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### **WRITING SAMPLE**

This writing sample is an excerpt from a brief written for my Legal Reasoning, Research and Writing course in Spring 2016. I was tasked with drafting a motion brief on behalf of the prosecution, the United States. The brief addresses whether a motion to suppress evidence should be granted when evidence was obtained from a search and seizure, as a result of reasonable suspicion.

Suggestions from my Professor and Dean's Fellow have been implemented, but all major edits and arguments in this final version are my own. Other writing samples can be provided upon request.

UNITED STATES	)	
	)	Criminal Number: 26-18-11386
	)	
v.	)	Judge Milton P. Bergen
	)	
CHARLOTTE MURRAY	)	Violations: 18 U.S.C.A. § 922
	)	
	)	Filed: January 25, 2016
	)	

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## **INTRODUCTION**

Pending before the Court is a Motion filed on behalf of Defendant, Charlotte Murray, seeking the suppression of evidence in violation of Title 18, United States Code, Section 922. On July 4, 2015, Sergeant Edwards pulled Murray over pursuant to a broken tail light. During the course of the stop, Edwards developed reasonable suspicion that she may be in possession of a firearm or that criminal activity may be afoot. Sergeant Edwards had reasonable suspicion, under the totality of the circumstances, due to his observation of various bumper stickers referencing firearms on Murray's vehicle along with a flyer that read "Sell your .357 Magnums!" in light of his ten years of experience and Canine Officer Marlo's certification in firearm detection. Therefore, Edwards conducted a subsequent search, for the protection of himself and others, that lead to the discovery of a firearm, in violation of Title 18, United States Code, Section 922. Thus, because the government had reasonable suspicion, the evidence should not be suppressed and the motion denied.

## **FACTUAL BACKGROUND**

On July 4, 2016, Charlotte Murray was driving home from a firework show, held in Atlantic City, New Jersey, when she was pulled over for a traffic violation. Murray had recently moved to New Jersey from Virginia to attend Rutgers University after leaving active duty in the Air Force and joining the Reserves. Murray regularly competes in marksmanship competitions and has a Virginia concealed carry and a Virginia open carry gun permit.

At approximately 10:45 p.m., she was pulled over for a broken tail light, by two police officers, Sergeant Edwards and Officer Jones, and their K-9 dog, Canine Officer Marlo. Officer Jones was a rookie; however, Sergeant Edwards had 10 years of experience as a New Jersey State Troop, serving the last three of those years as a Sergeant. Furthermore, Canine Officer

Marlo was, too, not a rookie. Marlo had not only been certified various times in firearm detection, but his most recent certification had taken place a week before Murray's traffic stop, in which he earned an 83% accuracy rate.

After stopping Murray, Sergeant Edwards walked to the driver's window. Upon arriving to her car, Edwards made a few notable observations including: (1) her bumper stickers related to the Air Force, her women's gun club, and the Second Amendment including one that stated "This Chick Is Packin'" with an image of a firearm; and (2) a flyer on Murray's passenger seat reading: "Sell your 357 Magnums! Top Prices Paid." He then requested that she exit the car and provide her legal documents. She obliged and handed over her documentation including her Virginia Driver's License. Edwards returned to the patrol car to verify.

While Sergeant Edwards was in the patrol car, Murray stood outside the driver's side door. As Officer Jones and Canine Officer Marlo stood on the passenger side, Canine Officer Marlo became restless and was sniffing around on the ground and in the air. Sergeant Edwards returned after approximately five minutes and said "Oh, before you go, I'm going to have Canine Officer Marlo do a quick walk around your car, if you don't mind." Murray remained silent. Subsequently, he returned her warning ticket and documents. The dog sniff was then conducted and the dog alerted. In response, Edwards opened the door and found a revolver in an open duffel bag. Murray was arrested for violating New Jersey's concealed carry ban, and the federal law mandating that guns carried across state lines be in closed and locked containers.

