v. Edgar*, District Court Case No.  
141400828, on June 24, 2015 (R. 250-52)



4TH DISTRICT COURT - PROVO  
UTAH COUNTY, STATE OF UTAH

FILED  
JUN 24 2015  
4TH DISTRICT  
STATE OF UTAH  
UTAH COUNTY

STATE OF UTAH, : MINUTES  
Plaintiff, : SENTENCE, JUDGMENT, COMMITMENT  
vs. :  
MICHAEL JOHN EDGAR, : Case No: 141400828 FS  
Defendant. : Judge: LYNN W DAVIS  
Custody: Utah County Jail : Date: June 24, 2015

PRESENT

Clerk: treenah  
Prosecutor: JOHNSON, CRAIG R  
Defendant  
Defendant's Attorney(s): STEWART, GREGORY V

DEFENDANT INFORMATION

Date of birth: September 16, 1980  
Audio  
Tape Number: 301-15 Tape Count: 11:36

CHARGES

1. POSSESSION OR USE OF A CONTROLLED SUBSTANCE - 2nd Degree Felony  
Plea: Guilty - Disposition: 04/17/2015 Guilty
  3. USE OR POSSESSION OF DRUG PARAPHERNALIA - Class A Misdemeanor  
Plea: Guilty - Disposition: 04/17/2015 Guilty
  4. UNLAW POSS/PURCH/TRANS DANGEROUS WEAPON - Class A Misdemeanor  
Plea: Guilty - Disposition: 04/17/2015 Guilty
  5. DRIVING UNDER THE INFLUENCE OF ALCOHOL/DRUGS - Class B Misdemeanor  
- Disposition: 04/16/2015 Dismissed w/ Prejudi
- SENTENCE PRISON

Based on the defendant's conviction of POSSESSION OR USE OF A CONTROLLED SUBSTANCE a 2nd Degree Felony, the defendant is sentenced to an indeterminate term of not less than one year nor more than fifteen years in the Utah State Prison.

COMMITMENT is to begin immediately.

To the UTAH County Sheriff: The defendant is remanded to your custody for transportation to the Utah State Prison where the defendant will be confined.

SENTENCE PRISON CONCURRENT/CONSECUTIVE NOTE

Court sentences defendant to 257 days on each of the Class A Misdemeanors with credit for time served on each to run concurrent. Sentence to run concurrent.

SENTENCE RECOMMENDATION NOTE

Court recommends Defendant not serve a lengthy sentence. Court recommends defendant be given credit for time served of 257 days, the court also recommends defendant participate in the Conquest Program.

SENTENCE JAIL

Based on the defendant's conviction of USE OR POSSESSION OF DRUG PARAPHERNALIA a Class A Misdemeanor, the defendant is sentenced to a term of 365 day(s) The total time suspended for this charge is 108 day(s).

Based on the defendant's conviction of UNLAW POSS/PURCH/TRANS DANGEROUS WEAPON a Class A Misdemeanor, the defendant is sentenced to a term of 365 day(s) The total time suspended for this charge is 108 day(s).

Credit is granted for 257 day(s) previously served.

SENTENCE FINE

Charge # 1            Fine: \$1000.00  
                      Suspended: \$1000.00  
                      Due: \$0.00

Charge # 3            Fine: \$2500.00  
                      Suspended: \$2500.00  
                      Due: \$0.00

Charge # 4            Fine: \$2500.00  
                      Suspended: \$2500.00  
                      Due: \$0.00

                      Total Fine: \$6000.00  
                      Total Suspended: \$6000.00  
                      Total Surcharge: \$0  
                      Total Principal Due: \$0  
                                  Plus Interest

CUSTODY

The defendant is present in the custody of the Utah County jail.

Date:

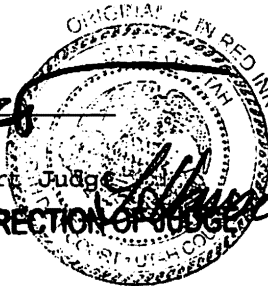
*June 24-2015*

*[Signature]*

LYNN W DAVIS

District Court Judge

STAMP USED AT DIRECTION OF JUDGE



## **Addendum B**

Excerpts from the testimony of the original officer (R. 126-28, 160-63)

1 THE COURT: It may.

2 Q (BY MR. JOHNSON) During this time what are you  
3 asking of the defendant?

4 A I'm asking the defendant for his driver's license,  
5 insurance, registration documents, advising him why I stopped  
6 him and then I'm just asking, I did ask him where he was  
7 going or where he was coming from.

8 Q Did the defendant indicate whether he was familiar  
9 with the area or not?

10 A Yeah, he told me that he wasn't familiar with the  
11 area.

12 Q Okay. While you're observing the defendant there,  
13 obviously the dash cam doesn't see inside the car from your  
14 angle. What sort of behavior are you seeing in the  
15 defendant?

