municipal projects that the City had not previously approved in a measure subject to referendum.

We conclude, however, that the appellants' referendum petition violated a common-law single subject rule that invalidates proposed ordinances that require voters to approve distinct and independent propositions in a single vote. Accordingly, we affirm the remaining part of the judgment.

AFFIRMED IN PART, AND IN PART REVERSED AND VACATED.

CONNOLLY, J., participating on briefs.

WRIGHT, J., not participating.

STATE OF NEBRASKA, APPELLEE, V.
STUART D. HOWARD, APPELLANT.

STATE OF NEBRASKA, APPELLEE, V.
ANTHONY M. LAWS, APPELLANT.

803 N.W.2d 450

Filed September 23, 2011. Nos. S-10-660, S-10-874.

1. **Investigative Stops: Warrantless Searches: Probable Cause: Appeal and Error.** When reviewing a district court's determinations of reasonable suspicion to conduct an investigatory stop and probable cause to perform a warrantless search, ultimate determinations of reasonable suspicion and probable cause are reviewed de novo. But findings of historical fact to support that determination are reviewed for clear error, giving due weight to the inferences drawn from those facts by the trial court.
2. **Investigative Stops: Motor Vehicles: Probable Cause.** A traffic violation, no matter how minor, creates probable cause to stop the driver of a vehicle.
3. **Investigative Stops: Motor Vehicles: Police Officers and Sheriffs.** Once a vehicle is lawfully stopped, a law enforcement officer may conduct an investigation reasonably related in scope to the circumstances that justified the traffic stop. This investigation may include asking the driver for an operator's license and registration, requesting that the driver sit in the patrol car, and asking the driver about the purpose and destination of his or her travel. Also, the officer may run a computer check to determine whether the vehicle involved in the stop has been stolen and whether there are outstanding warrants for any of its occupants.
4. **Investigative Stops: Motor Vehicles: Police Officers and Sheriffs: Probable Cause.** In order to expand the scope of a traffic stop and continue to detain the motorist for the time necessary to deploy a drug detection dog, an officer must

have a reasonable, articulable suspicion that a person in the vehicle is involved in criminal activity beyond that which initially justified the interference.

5. **Probable Cause: Words and Phrases.** Reasonable suspicion entails some minimal level of objective justification for detention, something more than an inchoate and unparticularized hunch, but less than the level of suspicion required for probable cause.
6. **Police Officers and Sheriffs: Probable Cause.** Whether a police officer has a reasonable suspicion based on sufficient articulable facts depends on the totality of the circumstances.
7. **Probable Cause.** Reasonable suspicion must be determined on a case-by-case basis.
8. **Investigative Stops: Motor Vehicles: Probable Cause.** When a determination is made to detain a person during a traffic stop, even where each factor considered independently is consistent with innocent activities, those same factors may amount to reasonable suspicion when considered collectively.
9. **Investigative Stops: Police Officers and Sheriffs: Probable Cause.** If reasonable suspicion exists for a continued detention, the court must consider whether the detention was reasonable in the context of an investigative stop, considering both the length of the continued detention and the investigative methods employed.
10. **Probable Cause.** Probable cause to search requires that the known facts and circumstances are sufficient to warrant a person of reasonable prudence in the belief that contraband or evidence of a crime will be found.
11. **Probable Cause: Words and Phrases.** Probable cause is a flexible, commonsense standard. It merely requires that the facts available to the officer would warrant a person of reasonable caution in the belief that certain items may be contraband or stolen property or useful as evidence of a crime; it does not demand any showing that such a belief be correct or more likely true than false.
12. **Probable Cause: Appeal and Error.** Appellate courts determine probable cause by an objective standard of reasonableness, given the known facts and circumstances.
13. **Investigative Stops: Motor Vehicles: Probable Cause: Records.** Evidence of a drug detection dog's search records may be considered in the totality of the circumstances when determining whether a canine alert, combined with reasonable suspicion factors, amounts to probable cause to search a vehicle.
14. **Criminal Law: Convictions: Evidence: Appeal and Error.** When reviewing a criminal conviction for sufficiency of the evidence to sustain the conviction, the relevant question for an appellate court is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.
15. **Evidence: Appeal and Error.** In reviewing a sufficiency of the evidence claim, whether the evidence is direct, circumstantial, or a combination thereof, the standard is the same: An appellate court does not resolve conflicts in the evidence, pass on the credibility of witnesses, or reweigh the evidence; such matters are for the finder of fact.

