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SENT VIA ELECTRONIC MAIL

Chief of Police Luke Hecker: heckl@ci.loveland.co.us
Loveland Police Department
810 E. 10th Street
Loveland, Colorado 80537

Re: David Kramer

Dear Chief Hecker:

I am writing on behalf of David Kramer, who was unreasonably detained and suffered the illegal search of his person and vehicle by Loveland police officers on July 4, 2011. On that evening, Mr. Kramer was travelling from his home to a nearby post office when he was pulled over by Officer Tim Knopp. Less than two minutes after Officer Knopp stopped Mr. Kramer, the officer ordered Mr. Kramer out of his car and proceeded to immediately handcuff him. Officer Knopp had no evidence that Mr. Kramer posed any threat, yet the officer detained Mr. Kramer in handcuffs for more than an hour while Loveland police officers conducted a search of Mr. Kramer's person and vehicle without any probable cause that he had committed a crime. The officers' actions violated Mr. Kramer's Fourth Amendment right to be free from unreasonable search and seizure.

I. FACTUAL BACKGROUND

On July 4, 2011 at approximately 10:30 p.m., Mr. Kramer left his house in Johnstown, Colorado, to head to the post office in Loveland to pick up mail at his post office box. On his way, Mr. Kramer noticed an SUV behind him with flashing red and blue lights, and he immediately pulled the car over to the side of the road.

Officer Tim Knopp approached Mr. Kramer's car window and asked where Mr. Kramer was going. Mr. Kramer responded that he was heading to the post office. The officer then asked Mr. Kramer for his driver's license, registration and proof of insurance. Mr. Kramer said that he did not have that documentation available to give to the officer at that time because he normally keeps it in the trunk of the car for security purposes.¹ The officer almost immediately began

¹ Mr. Kramer lives in Colorado, but he is originally from California. He travels back and forth between the two states on a regular basis and maintains both a California and a Colorado driver's license. As a habit, when Mr.

regarding Mr. Kramer with suspicion and questioned him very skeptically about why the documentation was in the trunk and why Mr. Kramer was going to the post office at that time of night. Mr. Kramer replied that he keeps the documentation in the trunk in case his car is broken into (which had happened in the past), and that he maintains a post office box in Loveland and was merely going to pick up his mail.

The entire interaction and verbal exchange between Mr. Kramer and Officer Knopp up to this point had lasted approximately two minutes. It was at this point, however, that Officer Knopp directed Mr. Kramer to get out of the car and asked whether Mr. Kramer had any weapons on him. Mr. Kramer often carries a pocket knife and told the officer that the knife may be in his front pocket. The officer then immediately asked Mr. Kramer to turn around, put his hands behind his head, and interlace his fingers. Within a matter of seconds Officer Knopp put Mr. Kramer in handcuffs and told him, "You're detained at this point."

Officer Knopp's actions in this regard were plainly unreasonable. As revealed later in the internal investigation conducted by Loveland Police Lieutenant Rick Arnold, Officer Knopp's only justification for handcuffing Mr. Kramer was that the officer "didn't know what [Mr. Kramer] was up to and [Mr. Kramer] was acting nervous and not clearly explaining his presence in the area or where he was going." This is clearly not a sufficient justification to handcuff a private citizen who has been accused of nothing more than failing to stop at a stop sign.

After placing Mr. Kramer in handcuffs, Officer Knopp conducted a pat down and removed the pocket knife from Mr. Kramer's pocket. Officer Knopp then proceeded to remove the wallet from Mr. Kramer's back pocket, opened the wallet, and removed and reviewed every card in the wallet. Officer Knopp searched the wallet without Mr. Kramer's consent or any other legal justification for the search. At the same time, the officer questioned Mr. Kramer about what was "really going on," and he stated that Mr. Kramer's "story is not really adding up." Officer Knopp instructed Mr. Kramer to sit on the sidewalk near the rear of the car. Mr. Kramer complied.

Officer Knopp continued his roadside interrogation of Mr. Kramer, stating to Mr. Kramer "Be honest, what's going on here?" and "Why are you lying to me?" Officer Knopp later justified the intimidating behavior as part of his "command presence" that he learned during a drug interdiction class called "Dessert Snow." Importantly, though, at this point Officer Knopp had no evidence or even reasonable suspicion that Mr. Kramer had anything to do with drug activity. Officer Knopp's actions indicate that he was pursuing a hastily-formed, baseless hunch that Mr. Kramer was up to some sort of criminal activity. Yet, Officer Knopp never articulated any reasonable basis for handcuffing or detaining Mr. Kramer.