## **ARGUMENT**

**I. The Court should not grant the motion to suppress evidence because Sergeant Edwards' search did not violate Murray's Fourth Amendment right because he had reasonable suspicion that criminal activity may be afoot due to the totality of the circumstances.**

The evidence in this case was legally seized, and must, therefore, not be suppressed. The Fourth Amendment protects people against unreasonable searches and seizures without a warrant. *U.S. Const. amend. IV*. However, where a police officer has reasonable suspicion to believe that criminal activity may be afoot or that the persons with whom he is dealing may be armed and presently dangerous, he is entitled for the protection of himself and others to conduct a search, absent a warrant. *Terry v. Ohio*, 392 U.S. 1, 32 (1968); *United States v. Sokolow*, 490 U.S. 1, 7 (1989). In a reasonable suspicion determination, an officer is required to look at “the totality of circumstances.” *United States v. Arvizu*, 534 U.S. 266, 273 (2002). The totality-of-the-circumstances analysis tasks the officer to make a practical, common-sense decision whether there is a fair probability that evidence of a crime or legal wrongdoing will be found in a particular place. *Illinois v. Gates*, 462 U.S. 213, 238 (1983). In justifying that the “totality of circumstances” gave rise to reasonable suspicion, the test requires that an officer must be able to point to specific and articulable facts based on his observations and his own experiences taken together, which lead to rational inferences that reasonably warrant the search. *Ornelas v. United States*, 517 U.S. 690, 700 (1996); *Terry*, 392 U.S. at 1, 88. The government can meet the test. Thus, evidence must be admissible because the search was lawful and evidence was lawfully seized.

**A. Sergeant Edwards had reasonable suspicion to believe that Charlotte Murray was armed or that criminal activity may be afoot due to his observations during the traffic stop including the bumper stickers and flyer referencing firearms.**

Sergeant Edwards had reasonable suspicion, under the totality of the circumstances, due to his observations, taken together, during the stop. A determination that reasonable suspicion exists need not rule out the possibility of innocent conduct just because each factor alone may be susceptible of innocent explanation. *United States v. Arvizu*, 534 U.S. 267 (2002). In *Arvizu*, the

officer had suspicion that the driver might be guilty of attempting to circumvent a border patrol checkpoint because he was driving a mini-van, the driver appeared stiff, the knees of the children in the backseat were unusually high as if propped on cargo, the children simultaneously waved at the officer as if instructed to do so, and the officer did not recognize the van as a part of the local traffic agents on patrol. *Id.* at 270-71. The court ruled that while each factor alone may be susceptible of innocent explanation, when all are considered collectively, they sufficed to form reasonable suspicion of criminal activity. *Id.* at 277-78. Additionally, when considering whether the totality of circumstances creates reasonable suspicion, ultimate determinations should not be deferred to trial court rulings, but determinations should be made by independent review. *Ornelas*, 517 U.S. at 697. This is because it allows general conclusions to be drawn that certain facts are sufficient or insufficient to constitute reasonable suspicion. *Id.* at 697. In *Ornelas*, factors such as (i) the two NADDIS, Narcotics and Dangerous Drugs System, tips; (ii) the car was from California, a source State, and a 1981 two-door General Motors product (iii) the car was found in Milwaukee; (iv) it was December; (v) one suspect checked into the hotel at 4 a.m.; (vi) he did not have reservations; (vii) he had one traveling companion; (viii) one suspect appeared calm but shaking; and (ix) there was a loose panel in the car door gave rise to reasonable suspicion. *Id.* at 704. While these factors might independently be innocent or amount to reasonable suspicion in one case, doesn't mean that it amounts to reasonable suspicion in another case, but instead must be determined by the totality of circumstances. *Id.* at 699.

