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IN THE EIGHTEENTH JUDICIAL DISTRICT
DISTRICT COURT, SEDGWICK COUNTY, KANSAS

Mason Grimmatt,	)	
	)	
Plaintiff,	)	
	)	
vs	)	Case No. SG-2026-CV-002760
	)	
City of Wichita, Kansas,	)	
	)	
Defendant.	)	
Pursuant to K.S.A. Chapter 60		

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

COMES NOW, the City of Wichita, by and through its attorney, Sharon L. Dickgrafe, Chief Deputy City Attorney and submits the following Memorandum in Support of its Motion to Dismiss pursuant to K.S.A. 60-212(b)(1) and K.S.A. 60-212(b)(6).

NATURE OF THE CASE

Plaintiff brings this Declaratory Judgment and Injunction action against the City of Wichita for its automated license plate reader (ALPR) program. He alleges that the City's use of ALPR violates his constitutional right to privacy under Sections 15 and 20 of the Kansas Constitution Bill of Rights. (Plaintiff's Petition ¶ 28)

FACTS OF THE CASE

1. The City of Wichita has approximately 200 ALPRs located throughout the City.
(Plaintiff's Petition ¶ 2)

2. The City's ALPR system captures still images of vehicles, license plates and the rear of the vehicle as they pass by the camera including the time and geographic location of the photograph. (Plaintiff's Petition ¶ 3)

3. The ALPR System captures license plates and uses AI software to convert them into searchable data including the vehicle's make and color and the photograph's location and time.
(Plaintiff's Petition ¶ 35)

4. The ALPR Camera uploads these photos into the cloud where they are stored for the applicable retention period, before they are permanently deleted. (Plaintiff's Petition ¶ 36)

5. This software then allows police officers to search the data by a vehicle's make, color, and license plate. (Plaintiff's Petition ¶ 38)

6. Certain homeowner associations and businesses throughout Wichita have purchased their own ALPR cameras and agreed to share their data with Wichita's network. (Plaintiff's Petition ¶¶ 69, 73)

7. ALPR data in the City of Wichita's ALPR database is also shared with other law enforcement agencies. (Plaintiff's Petition ¶ 9)

8. Pursuant to WPD policy No. 804, only commissioned WPD members who have properly been trained in the use of the ALPR may have access to the database. (Plaintiff's Petition, Exhibit #17, WPD Policy 804, III A.1) (Exhibit A)

9. The ALPR data system may only be used for legitimate law enforcement purposes.
(Plaintiff's Petition, Exhibit #17, WPD Policy 804, III A.3) (Exhibit "A")

10. All ALPR searches must include a legitimate law enforcement purpose for the reason to search the system. (Plaintiff's Petition, Exhibit #17, WPD Policy 804, III A.5) (Exhibit "A")

11. The ALPR data will only be stored for thirty days after which it is permanently deleted, except in limited circumstances where the data is required for ongoing criminal or administrative investigations. (Plaintiff's Petition, Exhibit #17, WPD Policy 804, III A.7) (Exhibit "A")

12. ALPR data may not be used for any non-work-related purpose. All users must take into consideration the privacy, civil rights and civil liberties of the individuals. (Plaintiff's Petition, Exhibit #17, WPD Policy 804, III C. 7) (Exhibit "A")

13. Vehicles may not be stopped or detained based solely on an alert from the ALPR. (Plaintiff's Petition, Exhibit #17, WPD Policy 804, III D.3) (Exhibit "A")

14. In order to enter a license plate into the ELSAG or Flock Hotlist, supervisor approval and reasonable suspicion is required. (Plaintiff's Petition, Exhibit #17, WPD Policy 804, III D. 4.d) (Exhibit "A")

15. Plaintiff lives within the City of Wichita. (Plaintiff's Petition ¶ 131)

16. Plaintiff has never been arrested or charged with a crime. (Plaintiff's Petition ¶ 143)

17. Plaintiff believes that the City's ALPR photographs his vehicle several times a day. (Plaintiff's Petition ¶ 152)

18. Plaintiff's beliefs of his vehicle being photographed by the City's ALPR System have caused him "anxiety and frustration." (Plaintiff's Petition ¶ 164)

19. Plaintiff does not allege that his license tag has been queried by the City's ALPR System, nor does he allege his vehicle has ever been stopped due to his tag being queried. He also does not allege that his information has improperly been utilized by law enforcement or released improperly.

20. Plaintiff requests a Declaratory Judgment that the City's ALPR System is unconstitutional and an injunction enjoining the operation of the program. (Plaintiff's Petition ¶ 171)

21. Plaintiff alleges that the ALPR System violates Section 15 of the Kansas Bill of Rights to be free of unreasonable searches and seizures (Plaintiff's Petition ¶ 181) and Section 20 of the Kansas Bill of Rights. (Plaintiff's Petition ¶ 227)

22. Plaintiff alleges that Section 20 provides citizens the right to be free from "governmental suspicionless surveillance, tracking and intrusion into private or personal information." (Plaintiff's Petition ¶ 229)

ARGUMENTS AND AUTHORITIES

Standard for Motion to Dismiss

When reviewing a Motion to Dismiss for failure to state a claim, the District Court must accept facts within the petition to be true. If the facts taken in a light most favorable to the Plaintiff establish that the Defendant is entitled to judgment as a matter of law, then the court may dismiss the claim. *League of Women Voters of Kansas v. Schwab*, 318 Kan. 777, 793, 549 P.3d 3663 (2024). Courts, however, need not accept conclusory allegations on the legal effects of events. *Grindsted Products, Inc. v. Kansas Corporation Comm'n*, 262 Kan. 294, 303, 937 P.2d 1 (1997) Whether standing exists is a question of law. *Board of Sumner County Comm's v. Bremby*, 286 Kan. 745, 751, 189 P.3d 494 (2008).

I. Plaintiff lacks standing to request a Declaratory Judgment pursuant to K.S.A. 60-1701 regarding the ALPR system because his license plate has never been searched.

Declaratory Judgments are governed by K.S.A. 60-1701, which provides that courts "shall have power to declare the rights, status, and other legal relations" between parties. The Declaratory Judgment Act provides relief from uncertainty and insecurity in legal controversies without

requiring a party to violate another's rights to maintain an ordinary action. *Pugh v. City of Topeka*, 151 Kan, 327, 99 P.2d 862 (1940). What is required is "two parties who can assert rights which have developed or will rise against each other." *Johnson Cnty. Sports Auth. v. Shanahan*, 210 Kan. 253, 259, 499 P.2d 1090 (1972).

Declaratory Judgment actions, like all suits, must satisfy the case or controversy requirement. *State ex rel Morrison v. Sebelius*, 285 Kan. 875, 896-98 179 P. 3d 366 (2008). Parties to a judicial action must have standing as part of the case or controversy requirement imposed by Article 3, Section 1 of the Kansas Constitution. *Morrison* at 895-896 (2008). The standing inquiry hinges upon whether a party has sufficient stake in the controversy to warrant invocation of jurisdiction and to justify the exercise of the Court's remedial powers on the party's behalf. *Board of Johnson Co. Comm'rs v. Jordan*, 303 Kan. 844, 854, 370 P.3d 1170 (2016).

The determination of standing and subject matter jurisdiction is determined based on facts in existence at the time of filing. *In re Estate of Mouchaque*, 56 Kan. App. 2d 983, 987, 442 P.2d 125 (2019). The party asserting the claims has the burden of establishing its standing in a case. *KNEA v. State*, 305 Kan. 739, 746, 387 P.3d 795 (2017).

Kansas courts use a two-part traditional standing test. *Kansas Bldg. Industry Workers Comp. Fund v. State of Kansas*, 302 Kan. 656, 679-80, 359 P.3d 33 (2015). To demonstrate standing a party must show a cognizable injury and establish a causal connection between the injury and the challenged conduct. *State v. Stoll*, 312 Kan. 726, 734, 480 P.3d 158 (2021).

To establish a cognizable injury, a party must establish a personal interest in the court's decision and that he personally suffers **some actual or threatened injury** as a result of the challenged conduct. *Sierra Club v. Moser*, 298 Kan. 22, 33, 310 P.3d 360 (2013) (emphasis added) The injury must affect a party in a personal and individual manner and may not base a claim to

relief on the legal rights or interest of third parties. *Peterson v. Ferrell*, 302 Kan 99, 103, 349 P.3d 1269 (2015).

The Kansas Supreme Court has referred to the cognizable injury requirement as “an injury in fact” and has on occasion cited to the federal standing requirement that an injury must be concrete, particularized and actual or imminent. *Gannon v. State*, 298 Kan. 1107, 1123, 319 P.3d 1196 (2014) Mere allegations of possible future injury do not meet the requirement of standing. An injury must be “impending” and “probable” rather than speculative and conjectural to confer standing. *Sierra Club*, 298 Kan. at 33; *Baker v Hayden*, 313 Kan. 667, 681 (2021) (speculative allegations about possible future injury were insufficient to confer Plaintiff with standing).

To establish a causal connection, “the injury must be “fairly... traceable to the challenged action of the Defendant” *Kansas Bldg. Industry Workers Comp Fund* at 681. As to causation, the Plaintiff must show that “its injury is fairly traceable to the challenged action of the Defendant.” *Rocky Mt. Peach & Justice Ctr. v. U.S. Fish & Wildlife Service*, 40 F.4th 1133, 1152 (10th Cir. 2022).

Plaintiff has the burden of pleading and proving concrete facts showing that the Defendant’s actions have caused Plaintiff harm or a substantial risk of harm. In an effort to show a cognizable injury, he makes several assertions regarding the City’s ALPR System:

1. Cameras take photos of his vehicle;
2. Photos are stored on Flock servers;
3. Photos are then reviewed by WPD personnel for law enforcement purposes;
4. Taking photos of his vehicle makes him nervous and anxious; and
5. He does not allege that law enforcement has ever searched for his license tag in the ALPR system, or that he has never been stopped as a result of any such search.

All actions which he asserts violate Section 15 prohibiting unreasonable searches and seizures and Section 20 of the Kansas Bill of Rights namely, querying the ALPR system to supposedly recreate his vehicle's movement - have not ever actually happened to him. In fact, he does not allege that his information has been used by law enforcement or used improperly.