16. **Controlled Substances.** A person possesses a controlled substance when he or she knows of the nature or character of the substance and of its presence and has dominion or control over it.
17. **Controlled Substances: Evidence: Circumstantial Evidence: Proof.** Possession can be either actual or constructive, and constructive possession of an illegal substance may be proved by direct or circumstantial evidence.
18. **Controlled Substances: Circumstantial Evidence: Intent.** Circumstantial evidence may support a finding that a defendant intended to distribute, deliver, or dispense a controlled substance in the defendant's possession.
19. ____: ____: ____. Circumstantial evidence sufficient to establish possession of a controlled substance with intent to deliver may consist of evidence of the quantity of the substance, equipment and supplies found with the substance, the place where the substance was found, the manner of packaging, and the testimony of witnesses experienced and knowledgeable in the field.
20. **Controlled Substances.** Mere presence at a place where a controlled substance is found is not sufficient to show constructive possession.
21. **Investigative Stops: Motor Vehicles: Controlled Substances.** Possession of a controlled substance can be inferred if the vehicle's occupant acts oddly during a traffic stop, gives explanations that are inconsistent with the explanations of other vehicle occupants, or generally gives an implausible explanation for the travels.
22. **Stipulations: Pleas: Evidence.** A stipulation entered by a defendant can be tantamount to a guilty plea. But this is true only when the defendant stipulates either to his or her guilt or to the sufficiency of the evidence.
23. **Effectiveness of Counsel: Proof.** In order to prevail on a claim for ineffective assistance of counsel, a defendant must show that his or her counsel's performance was deficient and that he or she was prejudiced by such deficiency.
24. **Effectiveness of Counsel: Presumptions.** Under certain limited circumstances, prejudice to the accused is to be assumed (1) where the accused is completely denied counsel at a critical stage of the proceedings, (2) where counsel fails to subject the prosecution's case to meaningful adversarial testing, and (3) where the surrounding circumstances may justify a presumption of ineffectiveness without inquiry into counsel's actual performance at trial.
25. **Sentences: Appeal and Error.** Sentences within statutory limits will be disturbed by an appellate court only if the sentences complained of were an abuse of judicial discretion.
26. **Sentences.** When imposing a sentence, a sentencing judge should consider the defendant's age, mentality, education and experience, social and cultural background, past criminal record, and motivation for the offense, as well as the nature of the offense and the violence involved in the commission of the crime.
27. ____. In imposing a sentence, the sentencing court is not limited to any mathematically applied set of factors. The appropriateness of a sentence is necessarily a subjective judgment and includes the sentencing judge's observation of the defendant's demeanor and attitude and all the facts and circumstances surrounding the defendant's life.

Appeals from the District Court for Lancaster County: STEVEN D. BURNS, Judge. Affirmed.

Korey Reiman for appellant Stuart D. Howard.

Matthew K. Kosmicki, of Brennan & Nielsen Law Offices, P.C., for appellant Anthony M. Laws.

Jon Bruning, Attorney General, and Nathan A. Liss for appellee.

WRIGHT, CONNOLLY, GERRARD, STEPHAN, MCCORMACK, and MILLER-LERMAN, JJ.

STEPHAN, J.

A vehicle driven by Anthony M. Laws in which Stuart D. Howard was a passenger was stopped for speeding by a Nebraska State Patrol officer. When consent to search was denied, a trained drug detection canine unit was brought to the scene. The canine alerted, and a search disclosed over 700 pounds of marijuana. Laws and Howard were both charged with possession of a controlled substance with intent to deliver. Each filed a motion to suppress the evidence obtained as a result of the traffic stop and canine alert. After a combined hearing, the motions to suppress were denied, and Laws and Howard were both subsequently convicted of the charge. Both filed notices of appeal, assigning separate but related errors. We have consolidated their appeals for purposes of this opinion.

I. FACTS

On June 1, 2009, at 12:50 p.m., Laws was driving a sports utility vehicle (SUV) towing a popup camper eastbound on Interstate 80 in Lancaster County, Nebraska. Nebraska State Patrol officer Robert Pelster's stationary radar showed the SUV was traveling 63 m.p.h. in a 55-m.p.h. construction zone. Pelster initiated a traffic stop.

During the stop, Pelster noted that Laws was driving the vehicle and that there was a female passenger, Sarah R. McGee, in the front seat and a male passenger, Howard, in the rear seat. Pelster thought Laws seemed very nervous and noticed that his hands were shaking. Laws provided documentation showing that both the SUV and the popup camper had been rented near Detroit, Michigan. The SUV was rented on the evening of May 28, 2009, for $767, and the camper was

rented on May 29 for $500. The rental documents showed that the camper had been rented by Howard and that the SUV had been rented by Ebony Young. Howard informed Pelster that Young was his sister. Both Young and Howard were listed as authorized drivers of the SUV. Laws, who was not listed as an authorized driver, initially told Pelster that he had driven during the entire trip.

Laws accompanied Pelster to his cruiser while Howard and McGee remained in the SUV. When Pelster asked Laws about his shaking hands, Laws explained that his hands were shaking because he had not consumed any alcohol for some time. Pelster asked about the group's travel, and Laws told him that they had driven from Detroit to Flagstaff, Arizona, and had seen some sights, including the Grand Canyon. Laws stated that Howard and McGee were his friends, and he was unsure as to exactly when they left Detroit because he was intoxicated at the time. Laws told Pelster that the three did not know anyone in Arizona, but instead had gone there just to sightsee.

Pelster checked the criminal histories of the three travelers and learned that Howard's driver's license was suspended, that an active protection order was issued against him, and that he had a prior criminal history for weapons and assault. Pelster also learned that Laws had a record of a weapons offense and had been involved in a homicide or an attempted homicide. Pelster obtained no criminal history for McGee, but determined that she did not have a driver's license. Pelster then left Laws in the cruiser and returned to the SUV, where Howard and McGee were waiting, to question McGee in order to verify that she was not the subject of the protection order that was issued against Howard. McGee informed him that she was not, and she confirmed that the three had visited Flagstaff and the Grand Canyon. During this conversation, Howard told Pelster that he had family in Flagstaff. Howard also referred to Laws as his uncle.

After speaking with Howard and McGee, Pelster returned to his cruiser to speak to Laws. This occurred at approximately 1:14 p.m. Laws, who had overheard Pelster's conversation with Howard and McGee on the police radio, immediately told

Pelster that he and Howard were just friends but that because Laws was older, Howard referred to him as his uncle. Pelster issued a warning citation to Laws at 1:26 p.m., and then asked Laws for permission to search his luggage. Laws agreed. Because the rental documents were in Howard's name, Pelster then asked Howard for permission to search the SUV and the camper. When Howard refused, Pelster radioed for a trained drug detection canine unit to come to the scene.

Pelster had some difficulty locating a canine unit, and finally, at 1:50 p.m., he was advised that Investigator Alan Eberle and his canine, Rocky, were en route from Omaha, Nebraska. Eberle and Rocky arrived at approximately 2:30 p.m. Rocky alerted on the camper, and a subsequent search led to the discovery of 727.5 pounds of marijuana inside the camper. Laws, Howard, and McGee were all arrested.

Laws and Howard were each charged with one count of possession of a controlled substance with intent to deliver. Each filed a motion to suppress all physical evidence seized after the search, contending, inter alia, that Pelster lacked reasonable suspicion to detain them after the conclusion of the traffic stop. A combined evidentiary hearing was conducted on the motions to suppress. Pelster testified regarding the traffic stop, and Eberle testified regarding the reliability of Rocky as a drug detection canine. At the conclusion of the hearing, the district court denied the motions to suppress.

Laws waived his right to a trial by jury and elected to proceed with a bench trial on stipulated evidence. At his trial, the State offered into evidence a recording of the traffic stop taken from Pelster's cruiser, Pelster's written report of the traffic stop, the rental agreements for the SUV and the camper, a Nebraska State Patrol crime laboratory report identifying the substance found in the camper as marijuana, photographs taken by Pelster of the search of the vehicles, and a document attesting that the certified weight of the marijuana found in the camper was 727.5 pounds. Laws offered the transcript from the hearing on the motion to suppress and preserved all the issues he raised in his motion to suppress. After considering this evidence, the district court found Laws guilty and subsequently sentenced him to incarceration for 8 to 12 years.

Howard also waived his right to a jury trial and elected to proceed with a bench trial on stipulated evidence. The evidence submitted by the State was identical to the evidence submitted at Laws' bench trial. Howard did not offer evidence, but did renew and preserve the issues raised in his motion to suppress. Based on the evidence submitted, the district court found Howard guilty.

Howard then filed a motion for a new trial, claiming that the district court erred in overruling his motion to suppress. Before that motion was ruled upon, Howard's trial counsel filed a motion to withdraw. The district court granted the motion to withdraw, found Howard to be indigent, and appointed new counsel to represent him. Howard's new counsel filed an amended motion for a new trial, alleging irregularities in the proceedings, errors of law, and ineffective assistance of counsel. Following an evidentiary hearing, the district court denied the motion for a new trial and sentenced Howard to 10 to 14 years' imprisonment. Both Laws and Howard filed timely notices of appeal from their sentencing orders.

II. ASSIGNMENTS OF ERROR

Laws assigns (1) that the district court erred in finding the arresting officer had reasonable suspicion to detain him after the conclusion of the traffic stop, (2) that the district court erred in finding there was adequate foundation for the admission of the results of the canine sniff, (3) that the district court erred in failing to suppress the physical evidence resulting from the search and seizure of the vehicle, and (4) that the evidence was insufficient as a matter of law to support his conviction.

Howard assigns (1) that the district court erred in overruling the motion to suppress the evidence obtained from the stop of the vehicle and subsequent search and seizure; (2) that the district court erred in determining reasonable suspicion existed allowing continued detention after the citation had been issued; (3) that the district court erred in determining the lengthy detention, while law enforcement awaited a canine unit, was lawful; (4) that the district court erred in conducting a stipulated trial without first advising Howard of the constitutional

rights he was waiving; (5) that his sentence is excessive, and (6) that his trial counsel was ineffective in proceeding with a stipulated bench trial.

III. ANALYSIS

1. Reasonable Suspicion Justified Further Detention

[1] Both Laws and Howard argue that the evidence found as a result of the search of the vehicles should be suppressed because Pelster lacked reasonable suspicion to detain them while awaiting the arrival of the canine unit. When reviewing a district court's determinations of reasonable suspicion to conduct an investigatory stop and probable cause to perform a warrantless search, ultimate determinations of reasonable suspicion and probable cause are reviewed de novo. But findings of historical fact to support that determination are reviewed for clear error, giving due weight to the inferences drawn from those facts by the trial court.[1]

[2] Neither Laws nor Howard contests the propriety of the initial traffic stop. Nor could they reasonably do so, because the record shows that Laws was stopped for speeding. And a traffic violation, no matter how minor, creates probable cause to stop the driver of a vehicle.[2]

[3] Once a vehicle is lawfully stopped, a law enforcement officer may conduct an investigation reasonably related in scope to the circumstances that justified the traffic stop.[3] This investigation may include asking the driver for an operator's license and registration, requesting that the driver sit in the patrol car, and asking the driver about the purpose and destination of his or her travel.[4] Also, the officer may run a computer check to determine whether the vehicle involved in the stop has been stolen and whether there are outstanding warrants for any of its occupants.[5]

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[1] *State v. Louthan*, 275 Neb. 101, 744 N.W.2d 454 (2008).

[2] *Id.*

[3] *Id.*

[4] *Id.*

[5] *Id.*

The record before us indicates that Pelster took about 40 minutes to complete these investigative procedures. Laws and Howard argue that after Pelster concluded these investigative procedures and issued Laws the citation, he lacked legal authority to detain the vehicles and their occupants pending the arrival of the canine unit.

[4-7] In order to expand the scope of a traffic stop and continue to detain the motorist for the time necessary to deploy a drug detection dog, an officer must have a reasonable, articulable suspicion that a person in the vehicle is involved in criminal activity beyond that which initially justified the interference.[6] Reasonable suspicion entails some minimal level of objective justification for detention, something more than an inchoate and unparticularized hunch, but less than the level of suspicion required for probable cause.[7] Whether a police officer has a reasonable suspicion based on sufficient articulable facts depends on the totality of the circumstances.[8] Reasonable suspicion must be determined on a case-by-case basis.[9]

[8] In this case, the district court found that Pelster had a reasonable, articulable suspicion that the occupants of the SUV were involved in criminal activity, based on (1) the illogical nature of the trip, which was expensive, driving-intensive, and very short; (2) Laws' nervousness; (3) Laws' explanation that his shaking hands were caused by alcohol deprivation when he was the only driver of the vehicle on the long trip; (4) the use of a single driver on such a long trip; (5) the fact that the camper had not been used during the trip; and (6) the recent law enforcement contacts of Laws and Howard. We examine each of these factors separately, mindful of the rule that when a determination is made to detain a person during a traffic stop, even where each factor considered independently is consistent with innocent activities, those same factors may amount to reasonable suspicion when considered collectively.[10]

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[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] *Id.*

(a) Illogical Nature of Trip

The parties left Detroit no earlier than the morning of May 29, 2009. The traffic stop occurred on Interstate 80 near Lincoln, Nebraska, on June 1 at 12:50 p.m. Pelster testified at the hearing on the motions to suppress that he thought the distance between Detroit and Phoenix, Arizona, was 2,000 miles, and he estimated it would take about 28 hours to drive that distance. Pelster further testified that he thought the distance between Phoenix and Lincoln was 1,300 miles. Based on general calculations, Pelster estimated that the parties could not have been in Phoenix for much more than 12 hours.

Laws argues that the evidence shows that the parties were in Flagstaff, not Phoenix, and that the distance between Detroit and Flagstaff is 1,800 miles. He calculates that they were actually in Flagstaff for 22 to 25 hours. Laws contends that the 22- to 25-hour stay, as opposed to the 12-hour stay calculated by Pelster, "conclusively proves that Pelster was fashioning facts to justify his detention and search of the vehicle."[11]

Pelster admittedly was estimating the group's travel times at the time of the traffic stop. Although his estimates may have been slightly off, that fact does not necessarily invalidate his conclusion that the nature of the trip was unusual and suspicious. Even under Laws' calculations, the parties drove 28 straight hours from Detroit to Flagstaff, stayed there for approximately 24 hours, and then drove another 14 straight hours before being stopped outside of Lincoln. Contrary to the assertions made in Laws' brief, a reasonable officer who learned that parties had driven from Detroit to Flagstaff on May 29, 2009, and were midway through a return trip on June 1 would be suspicious of the motive behind the trip. Considering that the trip was made in an SUV which was pulling a popup camper and that both vehicles were rented specifically for the trip at a combined cost of approximately $1,300, the level of suspicion logically increases. Simply stated, there is no innocent explanation for renting a vehicle and a popup camper and then driving more than 25 hours straight to a destination, staying for less than one full day without utilizing the camper, and

[11] Brief for appellant Laws in case No. S-10-874 at 14.

then driving straight back. The short duration of the long road trip, especially viewed in light of its expense and its utilization of the rental vehicles, is an important factor in the reasonable suspicion analysis.

Both Laws and Howard argue that the nature of the travel in this case is similar to travel in other cases which have not been found to be suspicious. Laws relies on *U.S. v. Beck*,[12] *U.S. v. Kirkpatrick*,[13] and *State v. McGinnis*.[14] In *Beck*, the defendant, a truckdriver, was driving from California to North Carolina for a job interview. The court found nothing inherently suspicious about a job search in a different location of the country. In *Kirkpatrick*, the defendant was stopped in a vehicle he had rented in Las Vegas, Nevada, and stated he was returning home to Minnesota. He told the officer that he had flown to Las Vegas in order to drive his niece to Denver, Colorado, because his niece's mother did not want the niece to fly. The court found there was nothing suspicious about the trip or his explanation of it. In *McGinnis*, the defendant flew from Seattle, Washington, to San Francisco, California; rented a car; and began driving to New York. He told officers that he was going to visit his ailing grandfather and that because he had never driven across the country before, he wanted to try it one time. The court found that although the trip was unconventional, it was not suspicious.

Both Laws and Howard cite *State v. Passerini*.[15] In that case, a state trooper saw a vehicle traveling below the speed limit. The trooper noticed that the driver did not glance over at the trooper's patrol car, had his hands "'at ten and two,'" was driving a clean rental vehicle, and appeared tense.[16] The driver slowed down even more when the trooper began following him, and eventually exited the interstate without signaling. When questioned, the driver explained that he had been living with his

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[12] *U.S. v. Beck*, 140 F.3d 1129 (8th Cir. 1998).

[13] *U.S. v. Kirkpatrick*, 5 F. Supp. 2d 1045 (D. Neb. 1998).

[14] *State v. McGinnis*, 8 Neb. App. 1014, 608 N.W.2d 605 (2000).

[15] *State v. Passerini*, 18 Neb. App. 552, 789 N.W.2d 60 (2010).

[16] *Id.* at 557, 789 N.W.2d at 65.

uncle in Reno, Nevada, but was driving back to Pennsylvania to take care of his barn, which had burned down. The Nebraska Court of Appeals determined that the trooper lacked reasonable suspicion to detain the driver for a canine sniff.

In each of these cases, there was a reasonable, innocent explanation for the unusual travel plans. Here, however, there is not. And, as discussed below, this case contains many factors not present in the other cases. The unusual length, nature, expense, and duration of the trip weigh heavily in favor of a finding of reasonable suspicion.

(b) Laws' Nervousness

Pelster noticed that Laws was exceptionally nervous, so much so that his hands were shaking. But trembling hands and other signs of nervousness may be displayed by innocent travelers who are stopped and confronted by an officer, and thus these observations do little to support a reasonable suspicion of criminal activity.[17] This factor weighs little, if at all, into the reasonable suspicion calculation.

(c) Laws' Explanation of His Shaking Hands

When asked by Pelster, Laws explained that his hands were shaking because he had not consumed alcohol in some time. This explanation is odd when it is considered in light of the fact that Laws also stated that he had been the only driver during the trip, for it begs the question of why the parties would choose a chemically dependent driver for a lengthy road trip. And Laws later contradicted his statement that he had been the only driver when he told Pelster that he did not know when they had left Michigan because he had been intoxicated in the back seat. A reasonable officer would be suspicious of Laws' explanation.

(d) Use of Single Driver on Very Long Trip

This factor is somewhat related to the explanation of Laws' shaking hands. But it is also of independent significance that

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[17] *State v. Anderson*, 258 Neb. 627, 605 N.W.2d 124 (2000), *disapproved on other grounds, State v. McCulloch*, 274 Neb. 636, 742 N.W.2d 727 (2007). See, *U.S. v. Beck, supra* note 12; *U.S. v. Kirkpatrick, supra* note 13.

Laws, who was not identified as an authorized driver on the rental agreement for the SUV, claimed that he was the only driver on what was undisputedly a very long road trip, particularly when all parties agreed that they drove straight through.

(e) Camper Had Not Been Used During Trip

Neither Laws nor Howard challenges the district court's finding that the camper was never used. And this finding is significant; the fact that a camper was pulled for 1,800 miles one way and then never utilized, either en route or upon reaching the destination of a "camping trip," is quite suspicious. This is particularly so when the camper was rented for the sole purpose of the trip. This factor weighs heavily in the reasonable suspicion analysis.

(f) Recent Law Enforcement Contacts of Laws and Howard

Both Laws and Howard had recent law enforcement contacts which included weapons charges and assaults, and Laws had prior involvement in a homicide. Laws and Howard contend that because the contacts were not drug related, they lack probative value in the reasonable suspicion analysis. Laws cites *State v. Draganescu*[18] for this proposition.

We stated in *Draganescu* that a person's "drug-related criminal history" is a factor to be considered in the reasonable suspicion analysis.[19] But the prior criminal history in that case was drug related, and our choice of words was based on the factual circumstances of the case. *Draganescu* cited *State v. Lee*,[20] and in that case, we recognized that any prior criminal history may be a relevant factor in the reasonable suspicion analysis. This factor weighs at least slightly in favor of a finding of reasonable suspicion.

(g) Conclusion

Although some of the factors identified by the district court, when examined in isolation, do not weigh heavily in

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[18] *State v. Draganescu*, 276 Neb. 448, 755 N.W.2d 57 (2008).

[19] *Id.* at 462, 755 N.W.2d at 75.

[20] *State v. Lee*, 265 Neb. 663, 658 N.W.2d 669 (2003).

favor of a finding of reasonable suspicion that the occupants of the vehicle were engaged in criminal activity, when viewed in their totality, the circumstances indicate that Pelster had reasonable suspicion to detain the occupants for the canine unit after the completion of the traffic stop. The illogical nature of the trip is a prime factor in this analysis, and when combined with Laws' odd explanation for his shaking hands, the fact that the camper was never used, and the criminal backgrounds of both Laws and Howard, Pelster had a reasonable suspicion that the vehicle's occupants were engaged in criminal activity. We affirm the district court's finding that there was reasonable suspicion to detain the vehicle for the canine unit.

2. Length of Detention Not Unreasonable

[9] Howard argues that the length of the continued detention was unreasonable. If reasonable suspicion exists for a continued detention, the court must consider whether the detention was reasonable in the context of an investigative stop, considering both the length of the continued detention and the investigative methods employed.[21] An investigative stop must be temporary and last no longer than is necessary to effectuate the purpose of the stop.[22] Similarly, the investigative methods employed should be the least intrusive means reasonably available to verify or dispel the officer's suspicion in a short period of time.[23]

The method utilized by Pelster, a canine sniff, is generally considered to be minimally intrusive.[24] And there is no rigid time limitation on investigative stops.[25] Here, the focus is on the diligence of Pelster, the officer pursuing the investigation,

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[21] *State v. Louthan, supra* note 1.

[22] *State v. Lee, supra* note 20.

[23] *Id.*

[24] *Id.*

[25] See, *United States v. Sharpe*, 470 U.S. 675, 105 S. Ct. 1568, 84 L. Ed. 2d 605 (1985); *U.S. v. Hardy*, 855 F.2d 753 (11th Cir. 1988); *State v. Soukharith*, 253 Neb. 310, 570 N.W.2d 344 (1997).

and the question is how quickly he requested the canine unit and how quickly the unit was dispatched.[26]

The district court found that Pelster issued the citation and returned Laws' license to him at 1:26 p.m. Immediately after that, Laws gave consent to search his luggage, and then at 1:34 p.m., Howard refused consent to search the vehicles. Pelster then requested the canine unit, and the nearest available unit was en route from Omaha by 1:50 p.m. The unit arrived at 2:30 p.m., and the canine sniff was completed by 2:36 p.m. Nothing in the record indicates any lack of diligence or abuse of discretion on the part of Pelster in seeking a trained canine unit. The mere fact that it took nearly an hour for the unit to ultimately arrive does not make the delay unreasonable, nor does the fact that the stop was conducted on the side of a busy interstate highway. We affirm the district court's finding that the detention was reasonable and did not amount to a de facto arrest.

3. Canine Sniff Was Reliable

Laws challenges the reliability of the canine sniff. We construe his argument to be that because the canine sniff was unreliable, there was not probable cause to search the vehicles. A district court's finding that a drug detection canine is reliable is a finding of fact that is reviewed for clear error.[27]

[10-12] Probable cause to search requires that the known facts and circumstances are sufficient to warrant a person of reasonable prudence in the belief that contraband or evidence of a crime will be found.[28] Probable cause is a flexible, commonsense standard.[29] It merely requires that the facts available to the officer would warrant a person of reasonable caution in the belief that certain items may be contraband or stolen property or useful as evidence of a crime; it does not

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[26] See, *U.S. v. Hardy, supra* note 25; *State v. Soukharith, supra* note 25.

[27] See *U.S. v. Winters*, 600 F.3d 963 (8th Cir. 2010).

[28] *State v. Smith*, 279 Neb. 918, 782 N.W.2d 913 (2010); *State v. McKinney*, 273 Neb. 346, 730 N.W.2d 74 (2007).

[29] *State v. Smith, supra* note 28.

demand any showing that such a belief be correct or more likely true than false.[30] We determine probable cause by an objective standard of reasonableness, given the known facts and circumstances.[31]

[13] Generally, the factors supporting an officer's reasonable suspicion of illegal drug activity, coupled with a well-trained drug detection dog's positive indication of drugs in a vehicle, give the officer probable cause to search the vehicle.[32] Many courts hold that proof that a drug detection dog is properly trained and certified is the only evidence material to a determination that a particular dog is reliable.[33] The rationale for this rule is that because a trained drug detection dog has an ability to detect residual drug odors, reliance on an "accuracy" rate measured by the number of times the dog alerts to drugs in the field and the finding of an actual presence of drugs is misleading.[34] Some courts, however, allow a defendant in at least some circumstances to introduce evidence of a drug detection dog's search records and consider those records in the totality of the circumstances when determining whether a canine alert, combined with reasonable suspicion factors, amounts to probable cause to search a vehicle.[35] We adopt this latter standard.

Here, Eberle testified about Rocky's training and certification at the hearing on the motions to suppress. Eberle testified that Rocky is certified by the Nebraska State Patrol, the entity responsible for certifying drug detection dogs in Nebraska. Rocky obtained his certification in June 2007 after Eberle and Rocky attended a 5-week training session where they were trained as a team. Eberle testified that during training, examiners knew whether a drug substance was present or not

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[30] *Id.*

[31] *Id.*

[32] See, e.g., *State v. Draganescu, supra* note 18.

[33] See *State v. Nguyen*, 157 Ohio App. 3d 482, 811 N.E.2d 1180 (2004) (citing cases).

[34] See *id.*

[35] See *U.S. v. Donnelly*, 475 F.3d 946 (8th Cir. 2007).

when Rocky alerted. He testified that he and Rocky passed an examination at the conclusion of the training and have renewed their certification annually.

Eberle also testified about Rocky's field record. He stated that a form is completed every time Rocky is deployed for a field search. The form indicates whether Rocky alerted and whether drugs were found. Eberle explained that sometimes Rocky will alert but no drugs are found. He explained that this can occur because often there is evidence that the items searched contained the scent of drugs, and it is that scent that Rocky is trained to detect.

The record shows that during 79 field deployments, Rocky alerted 41 times. Seven times, no contraband was found following the alert and there was no explanation for the alert. Another seven times, no contraband was found following the alert but there was a reasonable explanation for the presence of the scent of drugs. On three occasions, Rocky alerted but the form did not document whether any contraband was found.

Based on the evidence of Rocky's training and certification and his field records, we conclude that the district court did not err in finding that the canine sniff was reliable and, combined with the reasonable suspicion factors, supported a finding of probable cause to search the vehicles.

4. Evidence Is Sufficient to Support Laws' Conviction

Laws argues that the evidence was insufficient to convict him of possession with intent to deliver, because the SUV and the camper were leased by other individuals and he was merely the driver. He contends that there is no proof that he was aware that marijuana was in the camper so as to possess it and no proof that he had any intention of distributing the marijuana.

[14,15] When reviewing a criminal conviction for sufficiency of the evidence to sustain the conviction, the relevant question for an appellate court is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime

beyond a reasonable doubt.[36] And whether the evidence is direct, circumstantial, or a combination thereof, the standard is the same: An appellate court does not resolve conflicts in the evidence, pass on the credibility of witnesses, or reweigh the evidence; such matters are for the finder of fact.[37]

[16-19] A person possesses a controlled substance when he or she knows of the nature or character of the substance and of its presence and has dominion or control over it.[38] Possession can be either actual or constructive, and constructive possession of an illegal substance may be proved by direct or circumstantial evidence.[39] Circumstantial evidence may also support a finding that a defendant intended to distribute, deliver, or dispense a controlled substance in the defendant's possession.[40] Circumstantial evidence sufficient to establish possession of a controlled substance with intent to deliver may consist of evidence of the quantity of the substance, equipment and supplies found with the substance, the place where the substance was found, the manner of packaging, and the testimony of witnesses experienced and knowledgeable in the field.[41]

[20] Laws did not have actual possession of the marijuana, so the question before us is whether there is sufficient evidence from which a trier of fact could reasonably infer that he was in constructive possession, i.e., that he was aware of the presence of the marijuana and had dominion or control over it. Mere presence at a place where a controlled substance is found is not sufficient to show constructive possession.[42] Instead, the evidence must show facts and circumstances which affirmatively

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[36] *State v. Chavez*, 281 Neb. 99, 793 N.W.2d 347 (2011); *State v. Robinson*, 278 Neb. 212, 769 N.W.2d 366 (2009).

[37] *State v. Edwards*, 278 Neb. 55, 767 N.W.2d 784 (2009); *State v. Babbitt*, 277 Neb. 327, 762 N.W.2d 58 (2009).

[38] See *State v. Neujahr*, 248 Neb. 965, 540 N.W.2d 566 (1995).

[39] *State v. Draganescu, supra* note 18.

[40] *Id.*; *State v. Utter*, 263 Neb. 632, 641 N.W.2d 624 (2002).

[41] *Id.*

[42] *State v. Jensen*, 238 Neb. 801, 472 N.W.2d 423 (1991).

link Laws to the marijuana so as to suggest that he knew of it and exercised control over it.[43]

[21] Here, the record shows that Laws was driving the SUV at the time of the traffic stop, and according to his own statements, he was the sole driver of the SUV during the trip. Generally, the fact that one is the driver of a vehicle, particularly over a long period of time, creates an inference of control over items in the vehicle.[44] Possession of a controlled substance can also be inferred if the vehicle's occupant acts oddly during the traffic stop,[45] gives explanations that are inconsistent with the explanations of other vehicle occupants,[46] or generally gives an implausible explanation for the travels.[47] These factors are all present here—the record shows Laws' extreme nervousness, Laws' odd explanation for his shaking hands, inconsistencies in the stories related to Pelster by Laws and Howard about whether they visited any friends or relatives in Flagstaff and whether Laws was Howard's uncle, and the unusual nature of the group's travels. In addition, the extremely large amount of marijuana that was found in the camper also supports an inference that Laws, as the driver of the SUV, was aware of it.[48] As one court has noted, "[i]t is reasonable to conclude that defendant would not have been allowed in the [vehicle] as a passenger unless he knew of the valuable cargo contained therein and was conscious of the risks and ramifications involved with transporting that cargo."[49] Viewed in the light most favorable to the State, the evidence supports a reasonable

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[43] See *Robinson v. State*, 174 S.W.3d 320 (Tex. App. 2005).

[44] See, *State v. Matthews*, 205 Neb. 709, 289 N.W.2d 542 (1980); *Corrao et al. v. State*, 154 Ind. App. 525, 290 N.E.2d 484 (1972).

[45] See, *State v. Draganescu, supra* note 18; *Robinson v. State, supra* note 43.

[46] *Id.* See *U.S. v. Villarreal*, 324 F.3d 319 (5th Cir. 2003).

[47] *U.S. v. Villarreal, supra* note 46; *State v. Mercado*, 635 A.2d 260 (R.I. 1993).

[48] See, *U.S. v. Villarreal, supra* note 46; *State v. Draganescu, supra* note 18; *State v. Mercado, supra* note 47; *Robinson v. State, supra* note 43.

[49] *State v. Mercado, supra* note 47, 635 A.2d at 264.

inference that Laws knew of the marijuana and had dominion or control over it.

Laws also argues that there is no direct evidence that he intended to deliver the marijuana. But an inference that he intended to deliver is supported by the amount of the marijuana alone. In *State v. Parsons*,[50] we held that evidence that the defendant was in possession of 16 pounds of marijuana was sufficient to support a finding of his intent to deliver. The same principle obviously applies to possession of 727.5 pounds of marijuana. There was sufficient evidence to support Laws' conviction.

5. Stipulated Bench Trial Not Guilty Plea

Howard argues that by agreeing to go forward with a stipulated bench trial, he essentially entered a de facto guilty plea, and that the district court erred by not informing him of the constitutional rights he was giving up by doing so. The record shows that after Howard waived his right to a jury trial, a bench trial was held on March 1, 2010. The State referred to the trial as a "stipulated trial." At this trial, the State offered documentary evidence and Howard's counsel made no evidentiary objection to the admission of the evidence. Howard did not present evidence. He did, however, preserve all the issues he had raised in his motion to suppress. After considering the admitted evidence, the court found Howard guilty of the crime charged.

[22] A stipulation entered by a defendant can be tantamount to a guilty plea.[51] But this is true only when the defendant stipulates either to his or her guilt or to the sufficiency of the evidence.[52] Howard did not do so. Instead, he merely stipulated to the admission of certain evidence, and then the district court determined whether that evidence was sufficient to convict him

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[50] *State v. Parsons*, 213 Neb. 349, 328 N.W.2d 795 (1983).

[51] See, generally, *U.S. v. Holman*, 314 F.3d 837 (7th Cir. 2002); *Felker v. Thomas*, 52 F.3d 907 (11th Cir. 1995); *People v. Horton*, 143 Ill. 2d 11, 570 N.E.2d 320, 155 Ill. Dec. 807 (1991); *Glenn v. United States*, 391 A.2d 772 (D.C. App. 1978).

