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*Assignment of Sentencing Judge to Postconviction Proceedings.*

[9] Manning asserts that § 29-3001 requires that the postconviction proceeding be heard by the judge that sentenced him. However, we conclude that this is not the case. Section 29-3001 provides that a prisoner "may file a verified [postconviction] motion at any time in the court which imposed such sentence." The plain language of § 29-3001 requires only that the postconviction motion be filed in the court where the sentence was imposed—not that it be heard by the sentencing judge. Therefore, this assignment of error is also without merit.

## CONCLUSION

We conclude that the district court did not abuse its discretion in overruling Manning's motion to vacate the district court's final order denying postconviction relief. His other assigned errors lack merit.

AFFIRMED.

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STATE OF NEBRASKA, APPELLEE, V.
JASON M. PASSERINI, APPELLANT.
789 N.W.2d 60

Filed August 31, 2010. No. A-09-667.

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 conduct a warrantless search, ultimate determinations of reasonable suspicion and probable cause are reviewed de novo on the record. However, 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.

4. ____: ____: ____. A traffic stop 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.
5. **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 the person is involved in criminal activity beyond that which initially justified the interference.
6. **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.
7. **Investigative Stops: 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 and must be determined on a case-by-case basis.
8. ____: ____: ____. If reasonable suspicion exists, the court must then 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.
9. **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.
10. **Investigative Stops: Police Officers and Sheriffs: Probable Cause.** Although a motorist's nervousness is an appropriate factor for consideration within the totality of the circumstances of a prolonged traffic stop, its presence is of limited significance generally.
11. ____: ____: ____. An individual's criminal history may be a relevant factor when determining whether an officer has reasonable suspicion to detain an individual. However, such history cannot form the sole basis to determine reasonable suspicion to support detention.

Appeal from the District Court for Lancaster County: JEFFRE CHEUVRONT, Judge. Reversed and remanded with directions.

Robert B. Creager, of Anderson, Creager & Wittstruck, P.C., for appellant.

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

INBODY, Chief Judge, and MOORE and CASSEL, Judges.

INBODY, Chief Judge.

## I. INTRODUCTION

Jason M. Passerini appeals the decision of the Lancaster County District Court denying his motion to suppress evidence obtained as a result of a canine sniff search of the rental vehicle he drove. Passerini assigns error as to the motion to suppress, the reliability of the canine sniff, and the sufficiency of the subsequent conviction for possession of a controlled substance with the intent to deliver.

## II. STATEMENT OF FACTS

On October 16, 2007, David Frye, a trooper with the Nebraska State Patrol, and Bradley Hulse, an officer with the Lincoln Police Department, observed a pickup truck traveling eastbound on Interstate 80, near Lincoln, Nebraska. Frye and Hulse observed a barcode on the rear window, which indicated to them that the truck was a rental vehicle. Frye and Hulse also indicated that it was unusual that the driver of the truck did not look in their direction in passing, but appeared to be tense and looked straight ahead, placing his hands "at ten and two" on the steering wheel. Frye pulled his cruiser near the truck, which slowed to approximately 5 miles an hour below the speed limit. Hulse observed that, after traveling behind the truck for approximately 6 miles and upon reaching the Waverly, Nebraska, exit on the interstate, the truck abruptly braked and exited without using its turn signal. Hulse observed the activation of the turn signal after the truck had left the interstate and traveled some distance on the exit ramp. Frye, still traveling on the interstate, pulled his cruiser to the median to allow traffic to pass and then proceeded to follow the truck.

The truck pulled up to a gas pump at a service station approximately 1½ miles from the interstate exit, at which time Frye activated his cruiser's overhead lights and made contact with the driver of the truck, Passerini. Frye approached Passerini and explained that he stopped him for failure to use his turn signal at the exit and that he was going to issue him a warning. Frye asked Passerini if he had any weapons on him,

and Passerini indicated to Frye that he had a small pocketknife. Frye had him place the pocketknife on the rear bumper of the truck, and Passerini consented to a pat-down search by Frye. Frye then asked that Passerini sit in the cruiser while he issued the warning.

While sitting in the cruiser, Frye questioned Passerini about why he had chosen the Waverly exit for gas and food versus the various other visible service stations and restaurants he passed. Frye also questioned Passerini regarding whether he had ever been cited for any weapons or drug offenses, and Passerini indicated that he was arrested for something in conjunction with filling out a gun permit, but was never convicted, and also had a charge as a juvenile which dealt with drugs.

Passerini indicated to Frye that he had been living in Reno, Nevada, with his uncle for the past several months and had been helping on his uncle's ranch. Passerini explained that he was traveling back to his home state of Pennsylvania to take care of his barn, which had burned down in August 2009. Frye continued to question Passerini about various subjects, and after 19 minutes had passed since the stop was initiated, Frye explained why he stopped Passerini and how it was a violation of Nebraska law. Frye then gave Passerini the warning and his vehicle rental papers and told Passerini that he was finished with the traffic stop. After 21 minutes had passed, Frye began to question Passerini again about his living situation and travel plans. Passerini interrupted Frye and asked Frye whether he was "done now." Frye indicated to Passerini that he was in fact done with the traffic stop but asked whether he had anything illegal in the truck and asked for consent to search the truck. Passerini told Frye that if the traffic stop was indeed over, he wanted to leave. Frye then began to question Passerini as to whether he supported law enforcement and the pursuit of terrorists and again asked for consent to search the truck. Passerini indicated that "he had already been searched" in Salt Lake City, Utah, and did not want to go through the process again. Again, Frye explained to Passerini that no one knows what a terrorist looks like and thus, that it was his job to search vehicles traveling on the interstate. Frye again asked for consent to search, which Passerini declined. Frye then asked

whether Passerini would consent to a canine search of the truck, to which Passerini again declined and indicated to Frye that, since Frye had said the stop was over, he was going to get his gas and food and leave.

Approximately 27 minutes after the initial stop, Frye replied, "[A]ctually right now you are detained. You're not free to go anywhere, based upon my suspicions I am now detaining you." Frye again asked for consent to search the truck, which Passerini denied. Frye then confronted Passerini about his criminal history after discovering from dispatch that Passerini had two prior contacts involving drugs (although it is unclear from the record when this information was received). After 29 minutes, Frye asked Passerini for consent to search the truck and Passerini again asked to leave. Frye again indicated to Passerini that he could not leave and contacted dispatch for assistance with a canine sniff of the truck.

After a brief silence, Frye again began to question Passerini about his prior drug offenses and contacted dispatch to speak directly with Frye and Passerini regarding the prior offenses discovered after running his name through the system. Frye also continued to question Passerini about his travel plans and history of living in Reno.

Approximately 48 minutes after the initial stop, 29 minutes after Frye first indicated that the reason for the initial traffic stop was finished and Passerini first indicated that he wanted to leave, Gordon Downing, a trooper with the Nebraska State Patrol, arrived with his drug detection dog. A canine sniff of the vehicle was immediately conducted. The dog alerted Downing to the pocketknife still located on the bumper of the truck and also alerted at the driver's-side window. Upon searching the truck, troopers located a suitcase, and several packaged bags of marijuana were located within the suitcase and seized. Passerini was arrested approximately 57 minutes after the initial stop and eventually charged with possession of a controlled substance with the intent to distribute.

On February 7, 2008, Passerini filed a motion to suppress evidence obtained as a result of the continued stop of his truck by the Nebraska State Patrol. The motion alleged that law enforcement lacked reasonable suspicion and violated his 4th

and 14th Amendment rights. Passerini also filed a "Motion for Daubert Hearing and Determination of Admissibility of Drug Dog Evidence," which motion alleged that the drug detection dog was unreliable and that as such, there was no probable cause for law enforcement to search the vehicle.

At the hearing, Frye testified that, on October 16, 2007, he was on patrol at the 27th Street exit on Interstate 80 with Hulse, who was on a "ride along." Frye testified that his attention was first drawn to the truck driven by Passerini because the truck had Nevada license plates and appeared to be a rental vehicle. Frye testified that the driver changed his behavior by sitting up straight and placing his hands "at ten and two," whereas most people look at the officer or stay relaxed if they do not see the officer. Frye pulled out of the median and followed the truck, eventually pulling alongside the truck. Frye indicated that he observed Passerini driving, that there was a dog in the truck with Passerini, and that Passerini did not look at him. Frye indicated that, based upon his experience, this was not normal behavior. Specifically, Frye testified that

> when he came by us when we were in the median, based on my training and experience, he appeared to be setting himself up to look good as he drove by, again, paying absolutely no averted attention to anything but straight ahead of him. Um, having his hands placed at ten and two which is not a natural driving position of comfort. Um, the — when I pulled up and pulled along side him, again, his not acknowledging our presence.

Frye testified that because of Passerini's posture and because he was driving a very clean rental vehicle, Frye was suspicious and began to follow Passerini with the intention that he might observe Passerini's committing a traffic violation so Frye could confirm or deny his suspicions.

Frye testified that just before the Waverly exit sign, Passerini tapped on the brakes of the truck and abruptly exited the interstate without utilizing his turn signal until the truck had already merged into the exit lane. Frye indicated that he maneuvered his cruiser across traffic and followed Passerini to a service station, where Frye initiated a traffic stop for failure to signal.

Frye began to question Passerini, and Passerini explained that he was from and had a home in Pennsylvania, but had gone to Reno to help his uncle. Frye also indicated that Passerini told him that, while in Nevada, he had become involved in rodeo and had been thrown from a bull and injured. Frye testified that Passerini indicated his barn in Pennsylvania had burned down in August and that he was going to check on the situation. Frye testified that Passerini's demeanor indicated to Frye that he was making up the story as he went along, which he felt was substantiated by the facts that Passerini indicated he was driving to Pennsylvania because he could not fly with his dog and because the rental truck was to be returned to Nevada. Frye indicated that Passerini was acting "nervous" and "fidgety," was rubbing his hands on his legs throughout the stop, and did not make much eye contact with him. Frye also thought circumstances were suspicious because Passerini told him he took the Waverly exit for food and gas, when he had just passed several "major interchanges where it was visible from the interstate." Frye testified that, when he handed Passerini his license and rental documents, Passerini's hands were trembling.

Frye also testified that there was significance in the fact that Passerini had a dog traveling with him, because there had been an increase in individuals involved in criminal activity utilizing pets and children to change the circumstances for law enforcement. Frye testified that Passerini also told different stories regarding his criminal history.

Frye testified that he issued a warning to Passerini for failure to use his turn signal and then requested to speak with him about his travel plans. Frye testified that he questioned Passerini as to whether there were illegal items in the truck but was never given a direct answer. Frye testified that it took approximately 4 or 5 minutes for Passerini to answer his request to search the truck and that he then detained Passerini for all of the reasons previously indicated in his testimony.

Hulse, the Lincoln police officer riding with Frye on October 16, 2007, testified that he observed the truck traveling eastbound on Interstate 80 and that he, like Frye, was alerted to the truck because of the rental barcode on the rear window. Hulse

testified that generally, when law enforcement is on patrol in the median of the interstate, drivers will immediately brake and make eye contact with law enforcement; however, the driver of this truck was very rigid, placing his hands "at ten and two" on the steering wheel and looking straight forward, never making eye contact. Hulse testified that Frye sped up from the median and drove next to the vehicle when the driver slowed down to approximately 5 miles an hour below the speed limit. Hulse also indicated that as the truck approached the Waverly exit, the truck abruptly braked and exited the interstate without signaling. Hulse indicated that Frye pulled the cruiser to the median, waited for traffic to clear, then exited, and that he then observed the truck with its turn signal on.

Downing testified that he had been employed as a trooper for 10 years and a "canine handler" for 3 years. Downing testified that in order to be a canine handler, he went through a 13-week certification course which consisted of narcotic detection and patrol certification. Downing explained that during narcotic detection, dogs are trained to detect the odors of marijuana, heroin, cocaine, and methamphetamine, and that during patrol certification, the dogs are taught apprehension work, building search, tracking, and evidence recovery. Downing testified that the certification was not individual certification, but for the trainer and dog team. Downing explained that there was a written test which required an 80-percent pass rate and that there was then a practical exercise, which requires a 4.0 or better on a scale of 1 to 6 (one being the highest) and which requires the dog to have a passing indication score on each of the four odors. Downing testified that he and his dog had been certified and continued to renew that certification annually.

Downing testified that on October 16, 2007, he received a request to assist troopers by having his dog conduct an exterior sniff of a vehicle for the odor of drugs. Downing testified that, on the scene, his dog immediately alerted at the pocketknife on the bumper of the truck and again at the driver's side of the truck. After a search of the truck, law enforcement located a suitcase containing several packages of marijuana.

The district court found that law enforcement had stopped Passerini for failing to signal his exit from the interstate in

a timely manner and thus had probable cause for the stop and were allowed to conduct an investigation related to the stop. The court further determined that Passerini's unusual behavior, his abrupt exit from the interstate, his nervousness when talking with Frye, the fact that Passerini was driving a rental truck, the inconsistencies in his statements about travel, and the previous drug-related contacts constituted reasonable suspicion to detain Passerini until the canine unit could arrive. The district court also found that the drug detection dog was reliable and that the expert testimony given to dispute the dog's reliability by an expert offered by Passerini was unpersuasive. The district court overruled Passerini's motion to suppress and implicitly overruled through its findings, although not specifically stated, the motion regarding the drug detection dog's reliability.

A bench trial was held on the matter. Passerini was found guilty of one count of possession of a controlled substance with the intent to deliver and was sentenced to 2 to 4 years' imprisonment with 10 days' credit for time served. Passerini has timely appealed.

## III. ASSIGNMENTS OF ERROR

Passerini assigns, rephrased and consolidated, that the district court erred in overruling his motion to suppress, in determining that the drug detection dog was reliable, and in finding that there was sufficient evidence to find him guilty of possession of a controlled substance with the intent to deliver.

## IV. STANDARD OF REVIEW

[1] When reviewing a district court's determinations of reasonable suspicion to conduct an investigatory stop and probable cause to conduct a warrantless search, ultimate determinations of reasonable suspicion and probable cause are reviewed de novo on the record. However, 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. *State v. Louthan*, 275 Neb. 101, 744 N.W.2d 454 (2008); *State v. Voichahoske*, 271 Neb. 64, 709 N.W.2d 659 (2006).

## V. ANALYSIS

### 1. Denial of Passerini's Motion to Suppress

[2-5] No issue in this case as to the initial traffic stop of Passerini for failure to signal a turn has been raised. A traffic violation, no matter how minor, creates probable cause to stop the driver of a vehicle. *State v. Louthan, supra*. 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. See *id*. 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. *Id*. The record in this case indicates that these investigative procedures were completed and that a warning was issued to Passerini within approximately 19 minutes after Frye stopped behind the truck and activated his cruiser's overhead lights.

[5-8] Passerini argues that the district court erred in determining that Frye had reasonable suspicion to further detain him once the initial traffic stop had been completed. 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 the person is involved in criminal activity beyond that which initially justified the interference. S*tate v. Louthan, supra*. 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. *Id*. Whether a police officer has a reasonable suspicion based on sufficient articulable facts depends on the totality of the circumstances. Reasonable suspicion must be determined on a case-by-case basis. *Id*. If reasonable suspicion exists, the court must then 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. *Id*.

The video of the traffic stop, which is a part of the record in this case, indicates that approximately 19 minutes after the stop, following a check of the driver's license and rental vehicle agreement, Frye gave Passerini a warning for failure to signal a turn and returned all of the rental papers to Passerini, telling him that as far as the traffic stop goes, "I am done." At that point, Passerini attempted to leave and Frye immediately began to again question Passerini about his travel plans. During the next approximately 8 minutes, the video clearly reflects that Frye made several attempts to obtain Passerini's consent to search the truck, each of which was denied by Passerini, who told Frye that he wanted to leave and get back on the road. Frye informed Passerini that he was being detained and was not free to leave and repeated his attempt to seek consent from Passerini to search the truck. Passerini again declined Frye's request and attempted to leave the cruiser. After an additional 2 minutes of discussion with Passerini, the video indicates that Frye told Passerini a second time that he was detained and placed a call to dispatch for a canine sniff.

[9] The district court determined that Frye had sufficient reasonable suspicion because of

> Passerini's unusual behavior when the officers' vehicle pulled along side on the Interstate, his abrupt exit from the highway, his nervousness when conversing with Frye, the fact that he was driving a rental vehicle, his inconsistencies and changes in his account of what he was doing in Reno and the reason(s) for returning to Pennsylvania and the fact that he had several prior drug related contacts, when considered together, constituted reasonable suspicion to detain Passerini further.

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. *State v. Louthan*, 275 Neb. 101, 744 N.W.2d 454

(2008). See *State v. Voichahoske*, 271 Neb. 64, 709 N.W.2d 659 (2006).

(a) Unusual Behavior on Interstate

Frye and Hulse testified it was unusual that Passerini did not look at them in passing on the interstate and appeared to be tense and looked straight ahead and that further, he placed his hands "at ten and two" on the steering wheel. Furthermore, when the trooper's cruiser pulled near Passerini, he did not look at them and slowed his truck to approximately 5 miles an hour below the speed limit. The district court took into account these facts and indicated in its order that it was "unusual behavior." However, the record contains no evidence, nor has any authority been presented which would indicate to this court, that the behaviors described by law enforcement are actually "unusual" and, furthermore, appropriate to be considered in the analysis of reasonable suspicion. Therefore, we will not consider this testimony in our analysis.

(b) Abrupt Exit

Passerini's abrupt exit from the interstate was the circumstance under which the traffic stop was initiated, including the failure to signal a turn. Hulse testified that once the cruiser had exited the median, he and Frye followed Passerini's truck for approximately 6 miles, at which time Hulse observed Passerini tap on the brakes and then abruptly move off the interstate onto the Waverly exit ramp without signaling. Shortly thereafter, Frye and Hulse observed Passerini initiate his signal, but noted that he was already traveling on the exit ramp. Passerini traveled approximately 1½ miles from the exit to a service station, where he pulled up to a gas pump and Frye pulled behind him and activated his cruiser's overhead lights. Passerini indicated to Frye that he had exited at this particular exit for gas and food. This factor, in and of itself, does not support a determination of reasonable suspicion but may be considered with other factors.

(c) Nervousness

[10] Frye testified that throughout the traffic stop, Passerini was "nervous," "fidgety," and "rubbing his hands on his legs."