Within minutes of Officer Knopp handcuffing Mr. Kramer, two other officers arrived on scene. During the questioning and detention of Mr. Kramer, none of the other officers appeared concerned about the basis for the continued questioning or why Mr. Kramer remained detained.

Kramer is driving in Colorado, he keeps his Colorado identification, proof of insurance and registration in the spare tire compartment of the trunk of his car. At the time Mr. Kramer was stopped by Officer Knopp, Mr. Kramer had his California driver's license in his wallet, but his Colorado license and other documentation were in the trunk of the car.

Clearly, this was a disproportionate police response to such a minor traffic violation on a busy holiday night, yet none of the officers raised any of these seemingly important issues.

In an effort to diffuse the clearly escalating situation, Mr. Kramer suggested that Officer Knopp obtain the registration and insurance from the trunk of the car to verify Mr. Kramer's identity and confirm that he did in fact have a post office box at the nearby post office. Mr. Kramer explained where the documentation was located – inside the space where the spare tire was located – and that he was not giving Officer Knopp permission to search the entire car, but only to obtain his insurance and registration cards. Nonetheless, after opening the trunk, Officer Knopp immediately began to look through a box containing Mr. Kramer's business papers. Officer Knopp was again conducting a search without permission or probable cause to believe Mr. Kramer committed any kind of a crime that would justify a search of the trunk.

After what Mr. Kramer states was “at least a few minutes” of continued searching through the boxes in his trunk, Officer Knopp discontinued his illegal search and retrieved the identification documentation from the compartment in the spare tire. It was only at that point (a few minutes after having opened the trunk) that Officer Knopp claimed he smelled marijuana and asked Mr. Kramer whether he had a medical marijuana card. Mr. Kramer stated that he did not have a medical marijuana card and that he had no idea why there would be a smell of marijuana in his car. Mr. Kramer, who was sitting on the side of the road near the rear of the car when the officer opened the trunk, did not smell marijuana.

Once Officer Knopp claimed that he smelled marijuana, it was clear that he and the other officers planned to use that as a pretextual justification to search the entire car, hoping to find some evidence to support Officer Knopp's unjustified hunch that Mr. Kramer was involved in illegal activity. Mr. Kramer again calmly informed the officers that they did not have his permission to search the car. Nonetheless, Officer Knopp and one other officer proceeded to search the entire car, including removing and looking through all of the belongings in the car, going through the trunk, and opening the hood of the car. When the officers came up empty after the first thorough search of the car, they decided to try again, and they conducted a second search.

Shortly after the officers' searches failed to turn up any evidence of marijuana or any other illegal substance, another officer arrived on scene with a K-9 unit to search the vehicle.³

[REDACTED]

³ The timing of when the officers requested K-9 backup provides some additional evidence that Officer Knopp was acting on an immediately formed, baseless hunch that Mr. Kramer was involved in drug activity. The Incident Detail Report indicates that the K-9 unit was requested to the scene approximately seven minutes after Mr. Kramer's car was stopped, clearly very early in the sequence of events. Moreover, Sergeant Chase reported to Lt. Arnold during the internal investigation that “a K-9 was called to search for drugs but at that point, no one had smelled any marijuana.” See *Lt. Arnold's August 15, 2011 Supervisor Inquiry*. If this is accurate and the K-9 unit was called to the scene before the trunk was opened, it provides very strong evidence that Officer Knopp was proceeding on his own theory without any evidence, and that the smell of marijuana may have been fabricated in order to justify a search of the entire vehicle.

Mr. Kramer did not see the dog pause in any particular spot, scratch at anything, or whine or bark. The officers ran the dog through the car a second time, and again the dog failed to alert anywhere around the car. The subsequent internal investigation by the Loveland Police Department confirmed that, in fact, the K-9 had not alerted during any part of the search of the car.

After the officers searched the car at least twice and failed to find any evidence of marijuana, and the dog circled the car twice and failed to alert in any area, and after Mr. Kramer had been in handcuffs for more than an hour, Officer Knopp appeared frustrated and approached Mr. Kramer. In an apparent effort to justify the detention in some way, Officer Knopp told Mr. Kramer that the dog “had alerted” in a few areas, but the officers had not found anything; therefore, Mr. Kramer would not be receiving a ticket. Approximately one hour and twenty minutes after the initial stop and handcuffing, Mr. Kramer was told that he was free to go.

II. LEGAL ANALYSIS

The officers’ actions outlined above – from the initial handcuffing through the investigatory stop and the search of the vehicle – violated Mr. Kramer’s Fourth Amendment right to be free from unreasonable search and seizure. Following is a short legal analysis providing the basis for some of the potential legal claims against the Loveland police officers.

A. Officer Knopp’s Placement of Mr. Kramer In Handcuffs Was Unreasonable

Although the Supreme Court has held that a police officer may, as a matter of course, order the driver of a lawfully stopped car to exit his vehicle, *Pennsylvania v. Mimms*, 434 U.S. 106, 111 (1977), the use of handcuffs is greater than a de minimus intrusion and thus “requires the government to demonstrate that the facts available to the officer would warrant a man of reasonable caution in the belief that the action taken was appropriate.” *United States v. Melendez-Garcia*, 28 F.3d 1046, 1052 (10th Cir. 1994). In order to justify the use of handcuffs during an investigative detention, the Fourth Amendment “requires some reasonable belief that the suspect is armed and dangerous or that the restraints are necessary for some other legitimate purpose, evaluated on the facts of each case.” *Bennett v. City of Eastpointe*, 410 F.3d 810, 836 (6th Cir. 2005). The Tenth Circuit has generally approved the use of handcuffs during investigative stops in cases in which there is some level of threat or danger to the officer. *See e.g., United States v. Neff*, 300 F.3d 1217, 1221 (10th Cir. 2002) (use of handcuffs during a brief investigative detention reasonable because suspect was believed to be carrying a dangerous concealable weapon).

At the time that Officer Knopp ordered Mr. Kramer out of the car and placed him in handcuffs – approximately two minutes after the initial stop – no reasonable officer would have suspected Mr. Kramer of any crime other than the traffic violation, or believed that he posed a sufficient danger to the officer to warrant the use of handcuffs. Mr. Kramer was the only occupant in the vehicle; he had been completely cooperative with Officer Knopp since he initiated the traffic stop; and Mr. Kramer freely admitted to having a pocket knife (a common object carried by many people on a regular basis). *See El-Ghazzawy v. Berthiaume*, 636 F.3d 452 (8th Cir. 2011) (finding a Fourth Amendment violation where there was no evidence the

suspect was dangerous, the suspected crime was not violent, the suspect exhibited no erratic behavior, and the officer placed the suspect in handcuffs within one minute without conducting even the most basic investigation).

Indeed, Officer Knopp's only justification for his action in this regard was that he "didn't know what [Mr. Kramer] was up to and [Mr. Kramer] was acting nervous and not clearly explaining his presence in the area or where he was going." *See Lt. Arnold's August 15, 2011 Supervisor Inquiry*. This statement by Officer Knopp clearly provides no justification for handcuffing a citizen who is accused of nothing more than running a stop sign and who shows no sign of threatening behavior.

B. The Investigatory Stop Was Not Based on Reasonable Suspicion

In *Terry v. Ohio*, the Supreme Court held a police officer can temporarily detain an individual suspected of criminal activity if the officer can point to "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *Terry v. Ohio*, 392 U.S. 1, 21 (1968). "An encounter between police and an individual which goes beyond the limits of a *Terry* stop, however, may be constitutionally justified only by probable cause or consent." *United States v. Perdue*, 8 F.3d 1455, 1462 (10th Cir. 1993) (quoting *United States v. Hensley*, 469 U.S. 221, 235 (1985)). From the point that Officer Knopp put Mr. Kramer in handcuffs, until the officer opened the trunk and allegedly smelled marijuana, Mr. Kramer's detention was based only on the initial traffic stop. Nothing that occurred during that time would have provided an officer with reasonable suspicion of illegal activity to justify Mr. Kramer's detention and questioning.

"During a routine traffic stop, the detaining officer may request a driver's license and vehicle registration, run a computer check on the car and driver, and issue a citation." *United States v. Soto*, 988 F.2d 1548, 1554 (10th Cir. 1993). "If the officer wishes to detain the driver for further questioning unrelated to the initial stop, the officer must have an objectively reasonable articulable suspicion that illegal activity has occurred or is occurring." *United States v. Soto*, 988 F.2d 1548, 1554 (10th Cir. 1993). Therefore, Officer Knopp must be able to articulate some objectively reasonable suspicion that Mr. Kramer was participating in illegal activity to justify Mr. Kramer's continued detention. The only questions Officer Knopp posed to Mr. Kramer prior to placing him in handcuffs related to where Mr. Kramer was heading (to the rather routine destination of the post office) and where he kept his identification documentation. Mr. Kramer's answers to those questions certainly did not provide Officer Knopp with any articulable suspicion of illegal activity, nor did Officer Knopp articulate any suspicion of illegal activity to either Mr. Kramer or later to Lt. Arnold.