16 A Well, I'm speaking with Mr. Edgar. I first notice  
17 that his pupils are constricted. That was the first clue of  
18 possible indication of drugs. Next I noticed raspy voice. I  
19 notice his hands were shaky. I notice his face features  
20 appeared to be loose, relaxed, kind of and then when he was  
21 obtaining his driver's license out of his wallet he was  
22 having a hard time obtaining his license out of his wallet.

23 Q What did he finally provide you?

24 A I asked for three documents and I was provided two  
25 documents, one Utah Driver's license for Michael Edgar and an

1 insurance card, no registration. And also while I'm sitting  
2 here I also asked, also see that the passenger has, I can see  
3 his eyes look constricted also so I asked him for his ID and  
4 he provided me a Utah, I think it was identification card.

5 Q Who did you identify the passenger as?

6 A Zach Cassingham, it might be Zachary.

7 Q Okay. And the audio kicks on pretty soon here?

8 A Yeah, I'll get in my car, take it out of the  
9 docking station, put it on my belt and turn it on.

10 Q Once the audio kicks on we'll just listen to that.

11 A Okay.

12 Q The audio came on about 19:38, does that sound  
13 about right?

14 A Yeah.

15 (Audio begins at 1:35:48, plays to 1:48:36 -

16 No transcription - police radio, over talking)

17 Q (BY MR. JOHNSON) Which officer pulls up there at  
18 19:52:40?

19 A I believe that is Sargent (Inaudible).

20 MR. JOHNSON: For the record I stopped it at  
21 19:53:00. Can you turn the lights back up please?

22 Q (BY MR. JOHNSON) So, Detective Sager, what goes on  
23 after that interview? What did you do as far as the stop,  
24 you've got Officer Peterson there. How does the investigation  
25 progress? Did you call out for any other officers?

1           A     Well, in the beginning after I called for Officer  
2     Peterson I called also for a canine unit and Officer Thurston  
3     responded to my request and was en route. And then when I  
4     moved my car Officer Peterson was getting Mr. Edgar out of  
5     the vehicle to do field sobriety tests. At that point, I  
6     don't know the time frame, but relatively shortly Officer  
7     Thurston came. I believe I had a discussion with him,  
8     telling him what I seen. He said he was going to run his  
9     canine. While Officer Peterson was performing field sobriety  
10    tests, Officer Thurston ran the canine around the vehicle  
11    after which - before that he asked me to remove the passenger  
12    for his safety or to have that passenger exit the vehicle.  
13    So I had that -

14           Q     So -

15           A     - passenger exit before the canine went around the  
16    vehicle.

17           Q     When Officer Thurston's canine went around the  
18    vehicle, who was in the car?

19           A     No one.

20           Q     Okay. So Mr. Edgar was also removed from the car?

21           A     Yeah, no passengers.

22           Q     And were you present or nearby when the canine hit  
23    on the car -

24           A     I was nearby. I'd be watching the people to make  
25    officer safety.



1 MR. JOHNSON: Okay. I just want to check with the  
2 clerk.

3 Have all the exhibits been admitted that we've  
4 tried?

5 Okay. That's all the questions I have for this  
6 witness.

7 THE COURT: Cross examination?

8 CROSS EXAMINATION

9 BY MR. STEWART:

10 Q So when you originally stopped Mr. Edgar again, it  
11 was because he had crossed the white line, crossed the  
12 dividing line without signaling?

13 A Drifting and coming over without using his signal.

14 Q Okay.

15 A Eventually used his signal.

16 Q Okay. And is it just the video that makes it look  
17 like everybody's got their blinker on all the time or is  
18 that...

19 A I don't know.

20 Q Okay. All right. Anyway, you activated your  
21 lights before you got to the stoplight and turned them off;  
22 is that right?

23 A Yes, sir.

24 Q And when the light turned green again Mr. Edgar was  
25 signaling he was going to turn, you activated your lights

1     again?

2           A     Yes, sir.

3           Q     Initiated the stop?

4           A     Yes, sir.

5           Q     Okay. And this wasn't in the audio portion of the

6 deal but you quickly approached the driver's side, you asked

7 for his license, his registration and proof of insurance?

8           A     I believe so, yeah. Yes.

9           Q     Okay. And he was able to provide his driver

10 license?

11          A     Yeah.

12          Q     And that was valid?

13          A     Yeah.

14          Q     And that he was able to provide insurance, proof of

15 insurance?

16          A     Yeah.

17          Q     And that was valid, you checked that?

18          A     Yeah, I believe, yeah.

19          Q     And he didn't provide any registration information?

20          A     No.

21          Q     But you checked that?

22          A     Yeah.

23          Q     And who was the vehicle registered to?

24          A     I don't remember.

25          Q     Do you have your vehicle impound report there?

1           A     Sure do.

2           Q     Can you look at that?

3           A     Yep.

4           Q     Whose the owner/registrant there?

5           A     The owner is - the first name is spelled, A-R-J-A  
6 and then I think it's spelled, A-A-L-T-O-N-E-N. I'm trying  
7 to read her writing, sorry.