Although a motorist's nervousness is an appropriate factor for consideration within the totality of the circumstances of a prolonged traffic stop, its presence is of limited significance generally. *State v. Louthan, supra*; *State v. Lee*, 265 Neb. 663, 658 N.W.2d 669 (2003). See, also, *State v. Anderson*, 258 Neb. 627, 605 N.W.2d 124 (2000), *overruled on other grounds, State v. McCulloch*, 274 Neb. 636, 742 N.W.2d 727 (2007) (trembling hands, pulsing carotid artery, difficulty locating vehicle registration, and hesitancy to make eye contact are signs of nervousness which may be displayed by innocent travelers who are stopped and confronted by officer and standing alone did not afford officer basis for believing individual stopped was involved in criminal activity). Standing alone, the description of Passerini's nervousness would not support a determination of reasonable suspicion, and while it may be considered with other factors, it is of limited significance. See, *State v. Louthan*, 275 Neb. 101, 744 N.W.2d 454 (2008); *State v. Lee*, 265 Neb. 663, 658 N.W.2d 669 (2003).

(d) Rental Vehicle

Frye and Hulse both testified that they initially were drawn to Passerini because he was driving a truck with Nevada license plates which appeared to be a rental vehicle due to the barcode on the rear window of the truck and the "cleanliness of the vehicle." The record indicates that Passerini indicated to Frye that he had rented a truck in Reno, where he was temporarily living with his uncle and assisting him on his ranch. Passerini indicated to Frye that he rented a truck in order to bring back some building materials and a motorcycle from his home in Pennsylvania. Also included in the record is a copy of the rental agreement for the truck, indicating that the truck was rented in Reno, in the name "Jason Passerini" on October 11, 2007, to be returned on October 25 in Reno. The fact that Passerini was driving a rental vehicle is perfectly consistent with law-abiding activity, and furthermore, the matching names on the driver's license and rental agreement, coupled with the consistency of Passerini's story as to the timeframe of the trip and his plans to return to Reno should have dispelled, rather than created, further suspicion. See *State v. Anderson, supra*.

Thus, this factor alone would not support a determination of reasonable suspicion.

(e) Inconsistencies in Travel Plans

Frye testified that there were several inconsistencies in Passerini's statements regarding his travel plans, and the district court considered that as one factor which in totality amounted to reasonable suspicion. However, a closer look at the record and the video indicate that Passerini's story and description of his travel plans were consistent throughout the stop. Passerini told Frye that he was traveling from Reno to Pennsylvania. Passerini explained that he was originally from Pennsylvania and had been temporarily living in Nevada with his uncle and assisting him on his ranch. Passerini told Frye that in August, he was informed that his barn had burned down, and that he now was on his way to check out the situation and to pick up some equipment and a motorcycle to bring back to Nevada. Passerini explained that while in Nevada, his uncle had introduced him to the rodeo and he was thrown from a bull and injured around the time his barn burned down, and that this was the first opportunity he had to travel back to Pennsylvania. Thus, while we agree that inconsistent answers relating to the purpose of a trip or for being at a particular location is a factor which may be considered, this record presents no such inconsistencies in Passerini's given travel plans, and therefore, we will not consider this factor.

(f) Prior Drug-Related Contacts

The system check by dispatch on Passerini's criminal background revealed to Frye that Passerini had two drug-related contacts in 2000 and 2001. During the initial traffic stop, Frye questioned Passerini about his travel plans and also began an inquiry as to his criminal history. Frye first asked when was the last time Passerini had his license suspended, to which Passerini responded that it had never been suspended. Frye asked whether Passerini was on probation or parole, which he denied. Frye then asked whether Passerini had ever been arrested, and Passerini indicated that he had been arrested several years ago while renewing a gun permit but did not

remember specifics about the charge. Frye questioned Passerini whether he had been arrested for anything else, such as weapons or drug offenses, which Passerini again denied, but then Passerini responded that there had been a charge involving drugs when he was younger. At this time, Frye redirected questioning back to Passerini's travel plans.