A standing issue similar to the one before the court was determined by the Kansas Supreme Court in *POM of Kansas, LLC v. Kobach*, 319 Kan. 764 (2024). In that case, POM requested a Declaratory Judgment that its video arcade machines were lawful under the Kansas criminal gambling statute. POM failed to allege or establish any credible threat of prosecution or injury. It failed to allege that the gambling act affected its operation. Instead, it could only establish that "someday these Defendants **might** argue the Act applies." (Emphasis added) But this concern was purely speculative.

As the court stated:

Without any allegations or evidence that Defendant's intent to apply the Act to Dragon's Ascent, POM cannot show "impending probable" future harm our standing doctrine requires.

POM at 771.

Likewise, standing was denied by the Kansas Court of Appeals in *Landlords of Lawrence v. City of Lawrence*, 569 P. 3d 165 (Kan. App. 2024). Landlords alleged that the City's source of income ordinance requiring that their records could, at some point, be subject to inspection by governmental agencies violated their constitutional rights. At the time of filing, no such search had occurred. The Court dismissed the landlord's claims concluding that it had not established an imminent threat of injury.

Lastly, in *Jones v. Wildger*, 450 F. Supp. 2d 1265, 1266 (D. Kan. 2006) a tenant alleged that rental licensing and inspection requirements violated his Fourth Amendment rights. His home

had not been searched, but he alleged that the City could at any time search his residence. The court held that the tenant lacked standing because the “mere possibility” of a future controversy is not sufficient to establish standing. *Jones* at 1271.

Like these cases, Plaintiff’s claimed injury – that law enforcement can allegedly use ALPR data to retrace all of his whereabouts – is entirely hypothetical and speculative. As a general rule, courts will not declare the rights of parties upon facts which have not arisen, nor upon a matter which is future, contingent and uncertain, unless a present right depends upon the decision or there are other special circumstances to satisfy the court that is desirable at once to decide or the future rights. *Woolums v. Simonson*, 214 Kan. 722, Syl P.5 522 P. 2d 1321 (1974) and *Golden v. Zwickler*, 394 U.S. 103, 89 S.Ct. 956 (1969) (Speculative claims of future injury are insufficient to support a Declaratory Judgment Action). Unlike the context of a suppression motion, where a criminal Defendant has been subject of an ALPR query and such issues are often litigated, law enforcement here has never queried Plaintiff’s vehicle or ever attempted to use ALPR data to ascertain **any** information about Plaintiff.

Accordingly, Plaintiff’s petition fails to allege a sufficient injury in fact to establish standing under K.S.A. 60-1701. Plaintiff believes that photos may have been taken of his vehicle. Yet, as discussed further in this memorandum, the mere taking of photographs of Plaintiff’s vehicle on public roadways does not constitute a legally recognized injury. The law is well settled that there is no reasonable expectation of privacy to a license plate on a vehicle, which are visible to anyone who travels along some roadway. *Junction City Police Dep’t v. \$454,280*, 531 P.3d 539 (Kan. App. 2023) (Unpub.) (Exhibit. B) Any passing motorist or law enforcement officer is free to observe and photograph these license plates and vehicles. In order to challenge a search under the Fourth Amendment or Section 15 of the Kansas Bill of Rights, the individual must show an

expectation of privacy in the property search. *State v. Gonzales*, 32 Kan.App.2d 590, 593, 85 P.3d 11 (2004). There is clearly no expectation of privacy or injury caused to Plaintiff by the ALPR's system mere taking photographs of his vehicle and/or its tag.

In short, Plaintiff has not alleged or shown how he has been injured by the City's ALPR system. He has not alleged that his tag has been queried by the system, that any images of his vehicle's tag or registration information has been improperly utilized or released or that he plans to commit any such offense that would cause his tag to be queried. Absent some alleged injury caused by law enforcement's use of the database, the Plaintiff lacks standing to claim that the City's ALPR system violates his constitutional rights. Multiple courts have found as much, and the court should reach the same result here. *See: Scholl v. Illinois State Police*, 776 F. Supp. 3d 701, 711 (N.D. Ill. 2025) and *Schmidt v. City of Norfolk*, 819 F.Supp.3d 492 (E.D. Va. 2026).

Plaintiff's claims for a Declaratory Judgment should be dismissed due to lack of standing.

II. Plaintiff's Complaint fails to state a claim for an Injunction against the City.

In addition to Plaintiff's lack of standing, he fails to allege a violation of his constitutional rights, as shown through an unbroken line of cases upholding ALPR technology's legality. To obtain injunctive relief, the party must establish four elements:

1. A substantial likelihood that the Plaintiff will prevail on the merits;
2. A showing that the movant will suffer irreparable injury, unless the injunction is issued;
3. Proof that the threatened injury to the Plaintiff outweighs whatever damage the proposed injunction may cause the opposing parties; and
4. A showing that the injunction would not be adverse to the public interest.

Friess v. Quest Cherokee, 42 Kan. App. 2d 60, 64, 209 P.3d 722 (2009).

To show substantial likelihood of prevailing, a party has the burden to establish that it is more likely than not to succeed on the merits of its claim. *State ex rel Kobach v. Harper*, 65 Kan. App. 2d 68 701 (2025). Plaintiff cannot establish a likelihood of success on the merits of his case. Virtually all courts to have addressed the issue, including the Federal District Court of Kansas, when confronted with a nearly identical issue, have concluded that ALPR systems do not violate the Fourth Amendment to the United States Constitution and state constitution counterparts. Plaintiff attempts to circumvent these dozens of rulings by bringing this action pursuant to Section 15 of the Kansas Bill of Rights. Yet, Kansas Courts have held that cases interpreting United States constitutional counterparts to the Kansas Bill of Rights are instructive in interpreting identical provisions of the Kansas Bill of Rights. Additionally, Kansas Courts have affirmatively concluded, contrary to Plaintiff's assertions, that Section 15 does not provide additional protections which exceed those provided for by the Fourth Amendment. Plaintiff is unlikely to prevail on the merits of this case.

Secondly, Plaintiff must allege irreparable damage or the threat of irreparable damages. *Odgen River Water Users Ass'n v. Weber Basin Water Conservancy*, 238 F.2d 936, 942 (10th Cir. 1956). He must allege that an action at law will not provide an adequate remedy, the threatened injury to the him outweighs whatever the damage the proposed injunction might cause to the City of Wichita, and the injunction would not be adverse to the public interest. *Steffes v. City of Lawrence*, 284 Kan. 380, 395, 160 P. 3d 843 (2007).

For harm to be "irreparable harm," the harm must be real or substantial, and the injury cannot be atoned for in money, or the Court cannot remedy the injury following a determination of merits. *Prairie Band of Potawatomi Indians v. Pierce* 253 F. 3d 1234 (10th Cir. 2001). A Plaintiff suffers irreparable injury where the court would be unable to grant an effective monetary

remedy after a full trial because such danger would be inadequate or difficult to determine. *Kikumura v. Hurley*, 242 F.3d 950, 960 (10th Cir. 2001). Plaintiff's complaint fails to allege a significant injury to support injunctive relief, or that monetary damages would not be an adequate remedy for any alleged harm.

Further, a Plaintiff must demonstrate that there is a real danger that the act complained of actually will take place. There must be more than a mere possibility or fear that the injury will occur. *11 C. Wright & A. Miller, Federal Practice & Procedure* § 2942, at 369 (1973). An injunction will not be granted against something merely feared to occur at some indefinite time or future. *Connecticut v. Massachusetts*, 282 U.S. 660, 51 S. Ct. 286 (1931). The power to grant injunctive relief should not be used to assure fears of what may happen in the future. *Continental Baking Co. vs. Woodring*, 286 U.S. 352, 52 S. Ct. 595 (1932). Plaintiff's subjective beliefs and fears are not sufficient evidence upon which to grant injunctive relief. *Barrett v. Fields*, 941 F. Supp. 980, 984 (D. Kan. 1996). As with standing for the Declaratory Judgment action, any actions by Defendant that would cause harm or injury are speculative, at best.

Lastly, the court's granting of an injunction against the City will not alleviate his alleged injury. As Plaintiff's petition asserts, non-law enforcement agencies are utilizing ALPR technology. Any proposed injunction against the City will not dispel Plaintiff's concerns that he is subject to invasive surveillance. Private property and businesses throughout the City utilize security cameras and/or ALPR technology. Prohibiting the City from utilization of the same technology will not quell or displace Plaintiff's concerns that his movements are allegedly being monitored or tracked. Furthermore, an injunction prohibiting law enforcement from use of a tool which has shown to be effective in solving and deterring criminal activities would be adverse to

the public interest. Plaintiff's petition fails to allege sufficient facts to support a claim for injunctive relief and should be dismissed.

III. Section 15 of the Kansas Bill of Rights does not afford protections greater than those of the Fourth Amendment.

Plaintiff brings this cause of action pursuant to Kansas Constitutional law provisions to avoid the overwhelming precedent of courts that have concluded that similar ALPR systems do not violate the Fourth Amendment to the United States Constitution. The list of courts that have denied Fourth Amendment Claims is attached as Exhibit C. *See also: Schmidt v City of Norfolk*, 819 F.Supp.3d 492 (E.D. Vir. 2026) (listing the numerous federal and state courts analyzing ALPR claims that have concluded that neither taking photos of the license plate of a vehicle on a public roadway nor maintaining and querying a database of ALPR photos constitute a warrantless search).

As the court in *United States v. Sturdivant*, 786 F.Supp.3d 1098 (D. Ohio 2025), recently stated: “[n]umerous courts in evaluating ALPR systems have concluded that there is no reasonable expectation of privacy in the appearance of a vehicle or license plate. Therefore, any query of a database containing this information does not violate the Fourth Amendment. No search has occurred for the purposes of the Fourth Amendment.”

To avoid this settled legal backdrop, Plaintiff requests a broader interpretation of Section 15 than that afforded by the Fourth Amendment. This assertion is not supported by current Kansas law. While Kansas courts have recognized the ability of courts to have a more expansive view of the Kansas Bill of Rights, courts have generally refused to do so. This is especially true when allegations are asserted pursuant to Section 15.