8           Q     Okay. Did you fill that out?

9           A     I didn't.

10          Q     Okay. But Mr. Edgar is not the registered owner of  
11 the vehicle?

12          A     No.

13          Q     Okay. Did you followup with the registered owner  
14 of the vehicle?

15          A     I didn't.

16          Q     Okay. You also got - and again, I don't think this  
17 is on the audio portion but after you got that information  
18 from Mr. Edgar you went around the other side of the vehicle  
19 and you contacted the passenger?

20          A     I did.

21          Q     And you got an ID from him?

22          A     Prior to going over there.

23          Q     Mr. Edgar passed it across or he passed it across  
24 Mr. Edgar?

25          A     I think, yeah.

1 Q Okay. So you had that in hand, so why did you go  
2 around the car? Just to look in the back window?

3 A When Officer Peterson was over there?

4 Q No, when you went around before you went back to  
5 your car to turn on the audio, put your mike on.

6 A I don't remember doing that.

7 Q Okay. Who was the passenger?

8 A Casey or no, Zachary.

9 Q Zachary Laman Caseyham?

10 A Sure.

11 Q Does that sound -

12 A I'd have to check.

13 Q Okay.

14 A Cassingham sounds familiar.

15 Q Cassingham, Zachary Raymond Cassingham?

16 A Zachary Zachary Cassingham, yep.

17 Q Date of birth 8/25/87?

18 A I don't know, I'm going to have to look real quick.

19 Q Well, just -

20 A I remember it was '87. I remember '87 but I don't  
21 remember the other.

22 Q Can't be too many Zachary Raymond Cassinghams out  
23 there.

24 A Was that off my report you got that?

25 Q It is.

## **Addendum C**

Excerpts from the testimony of the backup officer (R. 81-83)

1           Q     And tell the jury just a little bit, what does a  
2 patrol officer do.

3           A     A patrol officer makes traffic stops, takes calls  
4 of service, responds to help for whatever reasons, as far  
5 calls or motor assists go.

6           Q     And on that date around 7:30 that night did you  
7 assist Detective Sager in a DUI investigation?

8           A     Yes.

9           Q     And where did you respond to?

10          A     Approximate address of 2100 North and State Street  
11 in Lehi.

12          Q     And did you interact with the driver of the vehicle  
13 that was stopped by Detective Sager?

14          A     I did.

15          Q     Okay, do you recognize him in the courtroom today?

16          A     Yes.

17          Q     Can you identify him for the jury, something he's  
18 wearing, point him out?

19          A     Michael Edgar wearing the white dress shirt and  
20 tie.

21               MR. JOHNSON: Let the record reflect the defendant  
22 has been identified.

23               THE COURT: It may.

24          Q     (BY MR. JOHNSON) Did you speak to him initially on  
25 scene there by his car?

1           A     Yes.

2           Q     And what sort of things did you guys talk about?

3           A     I made contact with Michael Edgar, talking with

4 him, trying to figure out where he's going. He said he

5 wasn't from around here, trying to figure out where he's

6 coming from, if he's lost or kind of just where he's at.

7           Q     Okay. During that conversation did you talk about

8 his family at all or...

9           A     Yeah.

10          Q     What did he say?

11          A     Ummm, his behavior was abnormal so I asked him

12 where he was going and he said he was worried about his wife,

13 there was some health concerns with her and he was trying to

14 figure out a way to get home because that's where he said he

15 was going.

16          Q     Okay, did he say where home was or...

17          A     I don't recall.

18          Q     Okay. All right. Can you describe your behavior

19 while, during this conversation the two of you were having?

20          A     As I was talking with him he appeared to be very

21 nervous, he was looking around, very distracted. It was

22 nighttime so I have my flashlight shined in the car, just

23 some of his behaviors. His voice was very raspy and I make a

24 lot of traffic stops throughout the day and he wasn't acting

25 normal as to the other drivers I'd pulled over. He was very

1     anxious. I notice that his pupils were very constricted and I  
2     had my light and I would shine it in the car and then I could  
3     kind of move it to see if his pupils would react and his  
4     pupils weren't reacting in the dark or the light which I  
5     found odd especially at nighttime.

6           Q     Okay. So as the result of that behavior did you act  
7     at Detective Sager's direction and perform some field  
8     sobriety tests in this incident?

9           A     Yes.

10          Q     Okay. After doing that did you become aware of any  
11     search of his car that was done at the same time?

12          A     Yes.

13          Q     Okay, and did you end up arresting the defendant?

14          A     Yes.

15          Q     Why was that?

16          A     For drugs that were found in the car as well as  
17     DUI.

18          Q     Okay. After he was arrested did you take him to  
19     your patrol vehicle?

20          A     Yes.

21          Q     And did anything noteworthy happen in walking to  
22     your patrol vehicle?

23                   MR. STEWART: Judge, can we approach?

24                   THE COURT: You may.

25                   (Whereupon a sidebar was held as follows: