



The Ninth Circuit agrees with the District Court that law enforcement officers violated the Defendant's Fourth Amendment rights. Therefore, the Ninth Circuit affirmed the District Court's granting of the Defendant's motion to suppress and ordered law enforcement to return \$167,070.00 to the Defendant



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In *United States v. Gorman*, 859 F.3d 706 (9th Cir. 2017), the Defendant Straughn Samuel Gorman wanted his money back. Specifically, Gorman wanted his \$167,070.00 back that law enforcement officers had seized from him during a traffic stop. Gorman claimed that the traffic stop violated his Fourth Amendment rights, and he moved to suppress evidence that resulted from two successive traffic stops. The District Court agreed with Gorman, granted his motion to suppress, and ordered the return of his money. The Government appealed. The following are the relevant facts on appeal.

On the morning of January 23, 2013, Gorman was driving a motorhome westbound on Interstate-80 near Wells, Nevada. Interstate 80 is a four-lane highway in this area with two lanes on each side of the center divider. Prior to his traffic stop, Gorman had been driving in the right lane. According to Gorman, he pulled briefly into the left lane to pass a semi-truck but was unable to complete the pass because of the truck's continued speed. Gorman returned to the right lane shortly thereafter. At no point during this maneuver was Gorman speeding.

Trooper Monroe, a local patrol officer, observed Gorman's pass attempt from the side of the road and, deeming it a potential "left-lane violation" (*i.e.*, where a slow-moving vehicle backs upon traffic in the left-hand lane), accelerated to approach the motorhome from behind. Monroe turned on his lights, caught Gorman's attention, and pulled him over. Gorman stopped the vehicle at the side of the highway. Monroe then told Gorman that he had pulled him over because of a "left-lane violation." Gorman explained that the trucks in the right lane were driving slowly and that he intended to return to the right lane once he completed the pass. Monroe replied that, if he were unable to pass the vehicles in the right-hand lane, he should not have attempted to do so in the first place.

Gorman promptly produced his license and registration. In response to Monroe's inquiries, Gorman said that he was on his way to visit "his chick" in Sacramento, that he was moving to California, and that the motorhome belonged to his brother. Gorman also responded that he earned money by selling paddleboards at "Beach Activities of Maui" in Hawaii.

Monroe found this information suspicious because he found the term "chick" to be "unusual" given Gorman's age, because he thought that the statement about visiting California and the statement about moving there were inconsistent, and because Gorman curtly answered "yep" when asked whether he was going to work in California. Monroe was also suspicious because Gorman could not recall his girlfriend's address and had to refer to his GPS before reporting his precise destination. As for Gorman's description of his previous employment in Hawaii, Monroe thought that "the way he said it sounded rehearsed." Further, Monroe found it puzzling that someone who sells paddleboards could afford to drive cross-country in a motorhome given the

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large vehicle's poor gas mileage. Monroe also thought it suspicious that Gorman's stated destination was Northern California, a place known for cultivating marijuana.

Monroe returned to his patrol car and contacted Nevada Highway Patrol ("NHP") Communications and requested a drug-detection dog, a driver's license warrant check, and a criminal history report on Gorman. According to Monroe, "the dog ... would give [him] probable cause to apply for a search warrant" if the dog "alerted." An alert could indicate the presence either of drugs or of drug-tainted currency as currency retains the odor of certain drugs with which it has come into contact.

Monroe soon received the results of the routine warrant and criminal history checks. They revealed that Gorman had no prior arrests and no outstanding warrants. NHP Communications also informed Monroe that a dog was not available in Wells. "Without a dog I'm not even going to get into this one," Monroe replied. In short, Monroe concluded that there was insufficient probable cause to obtain a search warrant.

Monroe then initiated a non-routine record check. He asked the El Paso Intelligence Center, a multi-jurisdictional bureau known as EPIC, to compare Gorman's home address with its database of information related to drug and weapons smuggling, money laundering, and human trafficking. EPIC returned a notification that there was a Drug Enforcement Agency "hit" on Gorman involving the transfer of \$11,000 in 2006. EPIC also indicated that Gorman had entered or exited the United States four times, on one occasion flying from Madrid, Spain, to John F. Kennedy Airport in New York. Monroe told the EPIC operator that he did not "have a dog on [him]" and that he was "going to try to gain consent" and would "call and let [EPIC] know" whether he succeeded in gaining Gorman's consent to search the vehicle. Monroe also asked EPIC to run a search on a different address associated with Gorman which returned the same results.

Twenty minutes into the stop, Monroe returned to the side of the motorhome, gave back Gorman's documents, and said that he was not issuing a citation. Monroe did not, however, advise Gorman that he was free to go. Instead, Monroe prolonged the roadside detention even further by questioning Gorman more pointedly. He asked how he could afford to drive a motorhome across the country given the high price of gas, and he asked how much money Gorman made from his paddleboard business. Gorman responded, "I don't want to talk about how much I make." Monroe then asked directly if there was anything illegal in his car and if he was carrying cash. Gorman replied that he was "just carrying \$2,000." Monroe "thought he was lying." Monroe then asked Gorman if he could search the vehicle. Gorman said no. Monroe finally sent Gorman on his way, after nearly half an hour. As he returned to the patrol car, Monroe muttered aloud to himself, "He's carrying money."

Immediately after he released Gorman, Monroe contacted NHP Communications and stated that "there was a vehicle headed westbound that [he] strongly suspected was carrying money." Monroe specified, "you're going to need a dog" because "the only way to get in this vehicle would [be] with probable cause." According to Monroe, he hoped the Elko County Sheriff's Office would dispatch an officer—and a dog—to intercept Gorman and find a way to search his vehicle. The Highway Patrol dispatcher contacted the Elko County Sheriff's Office which then contacted Deputy Fisher. The dispatcher said that Monroe "stopped a motor home near Wells" and that a canine unit "might want to take a second look at the car." The dispatcher provided Gorman's license plate number and the location of the initial stop and noted that Gorman had refused to consent to a search of the vehicle.

Following his conversation with the dispatcher, Fisher telephoned Monroe directly and spoke with him for about five minutes. Monroe advised Fisher of the "particulars of the stop" and described his "suspicions." Monroe told Fisher that he thought that there was cash in the vehicle but that he had to "let the guy go" because "he didn't think he had much more to go on ... based on his information."

Fisher was not patrolling the roads when dispatch contacted him. After speaking with Monroe, however, he “proceeded out to the highway” in a patrol car to find the motorhome. Fisher brought along a drug-sniffing dog which was trained to alert to the odor of tainted currency as well as to the odor of drugs themselves. Fisher soon spotted a motorhome with a small curtain obscuring part of the driver’s side window, began following the motorhome, and conclusively established that it was the same vehicle when he came close enough to view the license plate. While trailing the vehicle, Fisher noticed additional problematic traffic violations: the motorhome’s tire partly crossed onto the fog line three times. Fisher activated his lights, turned on the siren, and initiated a stop.

Fisher first approached the driver’s side of the vehicle, spoke to Gorman, and requested his drivers’ license and registration. After receiving the documents, Fisher contacted Elko central dispatch to initiate a routine records check for outstanding warrants and criminal history—exactly the same check that Monroe had performed. Dispatch did not immediately respond to Fisher’s request because, apparently, the dispatch office was delayed in replying to Fisher’s request because of a concurrent medical emergency that temporarily consumed the office’s resources. Fisher asked Deputy Prall, an officer dispatched to the scene to assist him, to initiate the records check again to see if “he could get through.” Fisher asked Prall to “stick around” because he “didn’t know where the traffic stop was going to lead.”

Still awaiting the results of the records check, Fisher approached the motorhome to speak with Gorman again. He told Gorman that he was being detained “until the records check was done.” Fisher asked if he was opposed to a canine assessment, and Gorman replied that he was, “if that means anything.” Fisher, nevertheless, prepared to begin the dog sniff. Fisher first asked Gorman to step out of the vehicle and patted him down to ensure that he was not armed. Fisher then returned to the patrol car and released the dog which walked to the side of the road and began urinating. While it was doing so, Fisher initiated another redundant records check—this time, the same non-routine EPIC check that Monroe had performed. The results of that search were identical to those Monroe received at the time of the first stop.

Fisher finally brought the dog forward to begin its sniff. The dog alerted to the right rear fender and rear cargo area. This alert gave Fisher probable cause to obtain a search warrant. Fisher then made a telephone call to apply for a warrant from the Elko County Justice Court. Fisher explained the positive alert to Gorman and informed him that the motorhome was being detained pending the warrant application. He said that while the motorhome was being held, Gorman would be free to leave once his records check returned without problems. The records check finally came back and—again—revealed that Gorman had no arrests and no warrants. The officers offered to give Gorman “a ride to a coffee shop or somewhere in town where he could stay warm” while they waited for the warrant application to be processed. Gorman declined the offer, choosing to stay with the motorhome.