Kansas courts have traditionally described that the scope of Section 15 and the Fourth Amendment as being “identical” or “usually” identical. *State v. Schulz*, 252 Kan. 819, 850 P. 2d 818 (1993). *See also: State v. Lefort*, 248 Kan. 332, 334, 806 P.2d 986 (1991) (“is identical”) and

State v. Deskins, 234 Kan. 529, Syl ¶ 1 (1983) (scope “is identical” in any particular factual situations). The Kansas Supreme Court has never extended state constitutional protections under Section 15 beyond federal guarantees contained in the Fourth Amendment. *See: State v. Flummerfelt*, 235 Kan. 609, 618, 684 P.2d 363 (1984), *State v. Bishop*, 240 Kan. 647, 656, 732 P.2d 765 (1987) and *State v. Deskins*, 234 Kan. 529, 531 673 P.2d 1174 (1983).

Further, Kansas Courts have traditionally found that rights provided by the state constitutions to be coextensive with federal constitutional protections, “notwithstanding any textual, historical or jurisprudential differences. “ *State v. Lawson*, 296 Kan. 1084, 1091, 297 P.3d 1164 (2013) For this reason, the Supreme Court has indicated that anyone advocating a different reading of a Kansas constitutional provision from its federal counterpart must “explain why [Kansas courts] should depart from [their] long history of coextensive analysis of right under the two constitutions. *State v. Boysaw*, 309 Kan. 526, 538, 439 P.3d 909 (2018). Plaintiff must articulate something in the history of the Kansas Constitution or in the state’s caselaw that would suggest a different analytic framework should apply for the jury-trial right. *Boysaw* at 536.

In *State v. Schultz*, 252 Kan. 819, 824, 850 P. 2d 818 (1993), the court rejected arguments similar to those asserted by the Plaintiff. Defendant asserted that the provisions of Section 15 of the Kansas Bill of Rights provided additional protection to bank records subpoenaed by prosecutors. Previously, the United States Supreme Court in *United States v Miller*, 425 U.S. 435, 96 S. Ct. 1619 (1976) had determined that there was no reasonable expectation of privacy in documents which had been turned over to a third party. The court in *Schultz* declined to hold that Section 15 provided additional or heightened protections to Kansas Citizens. *See also: State v. Daniel*, 291 Kan. 490, Syl ¶ 5, 242 P. 3d 1186 (2010) and *City of Leawood v. Puccinelli*, 56 Kan.

App. 2d 108, 424 P.3d 560 (2018). (Field Sobriety Tests did not violate Section 15 of the Kansas Bill of Rights or the Fourth Amendment).

The City is aware that the Kansas Supreme Court recently expanded its interpretation of Section 1 of the Kansas Bill of Rights in *Hodes & Hauser Md's, P.A. v. Schmidt*, 309 Kan. 610, 440 P.3d 461 (Kan. 2019) to be more expansive than the Equal Protection Clause in the Fourteenth Amendment. In reaching its determination that the Kansas Bill of Rights independently protected a woman's right to decide whether to continue pregnancy, the court focused on distinctive language in Section 1, which was contained in the Kansas Bill of Rights, but which was absent from the Federal Constitution. Such is not the case currently before the Court. *Hodes* is factually distinguishable from the case and constitutional provisions before the court. Courts have declined to extend *Hodes* to other Kansas Constitution provisions. *State v. Holton*, 466 P.3d 491 (Kan. App. 2020) (Scope of Section 5 of the Kansas Constitution does not provide a broader protection than its federal counterpart.) and *State v. Sanders*, 563 P.3d 234 (Kan. App. 2025) (Section 18 of the Kansas Constitution does not provide broader protection than its federal counterpart.)

Based on current Kansas precedent, there is no legal support for Plaintiff's claims that Section 15 of the Kansas Bill of Rights provides him broader protection than the Fourth Amendment of the United States Constitution.

IV. The use of ALPRs to photograph license plates is not a search.

Section 15 and the Fourth Amendment protect the rights of people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures. *State v. Morales* 297 Kan. 397, 404, 300 P.2d 1090 (2013). The Supreme Court has stated that the amendment protects people, not places and is aimed at the preservation of the individual's reasonable

expectation of privacy. *Katz v. United States*, 389 U. S. 347, 351-353, 88 S. Ct. 507 and *State v. Baker*, 239 Kan. 403, 406, 720 P.2d 1112 (1986).

All warrantless searches are per se unreasonable subject to a few specifically established and well-delineated exceptions. *State v. Estrada-Vital*, 302 Kan. 549, 555-56, 356 P.3d 1058 (2015). These exceptions include: “consent, search incident to a lawful arrest, stop and frisk ... plain view or feel and administrative searches.” *State v. Sanchez-Loredo*, 294 Kan. 50, 55, 272 P.3d 34 (2012).

It has long been held that the eye cannot commit a trespass condemned by the Fourth Amendment. *State v. Blood*, 190 Kan. 812, 378 P.2d 548 (1963). A search implies prying into hidden places for that which is concealed and is not in open view. Automobiles are “effects” and thus within the reach of the Fourth Amendment. *South Dakota v. Opperman*, 428 U.S. 364, 96 S. Ct. 3092 (1976). While warrantless searches are presumptively unconstitutional, not all investigative actions are “searches” subject to Fourth Amendment scrutiny. *U.S. vs. Soybel*, 13 F.4th 584, 590 (7th Cir. 2021). Rather, the word “search” is a term of art in the Fourth Amendment analysis. *U.S. v. Shelton*, 997 F.3d 749 (7th Cir. 2021).

The United States Supreme Court has developed two distinct paths to identify a search.

A search occurs when:

- (1) The government obtains information by **physically intruding** on a constitutionally protected area i.e. persons, houses, papers or effects; or
- (2) Invades a “subjective” expectation of privacy that society recognizes as reasonable. *Florida v. Jardines*, 569 U.S. 1, 133 S. Ct. 1409 (2013) (emphasis added), *Kyllo v. United States*, 533 U. S. 27 121 S. Ct. 2038 (2001) and *State v. Talkington*, 301 Kan. 453, 345 P.3d 258 (2015).

Under the property-based approach, a search occurs when an officer enters a constitutionally protected area for the purpose of gathering evidence against the property owner. *Florida v. Jardines*, 569 U.S. 1 (2013). Under the privacy-based approach, Courts ask whether a person has a legitimate expectation of privacy in a given situation. *Katz v. U.S.*, 389 U.S. 347 (1967).

a. The City’s ALPR System is not a “trespassory search” in violation of Section 15 of the Kansas Bill of Rights.

All courts which have evaluated ALPR systems regarding the need for a warrant have done so concluding that there is no reasonable expectation of privacy in the exterior of one’s motor vehicle or license plate. In order to circumvent these decisions, Plaintiff claims that the City’s ALPR system violates his property rights and the City has wrongfully trespassed on his property. He alleges that the taking of photos of vehicles constitutes a trespassory search (Plaintiff’s Petition ¶ 188). He then extrapolates that the ability to verify registration of vehicles from tag information coupled with the city’s ALPR program is the functional equivalent of GPS tracking. (Plaintiff’s Petition ¶ 203) Because of this “functional equivalent,” he alleges that a trespassory search has been committed by law enforcement. Plaintiff’s assertions and his gross extension of case law involving trespassory searches are without merit.

Every circuit that has considered whether a license plate check constitutes a search under the Fourth Amendment has concluded that it is not. *United States v. Diaz-Castaneda*, 494 F.3d 1146 (9th Cir. 2007), *United States v. Ellison*, 462 F.3d 557, 561 (6th Cir. 2006) and *United States v. Walraven*, 892 F.2d 972, 974 (10th Cir. 1989).

In *United States v. Jones*, 565 U.S. 400, 132 S. Ct. 945 (2011), the United States Supreme Court determined that the **physical placement** of a GPS tracker on a vehicle required law enforcement to obtain a warrant. The government conceded in *Jones*, that the officers did more

than conduct a visual inspection of Defendant's vehicle. "By attaching the device to the Jeep, officers encroached on a protected area." The court concluded that this finding was required based on the common-law trespass. The government in *Jones* physically touched the Defendant's property or effects (underneath side of vehicle). This governmental action was considered to be a trespass, as the government physically occupied private property for the purpose of obtaining information. A trespass to chattels has traditionally required a physical touching of the property. *See*: Restatement (Second) of Torts Section 217)

No government actor employed by the City of Wichita "encroached on a protected area" owned or possessed by the Plaintiff. The Fourth Amendment specifically precludes "government trespass upon areas (persons, house, papers and effects) it enumerates." *Jones* at 405 Put differently, when the government does engage in **physical** intrusion of a constitutionally protected area in order to obtain information, that intrusion may constitute a violation of the Fourth Amendment. *United States v. Knotts*, 460 U.S. 276, 286 103 S. Ct. 1081 (J. Brennan, Concurring) In *Jones*, the U.S. Supreme Court made it clear that it was not deviating from the understanding that mere visual observation does not constitute a search. *Jones* at 400. *See also*: *Kyllo*, 533 U.S. at 31-32.

The United States Supreme Court's opinion in *Kyllo v. United States*, 533 U.S. 27, 121 S. Ct. 203, (2001) likewise does not provide support for Plaintiff's property search argument. In *Kyllo*, law enforcement officers utilized thermal imaging devices to observe heat being emitted from the Defendant's home. Based on the heat signatures registered and other intelligence gathered by law enforcement, the officers obtained a warrant to search the premises. Based on the facts presented, the court concluded that the use of the thermal technology required a warrant because the information could not have otherwise been obtained without physical intrusion into a

constitutionally protected area, at least where the technology in question is not in general public use. *Kyllo* at 27. There are a number of factual differences between the use of an ALPR system and the use of thermal imaging cameras. The use of ALPR systems takes place in a public area, not one's home. Secondly, all photos taken by the ALPR system are in public view. "Warrantless visual surveillance of a home is not a search at all." *California v. Ciraolo*, 476 U.S. 207, 106 S. Ct. 507 (1986). The courts holding in *Kyllo* do not support Plaintiff's assertions.

Plaintiff's attempt to equate the City's ALPR system to that of GPS tracking is without merit. GPS tracking provides substantially more information to law enforcement than still photographs of vehicles. GPS monitoring generates a precise, comprehensive record of a person's movements that reflects a wealth of detail about her familial, political, professional, religious and sexual associations. *Jones*, at 413 (J. Sotomayor, concurring) Indeed, GPS tracking of a vehicle creates a continuous, minute-by-minute map of a person's entire movement – including precise entries into enclosed, non-public spaces like private driveways, underground garages, and businesses' parking lots – whereas ALPR can only capture discreet, public point-in-time snapshots as a vehicle passes a fixed camera. GPS tracking reveals where a vehicle's journey started, stopped, and every stop and movement in between. Moreover, the City's ALPR system has approximately 200 cameras. Due to the geographic size of the City of Wichita, it would be nearly impossible to "connect the dots" to follow Plaintiff's vehicle throughout the City in the same manner that a GPS monitor would. Further, ALPR systems take still photos of vehicles. They do not zoom in or "follow" a vehicle. The vehicle will only be viewable by officers, if, at a later time, the vehicle passes another camera.

Plaintiff has not asserted any physical trespass on his property or vehicle to establish a violation of Section 15 of the Kansas Bill of Rights. There is no trespass in taking a photograph of

a vehicle or person for that matter. The eye cannot commit a trespass. There are no allegations in the petition that any City of Wichita officer has ever had any contact with the Plaintiff or his vehicle, much less physically touched the vehicle. ALPR cameras are primarily located in public areas or public right of ways. There simply is no possibility that any City of Wichita employee could have trespassed on Plaintiff's property or his vehicle. These claims simply lack any basis in the facts presented or the laws applicable to constitutional search and seizure.

b. Plaintiff has no reasonable expectation of privacy in the photos taken by the ALPR System or any search of such System.

The Fourth Amendment does not protect merely subjective expectations of privacy, but only those exceptions that "society is prepared to recognize as reasonable." *Katz*, 389 U.S. at 361 (Harlan, J., concurring). To resolve whether any given expectation of privacy is reasonable, *Katz* provided a two-part inquiry:

"First, has the individual manifested a subjective expectation of privacy in the object of the challenged search? Second, is society willing to recognize that expectation as reasonable?" *Katz*, 389 U.S. at 361.

Defendant was unable to locate any court case that concluded that a law enforcement agency taking a photo of a license tag, in and of itself, is a violation of the Fourth Amendment. The Tenth Circuit has held that there is no reasonable expectation of privacy in a license plate, which is in public view. *U.S. v. Walraven*, 892 F.2d 972, 974 (10th Cir. 1989). Likewise, Kansas Courts have concluded that there is no reasonable expectation of privacy in an individual's tag or registration information. As stated by the Kansas Court of Appeals: "[a] license plate is made to be seen by all who care to look. No one has an expectation of privacy of their vehicle's license plate. *Junction City Police Department v. \$454,280*, 531 P.3d 539, (Kan. App. 2023) (unpublished) (Attached as Exhibit B).

Clearly, if it is not an unreasonable search for law enforcement to look inside a vehicle with or without a flashlight for contraband or a vehicle identification number, it cannot be an unreasonable search for law enforcement to capture a picture of a vehicle's tag on the exterior of the vehicle. Courts have long recognized that the use of equipment to aid an officer's view of items in plain sight does not alter the analysis that the search was reasonable. *See: State v. Brown*, 2000 Kan. App Unpub. 692 (2000). (Officer's use of flashlights to see marijuana in plain view did not constitute an unreasonable search); *State v. Wade*, 206 Kan. 347, 479 P.2d 811 (1971). (Evidence not illegally seized by use of flashlight to illuminate floorboard of a car), *State v. Karney*, 208 Kan. 677, 494 P.2d 1204 (1972) (A search does not occur even if it is nighttime and the object is seen in the light of a flashlight through a car window), *State v. Frizzell*, 207 Kan. 393, 485 P.2d 160 (1971) and *State v. Garcia*, 210 Kan 806, 504 P.2d 172.

Case law from the U.S. Supreme Court supports the constitutionality of ALPR technology. In *United States v. Knotts*, 460 U.S. 276 103 S. Ct. 1081 (1983), a tracking "beeper" placed on a suspect's car which used radio technology to convey a vehicle's location was not a search. *Knotts* at 281-84. The court concluded that people have no reasonable expectation of privacy in their movements from one place to another given that they "voluntarily" conveyed [them] to anyone who wanted to look. *Id* at 281-82. The beeper only augmented, to a permissible degree, warrantless capabilities the police had even before the utilized technology.

Later, in *U.S. v. Jones*, 565 U.S. 400, 132 S. Ct. 945 (2012) location tracking technology went from mere augmenting capabilities to impermissibly enhancing. As just mentioned, police affixed a GPS tracking device to remotely monitor and record a vehicle's every movement over 28 days. *Jones* at 402-04. The decision relied on property trespass principles, but five justices

agreed that “longer term GPS monitoring” impinged on expectations of privacy. *Jones* at 415 (Sotomayor, J., concurring).

Following *Jones*, the Court decided *Carpenter v. United States*, 585 U.S. 296 138 S. Ct. 2206 (2018), which is relied upon by Plaintiff. In *Carpenter*, the United States Supreme Court examined the use of cell phone data (cell-site location information) (CSLI) collected by law enforcement obtained without a warrant. In *Carpenter*, the officer’s collected 127 days’ worth of data. CSLI provides an approximate location of a cellular device based on location pings continuously sent to cell towers, regardless of whether the individual is located in a public or private place. These signals occur automatically whenever a phone is turned on. The data collected 12,898 location pings or an average of 101 data points a day.

The Supreme Court concluded that based on the invasive nature of the long-term surveillance, law enforcement was tracking “the whole of Carpenter’s physical movements and invaded his reasonable expectation of privacy when it accessed his cell phone data.” The majority of the court recognized a reasonable expectation of privacy in the whole of their physical movements.

It explained its rationale that “like GPS monitoring, cell phone tracking is remarkably easy, cheap and efficient;” “with just a click of a button, the government can access each carrier’s deep repository of historical information.” *Carpenter* at 311. The court further explained that cell phone location data presents even greater privacy concerns than GPS monitoring of a vehicle noting that cell phones are “compulsively carried” all the time beyond public thoroughfares into countless **private** spaces. *Carpenter* at 311.

Most recently, the Supreme Court reviewed geofence warrants requesting cell phone location history data from Google. *Chatrue v. United States*, (No. 25-112) (2026) In *Chatrue*,

officers had obtained access to Plaintiff's Google location history data. The court concluded that by gaining access to this data, law enforcement had conducted a search as an individual has a reasonable expectation of privacy in records which shows the location of one's cell phone. The court in relying on *Carpenter*, held that location history provided an even more fine-tuned picture of a person's movement than CSLI. *Chatrue* at _____. In *Carpenter*, his location was noted an average of 101 times a day. The location history in *Chatrue*, recorded a person's location every two minutes for a daily average of 720 chartings. Cell phone data provide access to the cell phone user's movement, in both public and private places.

The data collected by the City's ALPR system is much more limited than the data collected in *Carpenter* or *Chatrue*. The data collected only shows vehicles on public roadways. The system does not allow law enforcement to track a person's real time movements.

Similarly in *Leaders of a Beautiful Struggle v. Baltimore Police Department*, 330, 2 F.4th relied upon by the Plaintiff, the Fourth Circuit reviewed an aerial surveillance program piloted by the Baltimore Police Department. In *Leaders of a Beautiful Struggle*, the Baltimore Police Department partnered with a private surveillance contractor whose planes were equipped with high-tech cameras that captured approximately twelve hours of aerial footage of ninety percent of the city each day. *Leaders of a Beautiful Struggle* at 334. Images were transmitted from planes to ground stations where they could be analyzed by teams of contractors. Images were stored on computer servers for forty-five days. *Leaders of a Beautiful Struggle* 2 F.4th at 334. The Fourth Circuit concluded that such surveillance fell within the prohibitions set forth in *Carpenter* because it "tracks every movement" of every person outside in Baltimore and created a "detailed, encyclopedic record of where everyone came and went within the city during dallying hours over the prior month and a half." *Leaders of a Beautiful Struggle* at 341.

Plaintiff's reliance on *Carpenter*, *Chatrie* and *Leaders of a Beautiful Struggle* is misplaced. In recognizing the inherent technological differences between a cell phone and stationary ALPR programs, all courts have declined to extend *Carpenter* to ALPR programs. As especially relevant here, the Kansas Federal District Court declined to extend *Carpenter* to the City of Wichita's Flock Camera System currently before this court. In *United States v. Jackson*, 2025 U.S. Dist. Lexis 101960 (D. Kan. 2025). (Exhibit D) Judge Broomes, following an evidentiary hearing with substantial testimony regarding the City's system and its use, similarly denied Defendant's Motion to Suppress. Many of the facts established by the court in *Jackson* are the basis for Plaintiff's petition. In evaluating the City's system, he noted that like traditional ALPR's, the City's cameras are stationary and capture high speed pictures of every rear-facing license plate that passes the camera twenty-four hours a day, seven days a week, so long as the camera is operational. They have an intentionally narrow field of view, with motion detection triggering up to 75 feet away and field view of around 20 feet. Cameras take numerous high-speed photos of passing cars and then A.I. pulls up the best photo to be uploaded into the ALPR System.

The Court also made the additional findings that in addition to license plate numbers, cameras can also identify the make, model, color, resident status and any damage or alterations to the vehicle. The System cannot determine the speed of the vehicle, the identity of the occupants ... or the end destination to which any vehicle is traveling. Photos are retained for only thirty days after which they are permanently deleted unless saved on local hard drives. Access to Flock information is limited to authorized law enforcement personnel and all access to the Flock System is recorded and subject to audit.

The City of Wichita has used Flock Cameras since 2014 and has approximately 200 cameras or one camera per 2.6 lane/miles of road. Cameras are placed in high crime areas or on

roads with a high volume of traffic. Wichita Police Department uses historical location data from Flock to help build timelines and review vehicles' location related to criminal investigations. However, the ALPR data cannot continuously track the vehicle. The data is limited to only those locations where a Flock Camera is stationed. It is possible to evade detection by driving in areas without Flock Camera coverage.