[52] See *id.*

of the crime charged. Simply stipulating to the admission of evidence is not tantamount to a guilty plea.[53] Moreover, it is clear from the record that Howard preserved all of the defenses and arguments he raised in his motion to suppress. Where the defendant has presented or preserved a defense, such as the suppression of evidence, a stipulated bench trial is not tantamount to a guilty plea.[54]

We conclude that Howard's participation in the stipulated bench trial was not tantamount to a guilty plea, and the district court did not err in failing to inform him of any constitutional rights he was waiving by participating in the stipulated trial.

6. No Ineffective Assistance of Counsel

[23,24] Howard contends that his trial counsel was ineffective for failing to contest his guilt. Under *Strickland v. Washington*,[55] in order to prevail on a claim for ineffective assistance of counsel, a defendant must show that his or her counsel's performance was deficient and that he or she was prejudiced by such deficiency. According to *United States v. Cronic*,[56] under certain limited circumstances, prejudice to the accused is to be assumed (1) where the accused is completely denied counsel at a critical stage of the proceedings, (2) where counsel fails to subject the prosecution's case to meaningful adversarial testing, and (3) where the surrounding circumstances may justify a presumption of ineffectiveness without inquiry into counsel's actual performance at trial.

Howard does not cite to either *Strickland* or *Cronic*, but he argues generally that his counsel did not subject the prosecution's case to meaningful adversarial testing at all, because the stipulated bench trial was a de facto guilty plea. As noted, however, nothing about the stipulated bench trial

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[53] *People v. Horton, supra* note 51; *State v. Davis*, 29 Wash. App. 691, 630 P.2d 938 (1981).

[54] *People v. Horton, supra* note 51.

[55] *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984).

[56] *United States v. Cronic*, 466 U.S. 648, 104 S. Ct. 2039, 80 L. Ed. 2d 657 (1984).

was tantamount to a guilty plea, and therefore Howard's trial counsel could not have been ineffective under either the *Strickland* or the *Cronic* standard in failing to contest his guilt by proceeding with the stipulated bench trial. Howard makes no argument as to either performance or prejudice outside the assertion that a stipulated bench trial is equivalent to a guilty plea. Howard's ineffective assistance of counsel claim is without merit.

7. Sentence Not Excessive

[25-27] Howard alleges that the trial court erred by imposing an excessive sentence. Sentences within statutory limits will be disturbed by an appellate court only if the sentences complained of were an abuse of judicial discretion.[57] When imposing a sentence, a sentencing judge should consider the defendant's age, mentality, education and experience, social and cultural background, past criminal record, and motivation for the offense, as well as the nature of the offense and the violence involved in the commission of the crime.[58] In imposing a sentence, the sentencing court is not limited to any mathematically applied set of factors. The appropriateness of a sentence is necessarily a subjective judgment and includes the sentencing judge's observation of the defendant's demeanor and attitude and all the facts and circumstances surrounding the defendant's life.[59]

Howard's conviction was for possession of a controlled substance with intent to deliver, a Class III felony, punishable by a maximum of 20 years' imprisonment, a $25,000 fine, or both.[60] Howard received a sentence of 10 to 14 years' imprisonment. He was caught transporting 727.5 pounds of marijuana, and he has a lengthy criminal history. Howard claims that his sentence was excessive because he is a caring father and because his sentence was disproportionate to the sentences imposed on Laws and McGee.

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[57] *State v. Rung*, 278 Neb. 855, 774 N.W.2d 621 (2009).

[58] See *State v. Casillas*, 279 Neb. 820, 782 N.W.2d 882 (2010).

[59] *Id.*

[60] See Neb. Rev. Stat. §§ 28-105, 28-405, and 28-416(2)(b) (Reissue 2008).

Howard's sentence is well within the statutory limits and is consistent with the nature of the crime and his prior criminal history. Nothing in our sentencing guidelines requires a judge to consider the sentences imposed on codefendants. The district court did not abuse its discretion in imposing Howard's sentence.

IV. CONCLUSION

Pelster had reasonable suspicion to detain the vehicle after the traffic stop, and the length of the continued detention was not unreasonable. There is sufficient evidence of Rocky's training, certification, and field accuracy in the record to support the district court's factual finding that the results of the canine sniff were admissible. The reasonable suspicion factors combined with the alert by the trained canine constituted probable cause to search the vehicles.

Howard did not enter a de facto guilty plea when he participated in the stipulated bench trial, and his trial counsel was not ineffective. There is sufficient evidence to support the convictions of both Laws and Howard, and Howard's sentence was not excessive.

We affirm the judgment of the district court in each appeal.

AFFIRMED.

HEAVICAN, C.J., not participating.

PAT BRITTON, PERSONAL REPRESENTATIVE OF THE ESTATE OF JESSE BRITTON, DECEASED, APPELLANT, V. CITY OF CRAWFORD, A NEBRASKA POLITICAL SUBDIVISION, APPELLEE.

803 N.W.2d 508

Filed September 23, 2011. No. S-10-1013.

1. **Motions to Dismiss: Rules of the Supreme Court: Pleadings.** Because a motion pursuant to Neb. Ct. R. Pldg. § 6-1112(b)(6) tests the legal sufficiency of the complaint, not the claim's substantive merits, a court may typically look only at the face of the complaint to decide a motion to dismiss.
2. **Rules of the Supreme Court: Pleadings.** Dismissal under Neb. Ct. R. Pldg. § 6-1112(b)(6) should be granted only in the unusual case in which a plaintiff