Several minutes later, Frye issued Passerini a warning for failure to use his turn signal. After approximately 21 minutes, Frye indicated that he was done with the traffic stop and immediately began to question Passerini's travel plans as he had done before. Passerini interrupted Frye and inquired whether he was done, to which Frye responded that he was done with the traffic stop but wanted to know if there was anything illegal in the truck. Passerini again asked permission to leave, and Frye denied the request. After approximately 26 minutes and several attempts by Passerini to exit the cruiser, Frye informed Passerini that he had been detained and was not free to leave. Frye's testimony regarding further discussions concerning Passerini's drug contacts occurred several minutes after Passerini had already been informed that he was detained and not free to leave the cruiser.

[11] In our review of the facts of the case, an individual's criminal history is a factor when determining whether an officer has reasonable suspicion to detain an individual. *State v. Lee*, 265 Neb. 663, 658 N.W.2d 669 (2003). However, such history cannot form the sole basis to determine reasonable suspicion to support detention. *Id.*

(g) Totality of Circumstances

In sum, the circumstances which we view collectively consist of Passerini's lawfully operating a rental vehicle properly registered in his name, abruptly exiting the interstate, nervousness upon being detained and questioned, and prior drug-related contacts. Based upon our de novo review and considering the totality of the circumstances set forth above, we conclude that law enforcement did not have a reasonable, articulable suspicion that Passerini was involved in unlawful drug activity which would have been sufficient to justify the prolonged detention once the traffic stop had concluded.

Thus, while law enforcement's premonitions about Passerini may have eventually amounted to more than a "hunch," the fact that the "hunch" proved to be correct does not legitimize the circumstances. See *State v. Anderson*, 258 Neb. 627, 605 N.W.2d 124 (2000), *overruled on other grounds, State v. McCulloch*, 274 Neb. 636, 724 N.W.2d 727 (2007). Therefore, the district court erred in denying Passerini's motion to suppress, receiving evidence obtained in that search, and convicting Passerini of the offense of possession of a controlled substance with the intent to deliver. As such, we reverse the order of the district court and remand the cause with directions to set aside the judgment of conviction and remand for a new trial.

### 2. Passerini's Remaining Assignments of Error

Having determined that the district court improperly denied Passerini's motion to suppress, we need not address Passerini's other assignments of error. An appellate court is not obligated to engage in an analysis which is not needed to adjudicate the controversy before it. *Papillion Rural Fire Prot. Dist. v. City of Bellevue*, 274 Neb. 214, 739 N.W.2d 162 (2007).

## VI. CONCLUSION

In conclusion, we find that the district court erred in denying Passerini's motion to suppress evidence based upon law enforcement's lack of reasonable suspicion to further detain Passerini once the traffic stop had concluded. Therefore, we reverse the order of the district court denying the motion to suppress and remand the cause with directions consistent with this opinion.

Reversed and remanded with directions.

Moore, Judge, dissenting.

I respectfully disagree with the majority opinion's conclusion that law enforcement did not have a reasonable, articulable suspicion to justify the detention of Passerini once the traffic stop had concluded. While I agree that any of the factors considered by the majority opinion, standing alone, would be insufficient to support a determination of reasonable suspicion,

my view of the totality of the circumstances leads me to believe that there was a reasonable, articulable suspicion sufficient for the prolonged detention of Passerini.

Factors that would independently be consistent with innocent activities may nonetheless amount to reasonable suspicion when considered collectively. *State v. Draganescu*, 276 Neb. 448, 755 N.W.2d 57 (2008). And, an individual's criminal history may be a relevant factor when determining whether an officer has reasonable suspicion to detain an individual. *State v. Lee*, 265 Neb. 663, 658 N.W.2d 669 (2003). When considered collectively under the totality of the circumstances, Passerini's abrupt exit from the interstate after the law enforcement officers began to follow and then pull alongside Passerini, Passerini's travel over 1½ miles off the interstate before stopping at a gas station, Passerini's nervousness upon being detained and questioned, and Passerini's prior drug arrests created a reasonable, articulable suspicion sufficient for the prolonged detention of Passerini once the traffic stop had concluded. I would affirm the decision of the district court to deny Passerini's motion to suppress.