Based on the facts presented, the court concluded that a motorist had no reasonable expectation of privacy in the information contained on his license plate and entered into the Flock System. Judge Broomer, while recognizing the premise in *Carpenter*, that long-term, twenty-four-hour surveillance was prohibited noted that the limited nature of ALR photographs and the thirty-day retention period is sufficient to quell these concerns. *See also: Junction City Police Department v. \$454,280*, 2023 Kan. App. Unpub. Lexis 282 (2023) (Exhibit B).

Other jurisdictions evaluating ALPR system also have not extended the court's reasoning in *Carpenter*. Holding instead that no one has an expectation of privacy of their vehicles license plate number. License plate information from a plate reader ... is not similar to the location information derived from cell towers. *See: United States v. Brown*, 2025 U. S. Dist. Lexis 164367 (W.D. Ok. 2025). (Flock Cameras do not provide an "intimate window into a person's life" nor do they allow law enforcement to track a person's movements.) *Robinson v. Commonwealth*, 87 Va. App. 262 927 S. E. 2d 822, (C.A. Va. 2026) (Flock System simply took pictures of the license plate on Robinson's vehicle and the exterior of it ... police were not required under the Fourth Amendment to get a warrant) and *U.S. v. Martin*, 753 F. Supp. 3d 454 (E.D. Va. 2026) (Cameras were not so intrusive to violate constitutional privacy standards.)

Indeed, all criteria addressing whether law enforcement technology rises to the level of a Fourth Amendment search weigh against the Plaintiff. The City's ALPR system takes still

photographs of the rear of a motor vehicle as it passes through an area. The City has approximately 200 cameras or a camera per every 2.6 miles. The cameras are conspicuous and mounted on poles in public right of way. The cameras do not pan, follow or zoom inside of a vehicle. *See: United States v. Yang*, 958 F.3d 851 (9th Cir. 2020) (Database search of ALPR system did not reveal the whole, or even any, of Defendant’s movements. It would be folly to hold that searches of ALPR databases require a warrant without identifying even one case where the “whole of [one’s] physical movements was implicated in an ALPR database search.”) (J. Bea concurring) *See also: Robinson v. Commonwealth*, 927 S. E. 2d 822 (2026) (holding that Flock cameras - are not as intrusive as the cell towers in *Carpenter* that monitor the movement of cell phones both inside and outside of homes and buildings or the surveillance of a city from the air in *Leaders of a Beautiful Struggle*.) The images of captured by Flock are of vehicles, not persons, and the only pieces of information collected license plates and physical characteristics of the vehicle are already publicly viewable to anyone who sees the vehicles on the street. The cameras do not continually monitor all of [defendants] travels around the city. The City of Wichita’s ALPR program lacks the same depth, breadth and comprehensive reach as the surveillance issue in *Carpenter*, *Chatrie*, *Jones* and *Leaders of a Beautiful Struggle*. As such, Plaintiff’s petition should be dismissed for failure to make a claim for violation of his constitutional rights.

V. Section 20 of the Kansas Bill of Rights does not create a new constitutional right to support a cause of action.

Plaintiff’s petition asks the court to recognize a new constitutional right based on Section 20 of the Kansas Bill of Rights. The provisions of Section 20 are nearly identical to those contained in the Ninth Amendment.

Section 20 of the Kansas Bill of Rights provides:

This enumeration of rights shall not be construed to impair or deny

others retained by the people; and all powers not herein delegated to remain with the people.

Likewise, the Ninth Amendment to the United States Constitution states:

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

Specifically, Plaintiff claims that Section 20 protects “the right to be free from governmental suspicionless surveillance, tracking and intrusion into private and personal information”. (Plaintiff’s Petition ¶229). There is very little, if any, Kansas law construing these Kansas Constitutional provisions. As such, case law construing the Ninth Amendment to the United States Constitution is instructive for the court. Plaintiff’s claims ignore this existing case law, which concludes that the Ninth Amendment is a rule of construction, not an independent source of constitutional rights.

The Ninth Amendment is not an independent source of individual rights; rather it provides a “rule of construction” that is applied in certain cases. See: *United States v. Bifield*, 702 F.2d 342, 349 (2d Cir. 1983). It, standing alone, does not confirm substantive rights for the purposes of pursuing a constitutional claim. See: *Gibson v. Matthews*, 926 F.2d 532, 537 (6th Cir. 1991) and *Jenkins v. Commission*, 483 F.3d 90, 92 (2d Cir. 2007) (The Ninth Amendment is not an independent source of individual rights; rather it provides a ‘rule of construction’.) It does not raise unmentioned rights, which are not specifically mentioned in the Constitution, to Constitutional stature. Its savings clause was intended by the drafters to keep from lowering, degrading or rejecting any rights which are not specifically mentioned in the Constitution. It does not raise any right which are not specifically mentioned in the document itself... it simply takes cognizance of their general existence. *Charles v. Brown*, 495 F. Supp 862 (N.D. Ala. 1980)

Kansas Federal District Courts have interpreted the Ninth Amendment to be a rule of construction; not a provision adding additional substantive rights. The court in *Truillo v. City of Newton*, 2013 U.S. Dist. Lexis 92697 (D. Kan. 2013) in evaluating Plaintiff's claims that Defendant's actions in performing a strip search were a gross invasion of her right to privacy held that the Ninth Amendment was a rule of construction and not an independent source of constitutional rights. The court analyzed the Plaintiff's claims pursuant to the Fourth Amendment. *See also: Boulden v. AG of N.M.*, 2024 U.S. Dist. Lexis 101214 (D.N.M. 2024) (Ninth Amendment is a rule of construction rather than a source of additional rights) *Gibson v. Matthews*, 926 F. 2d 532, 537 (6th Cir. 1991) and *Jenkins v. Comm'r*, 483 F.3d 90, 92 (2d Cir. 2007) (The Ninth Amendment is not an independent source of individual rights; rather it provides a 'rule of construction').

Further, the court in *Heath v. Norwood*, 325 F.Supp. 3d 1183 (D. Kan. 2018), reached a similar conclusion in evaluating a Plaintiff's claim that the Ninth Amendment gave him a right to parole. The court, in recognizing that the Tenth Circuit had never ruled on this precise issue, determined that the Tenth Circuit would reach a similar conclusion as the other District courts.

The court stated:

The Ninth Amendment does not raise unenumerated rights to a constitutional level; instead, it recognizes that unenumerated rights exist and those that rise to a constitutional level come from the penumbras of the first eight amendments.

Heath at 1192

In *State v Schultz*, 252 Kan. 819, 850 P.2d 818 (1993), the Plaintiff asserted claims similar to those brought by Plaintiff. He asserted that based on Sections 18 and 20 of the Kansas Bill of Rights, a more expansive interpretation of Section 15 was appropriate. The trial court concluded that under the facts presented that Section 15 should be interpreted consistently with the Fourth

Amendment. As in *Schultz*, Plaintiff's attempts to expand his constitutional rights under Section 20 should be denied.

The Ninth Amendment's savings clause was added to the Constitution to keep from lowering, degrading or rejecting any rights which are not specifically mentioned in the Constitution. It does not raise unmentioned rights, which are not specifically mentioned in the Constitution, to constitutional stature. Plaintiff's claims arise from Section 15 of the Kansas Bill of Rights and/or the Fourth Amendment. His attempts to create a "new claim" to circumvent existing case law should be denied.

VI. Plaintiff's "Separation of Powers" Argument regarding Section 20 of the Kansas Bill of Rights is without merit.

Plaintiff effectively asks the court to reframe a claim under Section 15 of the Kansas Bill of Rights or the Fourth Amendment by using "different words to claim to the court the power to invalidate any legislative act which the court finds irrational, unreasonable or offensive." *Griswold v. Connecticut*, 381 U.S. 479 85 S. Ct. 1678 (1965) (J. Black and J. Stewart dissenting) He alleges that the "government has not been delegated the power to engage in suspicion less surveillances and tracking of the entire citizenry nor has it been delegated the power to intrude into the private or personal information of the citizenry." (Plaintiff's Petition ¶234)

This is not a separation of powers case. It is a Fourth Amendment or Section 15 case involving alleged search and seizure. Plaintiff's attempts to call it something that it is not are frivolous. The use of ALPR cameras by law enforcement is an investigative tool. It would be absurd to assert that any use or misuse of technology by a government actor rose to the level of a violation of the separation of powers between the branches of government.

Nevertheless, Kansas Municipalities are expressly given Kansas Constitutional and Legislative authority to employ law enforcement officers to enforce local and state laws.

Article 12, Section 5 of the Kansas Constitution provides that cities may determine their local affairs. Further, K.S.A. 12-4111 provides that the governing body of municipalities may employ law enforcement officers who shall have power to execute all process...to detain persons, to place them in custody and to arrest them.

There is no separations of powers argument available to Plaintiff. The Kansas Constitution allows cities to govern their own affairs. Further, the legislature has provided that municipal governments may have their own law enforcement agencies. The law is abundantly clear that these agencies must comply with all constitutional amendments, including those which establish the parameters of lawful searches and seizures. Remedies are available both under state and federal law for violations of these constitutional provisions. Section 20 of the Kansas Bill of Rights does not provide Plaintiff additional remedies for his alleged injuries. His claims should be dismissed.

VII. Section 20 of the Kansas Bill of Rights does not create a right to be “free from lawful intrusions into the private or personal information of citizens.”

Plaintiff’s last attempt to allege a cause of action are his assertions that Section 20 of the Kansas Bill of Rights creates a new right, essentially one of privacy, to be free from “suspicionless surveillances and tracking of the entire citizenry.” (Plaintiff’s Petition ¶234) No existing constitutional provision talks about a constitutional right of privacy.

Defendant acknowledges that the United States Supreme Court has, at times, recognized the explicit rights guaranteed in the Federal Bill of Rights “have penumbras, formed by emanations from those guarantees that help give them life and substance” and which “create zones of privacy.” *Griswold v. Connecticut*, 381 U.S. 479, 484, 85 S. Ct. 1678 (1965).

It is clear that the framers’ and adopters’ intent in establishing the Kansas Bill of Rights was to protect from government infringement not only specific enumerated rights, but those unenumerated rights inherent in the broader declarations of our Bill of Rights. As the Kansas

Supreme Court declared in *Atchinson Street Rly. Co. v. MO. Pac. Ry. Co.*, 31 Kan. 660, Syl. ¶ 1, 3 P. 284 (1884).

The Bill of Rights is something more than a mere collection of glittering generalities: some of its sections are clear, precise and definite limitations on the powers of the legislature and all other officers and agencies of the state ... while others are largely in nature of general affirmations of political truths, yet all are binding on legislatures and courts, and no act of legislature can be upheld which conflicts with their provisions, or trenches upon the political truths which they affirm.

The framers and adopters of the Kansas Constitution deliberately chose to express general affirmations of political truths to protect individual rights from government intrusion rather than exhaustively enumerate specific rights.

The Kansas Supreme Court recently expanded its interpretation of Section 1 of the Kansas Bill of Rights in *Hodes & Hauser Md's, P.A. v. Schmidt*, 309 Kan. 610, 440 P.3d 461 (Kan. 2019) to be more expansive than the Equal Protection Clause of the Fourteenth Amendment. In reaching its determination that the Kansas Bill of Rights independently protected a woman's right to decide whether to continue pregnancy, the court focused on distinctive language in Section 1, which was contained in the Kansas Bill of Rights, but which was absent from the Federal Constitution. *Hodes* is factually distinguishable from the case and constitutional provisions before the court.

Claims similar to those made by Plaintiff were made by the Defendant in *State v. Sanders*, 65 Kan.App2d. 236, 536 P.3d 234 (Kan.App. 2025). The Defendant had been convicted of sexual exploitation of a child. He alleged, based on the recent Supreme Court's decision in *Hodes*, that the statute was unconstitutional as it improperly criminalized private, consensual sexual conduct. Specifically, he alleged that based on Section 1 of the Kansas Bill of Rights that he had a fundamental right to privacy in sexual relations.

He claimed that based on Section 1 of the Kansas Constitution Bill of Rights, that the Kansas Supreme Court has identified a “right to privacy” as a “natural right” deserving of constitutional protection. See *Hodes & Hauser Md’s, P.A. v. Schmidt*, 309 Kan. 610, 650 (2019) (Hodes I) (citing *Kunz v. Allen*, 102 Kan. 883, 884, 172 P. 532 [1918]). He also argued that the “right to self-autonomy” recognized in *Hodes I* should also include the right to engage in private consensual sexual intimacy. The court concluded that his arguments were unpersuasive and lacked adequate support.

It noted that the Defendant was correct that *Hodes I* mentioned privacy as a natural right. However, Defendant ignored that the *Hodes I* court explained that explicitly recognizing a constitutional right to privacy was “not necessary” to its decision to recognize the Kansas Constitution protects the right to decide whether to continue a pregnancy. *Hodes I*, 309 Kan. at 650 (quoting *Preterm Cleveland v. Voinovich*, 89 Ohio App. 3d 684, 692 N.E. 2d 570 [1993]). Similarly, *Hodes I* said nothing about whether the right to self-autonomy included a right to sexual privacy as the Defendant asserted.

Kansas Supreme Court cases which have recognized an “inherent right of privacy” have done so based on specific language contained in Section 1 of the Kansas Bill of Rights. Namely, [a]ll men are possessed of equal and inalienable natural rights, among which are life, liberty, and the pursuit of happiness. These cases determined that these rights stemmed from existing constitutional provisions, such as the Due Process or Equal Protection Clause. None of Plaintiff’s allegations in regard to Section 20 relate to any existing provision under the Kansas Constitution. His attempts to “create” these rights exclusively from Section 20 of the Kansas Bill of Rights are misplaced. As with the Ninth Amendment, Section 20 of the Kansas Bill of Rights does not “create” a right. It was only intended to protect rights which fell within the concepts expressed in

the Bill of Rights, but which were not specifically enumerated. Plaintiff's allegations fall within the Fourth Amendment or Section 15 of the Kansas Bill of Rights. As such, Plaintiff's attempts to "create" a new right which is not within the general scope of existing constitutional provisions should be denied.

Conclusion

Pursuant to K.S.A. 60-212(b)(1) and K.S.A. 60-212(b)(6), Plaintiff has failed to establish the necessary standing to request that the Defendant's ALPR system be enjoined from future use or for a determination that it violates his Kansas Constitutional Rights. Further, he has failed to allege a valid cause of action pursuant to Section 15 or Section 20 of the Kansas Bill of Rights. His attempts to reclassify unlawful search or seizure claims into something they are not, should not be entertained by the court. The City's ALPR system does not constitute an unreasonable search contrary to the Kansas Bill of Rights or United States Constitutions. Defendant prays for an order dismissing the cause of action in its entirety.

Respectfully Submitted,

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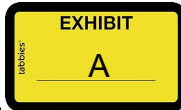
NOTICE OF SERVICE

I hereby certify that on the 25th day of September 2026, a true and correct copy of the above and foregoing Memorandum in Support of Motion to Dismiss was filed with the Court electronically and notification of said filing was transmitted by the Sedgwick County District Court Clerk's office to the parties of record listed below, and a copy was sent to counsel of record as follows:

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WICHITA POLICE DEPARTMENT

POLICY MANUAL

POLICY 804

LICENSE PLATE READER

I. PURPOSE

The purpose of this policy is to provide Wichita Police Department (WPD) members guidance on the application and use of license plate readers (LPR), management of LPR data, and maintenance of LPR equipment.

II. POLICY

License plate readers have enhanced law enforcement's ability to detect violations of law, recover stolen property, apprehend fugitives and assist in investigations. WPD members will use LPRs in accordance with the procedures and guidelines set forth. Data captured from LPRs will be used properly and responsibly as defined herein.

III. PROCEDURES

A. General Administration

1. LPRs will only be used by commissioned WPD members who have been properly trained in the use of the LPR. Any commissioned officer may be trained in the use of the LPR.
2. Any officer may request the assistance of a trained LPR Officer. A trained LPR Officer may respond along with a LPR-equipped vehicle if available.
3. LPR data will only be accessed by trained officers for a legitimate law enforcement purpose.
4. LPR Hot Lists and data gathered by WPD LPRs will be maintained securely. Requests for searches/inquiries may be made by any commissioned WPD member subject to the provisions of this policy.
5. All database searches shall include a legitimate law enforcement purpose in the 'Reason' search box. When the associated police case number is available, officers shall use the case number in the 'Reason' search box. If a case number is not available at the time of search, officers shall validate their search by entering the type of crime and location in the 'Reason' search box.
6. Requests for ELSAG LPR data by members of outside agencies shall be directed to the Midwest HIDTA ISC Manager by phone (816-746-4828) or via e-mail (watch@midwesthidta.org). Requests for FLOCK LPR data by members of outside agencies shall be directed to a commissioned WPD supervisor who will take into consideration the exigency and totality of each request.

7. ELSAG LPR data will be stored in the Houston HIDTA server for a period of no more than three (3) years and FLOCK LPR data will be stored for 30 days except in the following circumstances:
 - a. LPR records associated with an ongoing criminal or administrative investigation will be maintained until a final disposition has been reached in the particular case.
 - b. LPR alerts associated with an arrest will be maintained in the criminal case file and retained for the maximum period of time associated with such record.
 - c. LPR alerts associated with felony investigations will be maintained in the criminal case file and retained for the maximum period associated with such record.
 - d. LPR audit logs will be maintained and stored by Houston HIDTA and FLOCK indefinitely. All access to the system will be logged. ELSAG and FLOCK will maintain an audit trail of requested and accessed information, including the purpose of the query. Periodic, random audits will be conducted by LPR Administrators to ensure and evaluate compliance with system requirements and with the provisions of this policy and applicable law.
 - e. Whenever directed by a supervisor.
8. The LPR Administrator will ensure any changes in hardware, software or law are the subject of continued in-service training, e-mail announcements, or interwatch items.

B. Operations

1. Prior to a tour of duty, members using a mobile LPR will ensure an upload of current Hot List data has been performed for the day.
2. Data from ELSAG LPRs will be uploaded to the Houston HIDTA server via aircard in real time.
3. When crimes occur, the WPD may solicit assistance from other agencies with LPR-equipped cars for assistance in identifying a vehicle or to gather license plate data in a particular area. Requests for assistance from outside agencies shall be approved by a supervisor. Similarly, other departments may request assistance from the WPD in the event of the same. Any requests from outside agencies for LPR-equipped vehicle assistance will be directed through the duty chief. Consideration should be given to deploying LPRs strategically such as perimeters, choke points, major highways, other avenues of escape, etc.

C. LPR Data

1. Direct access to LPR data shall be granted by the LPR Administrator and limited to trained, crime analysts, commissioned officers and Reserve officers.

2. Supervisors entering data into a Hot List on behalf of another WPD employee or an outside agency must make a notation in the notes section regarding the requestor's name and agency name if applicable along with other pertinent details of the request.
3. Officers shall not disclose their EOC or FLOCK password or share account access with anyone. Doing so may result in disciplinary action and/or revocation of access to LPR data and equipment.
4. The WPD does not share LPR data with any contracted, commercial, or private entity other than for the purpose of storing and securely maintaining such data in compliance with accepted data security standards.
5. LPR data collected or retained by the WPD will not be:
 - a. Sold, published, exchanged, or disclosed for commercial purposes.
 - b. Disclosed or published without authorization.
 - c. Disseminated to persons not authorized to access or use the information.
6. The WPD shall not confirm the existence or non-existence of information to any person or agency not eligible to receive the information unless otherwise required by law.
7. LPR Data shall not be used for any non-work-related purpose, and all uses shall take into consideration the privacy, civil rights, and civil liberties of individuals.

D. Field Protocols

1. LPR-equipped vehicles should be used as often as possible. When not in use, LPR-equipped vehicles should be parked in a reasonably secure location and periodically monitored.
2. When the LPR indicates an alert, prior to making a stop or taking enforcement action, officers shall:
 - a. Verify the captured plate image matches the plate number of the vehicle and verify the captured plate matches the Hot List state entry.
 - b. Confirm the alert is accurate through dispatch, SPIDER, or CAD.
3. An officer may not stop or detain an individual solely based on an alert from the LPR system unless specified to do so as part of the alert by an authorizing supervisor. Each incident should be weighed according to the totality of circumstances presented therein. The following are general guidelines only, but should assist an officer in determining when reasonable suspicion exists concerning various types of LPR alerts.
 - a. Stolen Vehicles and Stolen License Plates – Requires confirmation.

- b. Wanted Persons – Must have a reasonable belief the person sought is in the vehicle and the warrant or pick-up is valid.
 - c. BOLO Only – This alert is information only for officers, and reasonable suspicion may or may not exist based on the alert alone. The narrative of the alert will assist officers in determining the level of reasonable suspicion. Independent reasonable suspicion may or may not be required in order to detain.
 - d. Officer Safety, Suspected Gang Member, Sexual Offender, Past Offender, Associate Only, and Information Only – These alerts are information only for officers. Reasonable suspicion should be obtained in order to detain.
4. The proactive entry of data or access to LPR records must be for a legitimate law enforcement purpose by authorized personnel as defined in WPD Policy 109. This applies to data uploaded prior to the deployment of the LPR as well as data which may be uploaded by a Commissioned Supervisor during a tour of duty. Proactive/manual entry into an LPR Hot List in the field is permitted in the following circumstances, however no personally identifiable information (PII) will be entered, uploaded and/or transmitted to Houston HIDTA or FLOCK:
- a. Dispatch reports of crimes, BOLOs, alerts in which a license plate number is part of the broadcast.
 - b. An officer queries the ELSAG or FLOCK system to ascertain if there is a prior read of the license plate which is the subject of the particular alert, bulletin or alarm.
 - c. An authorized user contacts any Commissioned Supervisor to request certain license plate characters, complete or partial be entered into the WPD's Hotlist. Examples of entries include:
 - 1. Gang members/associates
 - 2. Sex offenders
 - 3. Crime suspects
 - 4. Fugitives
 - 5. Search warrant targets
 - d. In order to enter a license plate into the ELSAG or FLOCK Hotlist, a supervisor should have reasonable suspicion to believe the vehicle is directly associated with:
 - 1. The person sought (owner, regular driver, or regular passenger) or;
 - 2. Criminal activity.
 - e. All Hotlist entries shall be limited to a maximum of 7 days upon initial entry. If necessary, these entries may be renewed for an additional 7 day period.

- f. As soon as practicable, when the entering supervisor is made aware the alert is no longer valid, the supervisor should immediately remove the alert from the system.
- 5. Proactive/manual entry into a LPR Hot List in the field is required for AMBER Alerts, Silver Alerts or Missing Child bulletins. Additionally, officers must query their LPR to ascertain if there is a prior read of the license plate which is the subject of the alert.
- 6. Officers shall make an entry in the LPR Tracking Log whenever a LPR alert results in an investigatory stop, citation, or arrest.
 - a. The LPR Tracking Log is located on the police secure portal under the MCT Directory link list.
 - b. For tracking purposes, only one entry needs to be made per incident. If a stop involves an arrest and a citation, an officer should select 'LPR Arrest' in the LPR Tracking Log.
 - c. In the notes sections of the LPR Tracking Log, officers should provide a short summary of the stop to include the location of the alert, any charges, types and amounts of illegal drugs located, firearms seized, warrants cleared, and any other significant information.
 - d. Officers will ensure entries are timely and complete.
 - e. When enforcement action, an investigation or prosecution results from an LPR alert, officers shall preserve the alert via exportation to a PDF document and submission into the Laserfiche DVI file under the appropriate case number.

E. LPR Maintenance

- 1. At the beginning of each tour of duty, mobile LPR Officers should verify the aim of the LPR camera(s) to ensure they are reading the correct lanes of traffic.
- 2. Mobile LPR camera lenses may be cleaned with glass cleaner sprayed on a soft cloth.
- 3. Any damage shall be reported immediately to a supervisor who shall in turn contact the LPR Administrator.
- 4. Any hardware or software issues related to ELSAG LPR equipped vehicles can be reported to the ELSAG LPR Helpdesk by any trained officer, 24 hours a day by calling (866) 967-4900. Any hardware or software issues related to FLOCK LPR's can be directed to the LPR Administrator or an e-mail may be sent to support@flocksafety.com.

Junction City Police Dep't v. 454,280 United States Currency

Court of Appeals of Kansas

June 30, 2023, Opinion Filed

No. 125,181

Reporter

2023 Kan. App. Unpub. LEXIS 282 *; 531 P.3d 539; 2023 WL 4278881

JUNCTION CITY POLICE DEPARTMENT, Appellee, v. \$454,280 U.S. **Currency**, More or Less, 2013 Chevrolet Silverado, 2015 Lance Camper, Suspected Trace Amounts of Marijuana, and Drug Paraphernalia, Defendants, ROBERT E. HENDERSON, Appellant, and OREGON COMMUNITY CREDIT UNION, Appellee.

Notice: NOT DESIGNATED FOR PUBLICATION.

PLEASE CONSULT THE KANSAS RULES FOR CITATION OF UNPUBLISHED OPINIONS.

PUBLISHED IN TABLE FORMAT IN THE PACIFIC REPORTER.

Subsequent History: Review denied by Junction City Police Dep't v. \$454,280 United States **Currency**, 2024 Kan. LEXIS 223 (Kan., Feb. 22, 2024)

Prior History: [*1] Appeal from Geary District Court; STEVEN L. HORNBAKER and KEITH L. COLLETT, judges.

Junction City Police Dep't v. \$454,280 in United States **Currency**, 428 P.3d 239, 2018 Kan. App. Unpub. LEXIS 768, 2018 WL 4939366 (Kan. Ct. App., Oct. 12, 2018)

Disposition: Affirmed.

Counsel: Michael E. Francis, of Topeka, and Jonathan F. Andres, pro hac vice, of Jonathan F. Andres P.C., of St. Louis, Missouri, for appellant.

Tony Cruz, assistant county attorney, and Derek Schmidt, attorney general, for appellee.

Judges: Before COBLE, P.J., HILL and ATCHESON, JJ.

Opinion

MEMORANDUM OPINION

PER CURIAM: This appeal is about whether a district court, while trying a civil forfeiture action, can simply rely on a criminal court's prior ruling that a search and seizure conducted during a traffic stop was legal. In other words, does the doctrine of collateral estoppel apply in an action where a police department is seeking the forfeiture of seized property?

During a June 2015 traffic stop that resulted in a full search of Robert Henderson's truck, a police officer with the Junction City Police Department discovered \$454,280 in cash, as well as other documents and materials that raised suspicions of marijuana trafficking. During the stop Henderson offered half of the money to one of the officers if he would let him go on down the road. The tactic failed.

SHARON DICKGRAFE

The State pressed criminal charges against Henderson, charging [*2] him with alternative counts of having an unlawful association with money that was to be "used for or had been derived from" the trafficking of illegal drugs, bribery, and misdemeanor possession of marijuana. His jury convicted him of bribery and possession of money derived from the distribution of marijuana, and it found him not guilty of possession of marijuana and the alternative charge of possession of money to be used to acquire marijuana.

Henderson appealed, challenging the denial of his motion to suppress, the sufficiency of the evidence used to convict him on the drug charge, and the adequacy of the jury instructions regarding the alternative drug counts. That said, he did not challenge his conviction for bribery. His convictions were affirmed by this court. State v. Henderson, No. 121, 264, 479 P.3d 518, 2021 Kan. App. Unpub. LEXIS 43, 2021 WL 300277 (Kan. App. 2021) (unpublished opinion). But we note that on appeal, this court did not address Henderson's argument about the denial of his motion to suppress because he failed to preserve it. See 2021 Kan. App. Unpub. LEXIS 43, 2021 WL 300277, at *1-2.

While the criminal charges were being litigated, the Police Department seized the money, a 2013 Chevrolet Silverado pickup truck, a slide-in camper, and drug paraphernalia from Henderson. In August 2015, the Police Department petitioned the district [*3] court seeking an *in rem* forfeiture of the seized items. In this civil action, Henderson moved to suppress the evidence discovered during the stop. But he maintained his constitutional right against self-incrimination and offered no testimony. The district court eventually denied Henderson's motions. The court found that Henderson lacked standing to make a claim to the property because of his failure to comply with K.S.A. 60-4111. The court ordered the forfeiture of all the property to the Police Department.

Henderson appealed this forfeiture ruling to our court in Junction City Police Dep't v. \$454,280 in U.S. Currency, No. 118, 231, 428 P.3d 239, 2018 Kan. App. Unpub. LEXIS 768, 2018 WL 4939366, at *1 (Kan. App. 2018) (unpublished opinion). A panel of this court found the lower court had erred by not applying the 2018 amendments to the Kansas Standard Asset Seizure and Forfeiture Act, K.S.A. 60-4101 et seq., to Henderson's claim when it granted summary judgment. The panel directed the court to reexamine its conclusion that Henderson lacked standing to challenge the civil forfeiture action in light of those procedural amendments that applied retroactively. As a result, the panel reversed and remanded the case to the district court. See 2018 Kan. App. Unpub. LEXIS 768, 2018 WL 4939366, at *7-9.

After remand, Henderson again moved to suppress, arguing that the evidence seized from his truck following the traffic stop, as well as any derivative evidence, should be suppressed because [*4] the search and seizure violated his rights under the Fourth Amendment to the United States Constitution. The district court later dismissed Henderson's motion to suppress based on the preclusion doctrine.

In June 2020, the district court held a bench trial. At the hearing, the district court admitted the criminal trial transcript, the transcript from previous suppression hearings, the transcript of the criminal preliminary hearing, and the trial exhibits from Officer Blake's patrol vehicle. Henderson lodged a continuing objection to the admission of the trial exhibits.

The district court ordered the forfeiture of the seized property and awarded all of it to the Police Department. In the decision, the district court reiterated its previous finding that Henderson's motion to suppress was barred by the preclusion doctrine. The court concluded Henderson's rights were not violated during the initial stop and eventual seizure.