Furthermore, a First-Amendment symbol of expression attached to the back of a vehicle is a sufficient factor to contribute to reasonable suspicion under a totality of the circumstances analysis. *United States v. Lopez*, 304 Fed.Appx. 83-84 (3d Cir.2008). In *Lopez*, the officer pointed to no less than seven factors he took into account during the initial stop that he believed

to be unusual in the trucking industry and/or consistent with the transportation of illegal drugs including the religious symbol. *Id.* When viewing the totality of the circumstances, in light of the officer's experience, the court held that the officer not only had ample reason to call for a drug detection dog and to detain the tractor trailer, but the officer, also, had the reasonable suspicion necessary to expand the stop. *Id.* Additionally, the fact that an individual has the right to First Amendment protected items, does not mean that officials have to ignore their content or refrain from further investigation due to the content of the items. *George v. Rehiel*, 738 F.3d 586 (3d Cir.2013). In *Rehiel* officials had justifiable suspicion that permitted further investigation of an airline passenger due to handwritten Arabic-English flashcards containing such words as "bomb", "terrorist", "explosion", "an attack", and "to target" following the 9/11 attacks. *Id.* at 567. The court reasoned that under the totality of the circumstances, the content of the flashcards could cause a reasonable person to believe that the First Amendment protected items gave rise to the possibility that the individual poses a threat to others, thus the search was justified and lawful. *Id.* at 586-86.

In the present case, similar to *Arvizu* and *Ornelas*, each factor alone may be susceptible of innocent explanation, but when taken together suffice to form a particularized and objective basis for suspecting criminal activity. Murray was pulled over for a traffic violation, in which Sergeant Edward made various observations throughout. These observations included her bumper stickers related to the Air Force, her women's gun club, and the Second Amendment including one that stated "This Chick Is Packin" with an image of a firearm; and her verbal confirmation that she did two tours of duty in Afghanistan, left active duty in the Air Force, and is currently in the Reserves; all activities requiring firearms. Furthermore, he observed the flyer on her passenger seat reading: "Sell your .357 Magnums! Top Prices Paid." Furthermore, Canine

Officer Marlo seemed extremely restless during the stop and kept sniffing on the ground and in the air. Additionally, he observed her driver's license and license plate from Virginia. Similar to both cases, each factor, independently reviewed, were seemingly innocent, but when considered together could lawfully create reasonable suspicion. When considering all observations as a whole, one could not only reasonably suspect that Murray currently possessed a firearm or had at least possessed one at some point, but that she also possibly possessed it unlawfully due to her residency in a different state than where the stop occurred.

Furthermore, similar to the facts of *Lopez* and *George*, many of the observations giving rise to reasonable suspicion are classified as First Amendment protected items. In *Lopez*, it was a religious symbol of expression attached to the back of a vehicle. In *George*, it was Arabic-English flashcards with words such as "bomb", "terrorist", and "to attack". In our case, the protected items include bumper stickers related to the Air Force, membership in a women's gun club, and the Second Amendment including one that stated "This Chick Is Packin'", in addition to a flyer advertising the sell of a .357 Magnum. Therefore, not only is our case comparable to *Lopez and George*, but it exceeds the standard set forth in these cases because while they allowed the presence of one symbol to give rise to reasonable suspicion in a totality of the circumstances analysis; our case involves not one symbol but numerous symbols. Thus, not only do we have one symbol to give rise to reasonable suspicion, but we have multiple symbols in our case to further confirm that reasonable suspicion and progressively increase suspicion as more and more symbols were discovered. On the other hand, our case also differs from *Lopez* and *George*. Additionally, our case differs from *Lopez* and *George*, because we have bumper stickers that explicitly make statements that elude to the ownership and presence of a firearm such as "This Chick Is Packin'", "You Wish You Could Shoot Like A Girl", and "A Girl & A Gun".



Thus if a religious symbol and the presence of “stand alone” words on flashcards can give rise to reasonable suspicion from their implicit implications, then bumper stickers that explicitly state and express the beliefs and conduct of Murray should, too, be capable of giving rise to reasonable suspicion. And for the foregoing reasons, the government had reasonable suspicion to conduct a search due to the observations of the officers.