As soon as Mr. Kramer exited the car, Officer Knopp's questions and actions were trained on what he characterized as "what was really going on" and had nothing to do with the alleged traffic violation. This is despite the fact that Mr. Kramer had provided the officer with accurate information regarding his identity, his residence, his destination, and his purpose. No reasonable officer under these circumstances would have believed that Mr. Kramer's actions indicated anything other than normal everyday behavior. The types of unparticularized suspicions provided by Officer Knopp during the subsequent internal investigation are not

sufficient to justify an investigatory stop. *Terry v. Ohio*, 392 U.S. at 22, 27 (holding that neither “inarticulate hunches,” nor “inchoate and unparticularized suspicion,” will suffice to justify an investigatory detention).

C. Officer Knopp Did Not Have Probable Cause To Search Mr. Kramer’s Wallet

After Mr. Kramer informed the officer that he had a pocket knife on his person, and after the knife was retrieved from the pocket, Officer Knopp continued with the search of Mr. Kramer’s person and removed the wallet from Mr. Kramer’s pocket. After illegally seizing Mr. Kramer’s wallet, Officer Knopp illegally searched it, in violation of the Fourth Amendment. “During an investigative detention, police officers are authorized to take reasonable steps necessary to secure their safety and maintain the status quo. In some circumstances, these safety measures may include a pat-down search for weapons.” *United States v. Garcia*, 459 F.3d 1059, 1063 (10th Cir. 2006). This type of frisk, however, is only valid if it is confined to a search for weapons because “[t]he purpose of the limited pat-down search is not to discover evidence of a crime, but to allow the officer to pursue his investigation without fear of violence.” *Id.* (quotations omitted). If an officer conducting a limited pat-down frisk continues to search a pocket even after concluding there is no weapon in that pocket, the search becomes an unauthorized evidentiary search that the Supreme Court has condemned. *United States v. Albert*, 579 F.3d 1188, 1195 (10th Cir. 2009).⁴

D. The Officers Did Not Have Probable Cause to Search the Vehicle

In attempting to justify the search of Mr. Kramer’s entire vehicle, Officer Knopp relied on the alleged smell of marijuana coming from the trunk when searching for Mr. Kramer’s identification. However, the evidence indicates that there never was any smell of marijuana and that the officers fabricated this evidence in order to create probable cause to justify the failed search of Mr. Kramer’s vehicle. First, and most importantly, there was no marijuana, drug paraphernalia or other drugs which would have emitted the smell of marijuana in Mr. Kramer’s car. Despite two thorough searches by the officers and two rounds of searching by the drug sniffing K-9, no drugs of any kind were found.

Second, when Officer Knopp opened the trunk, he immediately began to look through a box of papers that were in the trunk and spent at least a few minutes with his head inside the trunk before making the allegation that he smelled marijuana. Had Officer Knopp actually smelled marijuana he would have likely smelled it immediately upon opening the trunk, or at least when he put his head inside the trunk and began to search. Yet, it was not until at least a few minutes had passed that Officer Knopp claimed that he smelled it.

Third, the fact that the officers made the decision to request the K-9 unit so early in the investigation – and possibly even prior to allegedly smelling marijuana – indicates that Officer

⁴ Notably, during the subsequent internal investigation, Officer Knopp admitted that he removed Mr. Kramer’s wallet and searched it without consent. Lt. Arnold determined that the officer’s actions violated police department policy.

Knopp was acting on an unsupported hunch that Mr. Kramer was somehow involved with illegal drug activity before having any actual evidence to support this belief.

Finally, Mr. Kramer is not a drug user, does not associate with any drug users and has never had drugs or drug users in his car. So, the likelihood that there was some remnant of an actual marijuana smell is highly improbable. Under these circumstances, it is likely that a jury would find that no reasonable officer could have actually smelled marijuana coming from Mr. Kramer's car at any time during the traffic stop.

III. CONCLUSION

The Loveland Police Department officers' actions toward Mr. Kramer in handcuffing him, conducting an investigatory stop, searching his wallet and his entire vehicle without any probable cause violated his Fourth Amendment rights. Based upon my analysis of the facts and circumstances of the incidents as described above, I have advised Mr. Kramer that he likely has meritorious federal law claims against the Loveland police officers who performed the actions. While Mr. Kramer is determined to secure a fair resolution to his claims, he is not opposed to doing so short of commencing formal legal action. If you are amenable to exploring this avenue, please contact me on or before September 28, 2012. I look forward to hearing from you.

Sincerely,



Sara J. Rich
Staff Attorney, ACLU of Colorado