The Elko County court granted Fisher’s application for a search warrant roughly twenty minutes later. Fisher took the motorhome to a sheriff’s station where he searched it and found currency in white envelopes and bundles, “each bound with rubber bands and sealed inside plastic vacuum-sealed bags.” Fisher also discovered fifteen pages of papers and notes with entries that resembled “pay/owe” sheets, an inhaler, directions to Garberville, California, and “two large empty canvas duffle-type bags and a large empty hard-sided storage ‘Pelican’ case.” Fisher discovered and seized a total of \$167,070 in cash.

No criminal charges were brought against Gorman arising from this incident. Instead, the federal government pursued civil forfeiture of the \$167,070. In the forfeiture action, Gorman filed a motion to suppress the currency on the ground that it was obtained in violation of the Fourth Amendment. The District Court held an evidentiary hearing and ultimately held that the two traffic stops were inextricably connected and that Gorman’s total detention was unreasonably prolonged in violation of the Fourth Amendment. Accordingly, the District

Court granted Gorman's motion to suppress and awarded Gorman the return of his money plus attorneys' fees.

The Ninth Circuit began its consideration of the Government's appeal by noting that traffic stops are presumptively temporary and brief and may last only as long as is reasonably necessary to carry out the mission of the stop unless the police have an independent reason to detain the motorist longer. The mission of a stop includes determining whether to issue a traffic ticket, checking the driver's license to determine whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance. A stop that is unreasonably prolonged beyond the time needed to perform these tasks ordinarily violates the Constitution.

The Ninth Circuit explained that this is so because the temporary detention of individuals during a traffic stop, even if only for a brief period and for limited purposes, constitutes a seizure under the Fourth Amendment. Police may not perform unrelated investigations that prolong a stop unless they have independent reasonable suspicion justifying the prolongation. The Ninth Circuit noted that non-routine record checks and dog sniffs are paradigm examples of unrelated investigations that may not be performed if they prolong a roadside detention absent independent reasonable suspicion.

Here, the Ninth Circuit agreed with the District Court that the two traffic stops violated Gorman's Fourth Amendment rights because the stops were unreasonably prolonged without justification. In fact, the Government conceded that the first stop conducted by Monroe was unreasonably prolonged. The stop should have taken a short time—only long enough to warn Gorman about the left-hand violation and to perform a routine check of Gorman's records. Instead, Monroe detained Gorman for nearly thirty minutes in order to perform non-routine investigative inquiries.

As for the second stop performed by Fisher (*i.e.*, the one in which the cash was found), the Ninth Circuit stated that evidence derivative of a Fourth Amendment violation—the so called "fruit of the poisonous tree"—is ordinarily tainted by the prior, illegal search with only a few recognized exceptions. The Ninth Circuit noted that evidence qualifies as fruit of the poisonous tree when the illegal activity tends to significantly direct the investigation to the evidence in question. The focus is on the causal connection between the illegality and the evidence.

Here, the Ninth Circuit determined that there was an indisputable causal connection between Gorman's first unlawful detention and the second detention where the dog sniff occurred and where the money was discovered. The Ninth Circuit held that the first search/detention by Monroe "unquestionably" served as the impetus for the chain of events that led to the discovery of the money. Accordingly, the evidence was properly barred as being fruit of the poisonous tree.

Finally, the Ninth Circuit opined that none of the exceptions to the fruit of the poisonous tree rule applied. The independent source doctrine did not apply because the money was not separately discovered through an independent source. The inevitable discovery doctrine did not apply because there was no evidence to suggest that the money would have been discovered absent the unconstitutional conduct involved. And, the attenuation doctrine (where evidence is admissible when the connection between the illegality and the challenged evidence has become so attenuated as to dissipate the taint caused by the illegality) did not apply because nothing attenuated the connection between Gorman's unlawful detention and the seized currency.

Accordingly, the Ninth Circuit affirmed the District Court's order granting Gorman's motion to suppress. The Ninth Circuit further affirmed the District Court's order returning the money to Gorman and his award of attorneys' fees.