**B. Sergeant Edwards had reasonable suspicion to believe Charlotte Murray was armed, considering the totality of circumstances, due to his experience as a sergeant and Canine Officer Marlo’s certification and experience in firearm detection.**

Sergeant Edwards had reasonable suspicion to believe that criminal activity may be afoot or that Murray was armed under the “totality of the circumstances” due to his experience as a New Jersey State Trooper and the experience of the other officers at the time of the stop. The “totality of circumstances” analysis allows officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that “might well elude an untrained person.” *Arvizu*, 534 U.S. at 273; See, e.g., *Cortez*, 449 U.S. at 418. In *Arvizu*, the officer was specifically a border control agent. As someone specifically hired as a border patrol agent, the agent had not only experience with cases involving smugglers but had knowledge of the types of vehicles they drove, their behavior, the routes they took, locations of checkpoints, and the areas surrounding checkpoints. *Id.* at 268-271. Thus, in considering the totality of the circumstances, it was not only the observations and events that took place that sufficed to find reasonable suspicion, but also the experience and knowledge of the agent. *Id.* at 273. A police officer may draw inferences based on his own experience in deciding whether reasonable suspicion exists. *Ornelas*, 517 U.S. at 700. A police officer views the facts through the lens of his police experience and expertise. The background effects provide a context for the historical facts, and when seen together yield inferences that deserve deference.

*Id.* at 699. In *Ornelas*, the court held that to a layman, a loose panel below the back seat armrest in the automobile involved in the case may suggest only wear and tear, but to the officer, who had searched roughly 2,000 cars for narcotics and a 20-year veteran of the Milwaukee County Sheriff's Department, it suggest that drugs may be secreted inside the panel. *Id.* at 700. Thus, the court should give due weight to a trial court's finding that the officer was credible and that the inference was based on reasonable suspicion. *Id.*

Similar to *Arvizu* and *Ornelas*, the experience of the officers combined with the observations from the stop could lawfully give rise to reasonable suspicion. In *Arvizu*, the officer was specifically trained as a border patrol agent and extremely knowledgeable of characteristics of smugglers. In *Ornelas*, the officer was a 20-year veteran and had searched over 2,000 cars for narcotics. Similarly, Sergeant Edwards and Canine Officer Marlo, too, exemplify this type of experience. Edwards has 10 years of experience as a New Jersey State Trooper, in which he served the last three as a sergeant. This was not his first traffic stop or his first time dealing with a person who was potentially armed or his first time dealing with the types of observations at hand that gave rise to reasonable suspicion. Furthermore, Canine Officer Marlo not only had experience, but was specifically trained to detect the presence of firearms. Marlo's accuracy rate at his most recent certification test was 83%. Furthermore, the test was performed one week before Murray's traffic stop, meaning that his training was up-to-date and certification recently renewed. For the foregoing reasons, Edwards and Marlo, collectively, had experience capable of giving rise to reasonable suspicion to conduct a search.

## **II. Because Edwards had reasonable suspicion, evidence obtained as a result of the lawful search must not be suppressed.**

The results of the dog sniff must not be suppressed. If a stop is rendered reasonable under the Fourth Amendment, the evidence thereby discovered is admissible. *Whren v. United States*,

517 U.S. 819 (1996). The suppression of evidence is correct only if there is nothing to establish that reasonable suspicion exists to justify a lawful search, absent a warrant. *United States v. Bonner*, 300 Fed.Appx. 225 (2008). Here, the lawful search produced evidence that resulted in constitutionally obtained evidence. While Sergeant Edwards did not possess a search warrant, he had reasonable suspicion, under the totality of the circumstances, to search her vehicle. Thus, the Court should admit all evidence obtained as a result of lawful search, based on reasonable suspicion, pursuant to the Fourth Amendment.

### **CONCLUSION**

Because the government obtained reasonable suspicion and Murray's possession of the firearm was in violation of Title 18, United States Code, Section 922, evidence from the search should not be suppressed.

Respectfully Submitted,

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## **CERTIFICATE OF SERVICE**

This is to certify that on January 25, 2016, a copy of the United States' Memorandum of Law in Opposition to the Defendant's Motion to Suppress Evidence pursuant to Federal Rule of Criminal Procedure 12 was delivered to counsel of record for the Defense, as follows:

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