In this appeal, Henderson presses two claims of error. First, he contends the district court simply should not have relied on collateral estoppel because an exception to the rule applies here. Second, he claims that the court ignored additional evidence he wanted to present that would show the search and seizure in his [*5] criminal prosecution was unreasonable.

The exclusionary rule applies to civil forfeiture cases.

The protection of the exclusionary rule extends to cases such as Henderson's. Illegally seized evidence cannot be admitted in the prosecution of a crime. Nor can it be admitted in a subsequent civil forfeiture action. In State v. 1990 Lincoln Town Car, 36 Kan. App. 2d 817, 820-21, 145 P.3d 921 (2006), our court held that the protections against unreasonable searches and seizures guaranteed by the Fourth Amendment to the United States Constitution and section 15 of the Kansas Constitution Bill of Rights apply to forfeiture actions, although such proceedings are civil in nature.

The Town Car panel relied on One 1958 Plymouth Sedan v. Pennsylvania, 380 U.S. 693, 696, 702, 85 S. Ct. 1246, 14 L. Ed. 2d 170 (1965), where the United States Supreme Court addressed Fourth Amendment protections in forfeiture actions and held that "the constitutional exclusionary rule does apply to such forfeiture proceedings." The panel reasoned that our Kansas Supreme Court has implicitly adopted the same view that the exclusionary rule applies when considering the propriety of a search in a forfeiture action in State ex rel. Love v. One 1967 Chevrolet, 247 Kan. 469, 471, 475-77, 799 P.2d 1043 (1990). We see no reason to depart from this holding. If the actions of the police were illegal in the criminal case, they do not become legal in a companion civil case.

Our holding follows that of the court in State v. One 2008 Toyota Tundra, 55 Kan. App. 2d 356, Syl. ¶ 1, 415 P.3d 449 (2018). The court held:

"Although forfeiture actions are civil in nature, the protections against unreasonable [*6] searches and seizures guaranteed by the Fourth Amendment to the United States Constitution and § 15 of the Kansas Constitution Bill of Rights are applicable. Therefore, the constitutional exclusionary rule applies to forfeiture proceedings." Syl. ¶ 1.

"The Fourth Amendment to the United States Constitution protects the 'right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.' U.S. Const. amend IV. Section 15 of the Kansas Constitution Bill of Rights provides the same protection from unlawful government searches and seizures as the Fourth Amendment." Syl. ¶ 2.

These rulings compel us to hold that if the search and seizure of this property was illegal, then the Police Department is not entitled to forfeiture. But there is a notable difference between Henderson's case and the Toyota Tundra forfeiture action. The court in Toyota Tundra found that the search was illegal. Here, the civil court relied on the findings of the criminal court that the search was legal.

That brings us to consider the doctrine of collateral estoppel and whether the court could rely upon that doctrine in ruling upon the admission and forfeiture of the seized property.

Did the district court properly rely on collateral estoppel?

Our reading of the record persuades us that the district court, even though it had admitted all of the criminal trial transcripts as well as transcripts from [*7] other proceedings in the prosecution of Henderson, relied only on collateral estoppel to find the search and seizure by the Police Department was legal and subject to forfeiture.

Collateral estoppel applies when:

- (1) a court has rendered a prior judgment on the merits that determined the rights and liabilities of the parties on the issue based on ultimate facts as disclosed by the pleadings and judgment;
- (2) the parties are the same or in privity as in the prior proceeding; and
- (3) the issue litigated has been determined and is necessary to support the judgment.

In re Care & Treatment of Easterberg, 309 Kan. 490, 502, 437 P.3d 964 (2019).

The effects of the application of the doctrine are illustrated by the court in In re Tax Appeal of Fleet, 293 Kan. 768, 778, 272 P.3d 583 (2012), where the court held: "Issue preclusion prevents a second litigation of the same issue between the same parties, even when raised in a different claim or cause of action."

Those three requirements to apply the doctrine are satisfied here. The record discloses that the district court relied on the ruling from Henderson's criminal prosecution as the basis for applying the doctrine of collateral estoppel. In that case, Henderson had moved to suppress, which the district court denied following an evidentiary hearing. This satisfies the first factor. Similarly, [*8] the second and third factors are also satisfied because the parties are the same or in privity with one another, and the issue litigated—the motion to suppress—was determined and necessary to support the judgment—Henderson's prosecution.

We must now determine whether an exception to the doctrine applies here. Our Supreme Court has held that because law does change, collateral estoppel is not immutable:

"Although an issue is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, relitigation of the issue in a subsequent action between the parties is not precluded in the following circumstances:

....

""(2) The issue is one of law and (a) the two actions involve claims that are substantially unrelated, or (b) a new determination is warranted in order to take account of an intervening change in the applicable legal context or otherwise to avoid inequitable administration of the laws." KPERS v. Reimer & Kroger Assocs., Inc., 262 Kan. 635, 671, 941 P.2d 1321 (quoting Restatement [Second] of Judgments § 28 [1982]).

Has the law on the search of automobiles changed so the doctrine of collateral estoppel cannot apply here?

Henderson argues the district court erred in applying the doctrine of collateral estoppel, contending that an exception [*9] applies. Henderson relies on four cases: the United States Supreme Court's decision in Rodriguez v. United States, 575 U.S. 348, 135 S. Ct. 1609, 191 L. Ed. 2d. 492 (2015), and our Kansas Supreme Court's decisions in State v. Jimenez, 308 Kan. 315, 420 P.3d 464 (2018); State v. Schooler, 308 Kan. 333, 419 P.3d 1164 (2018); and State v. Lowery, 308 Kan. 359, 420 P.3d 456 (2018). He contends that those cases have changed the law applicable to traffic stops. As a result, the district court's prior determination of the motion to suppress needed to be reconsidered based on those rulings. All those cases dealt with the Fourth Amendment to the United States Constitution.

In Rodriguez, the United States Supreme Court held that, absent reasonable suspicion of or probable cause to believe other criminal activity is occurring, traffic stops could not be measurably extended beyond what is necessary to process the infraction prompting the stop. 575 U.S. at 355. The Rodriguez Court also explained that, together with determining whether to issue a traffic ticket, an officer's "mission" also includes ordinary inquiries related to the stop, including checking a driving license, determining whether the driver has outstanding warrants, and inspecting the automobile's registration and proof of insurance. An officer is also allowed to take negligibly burdensome precautions to ensure their safety. That said, on-scene investigations of other crimes divert from the mission of the stop and are not permissible *de minimis* intrusions. [*10] 575 U.S. at 355-57. Put differently, "[a]uthority for the seizure thus ends when tasks tied to the traffic infraction are—or reasonably should have been—completed." 575 U.S. at 354.

Moving to the Kansas cases, we look first at Jimenez. In Jimenez, a police officer stopped a driver for following too closely. Jimenez then provided the police officer with a copy of her driving license and the automobile's rental agreement. The police officer also noticed money bundled in a rubber band contained in the glove box. During the stop, the police officer asked Jimenez to accompany him to his vehicle, and Jimenez did so. During their conversation, Jimenez and the police officer communicated using a smartphone application due to a language barrier between the two. The police officer asked Jimenez several questions, including where she was headed, where she had slept recently, her trip's purpose, and whom she planned on visiting. Eventually, the police officer

requested warrant checks and criminal history reports for Jimenez and her passenger. Not long after, the police officer used his police dog to sniff around the car, and the dog eventually alerted to the police officer. The police officer and another officer then searched the vehicle. [*11] They did not find drugs, but they discovered three currency bundles which totaled approximately \$50,000. The State then charged Jimenez with criminal transportation of drug proceeds and, alternatively, criminal transfer of drug proceeds.

Jimenez moved to suppress the evidence before trial, arguing:

- The police officer lacked reasonable suspicion to pull over the vehicle;
- the police officer measurably extended the stop by asking about her travel plans before processing her license and warrant information;
- any statements she gave violated Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966); and
- any statements made after Miranda warnings were given were tainted by previous illegal questioning.

The district court eventually agreed with Jimenez' argument about the police officer's measurable extension of the stop, finding no articulable facts supported reasonable suspicion of criminal activity to justify the delay.

On appeal, our Supreme Court applied the Rodriguez holding to the case, finding that a plain reading of the case "shows the [United States Supreme] Court's intention to clarify that any traffic stop extension without reasonable suspicion or consent—by even a *de minimis* length of time—amounts to an unreasonable seizure when the delay is based [*12] on anything but the articulated components of the stop's mission." 308 Kan. at 326. As such, our Supreme Court concluded that Rodriguez did not envision unbridled questions about travel plans as part of routine traffic stop questioning. Instead, whether and to what extent such questions may be asked as part of the police officer's mission depend on the circumstances of the stop. 308 Kan. at 327. Our Supreme Court clarified that "[s]uch inquiries could be within a particular stop's mission if it were shown they 'serve the same objective as enforcement of the traffic code: ensuring that vehicles on the road are operated safely and responsibly.'" 308 Kan. at 329 (quoting Rodriguez, 575 U.S. at 355). As a result, our Supreme Court concluded that the police officer's measurable extension of the stop violated Jimenez' Fourth Amendment rights. 308 Kan. at 331.

Then, in Schooler, our Supreme Court again applied the holding from Rodriguez to a traffic stop case. There, a police officer pulled Schooler over after noticing snow obstructing the license tag's lower half. When the police officer approached Schooler's vehicle, Schooler provided the officer with his driving license and a rental agreement. The police officer then asked about Schooler's travel plans, and Schooler provided inconsistent and peculiar answers. The [*13] police officer also noticed a large duffel bag, the odor of air fresheners, multiple cell phones, and debris in the back seat. Eventually, the police officer asked Schooler to come to the police vehicle, and Schooler did so. The police officer also requested a drug dog.

While inside the vehicle, the police officer continued to question Schooler about his plans, given the confusing responses Schooler previously gave. The stop continued for about 18 minutes before the police officer told Schooler he was allowed to leave. But just after that, the police officer asked Schooler whether he would answer a few more questions. When Schooler said he wanted to get back on the road, the police officer detained Schooler. A drug dog arrived soon after and alerted to the police officer, who ultimately discovered 38 pounds of marijuana inside the vehicle. The district court later suppressed the evidence.

On appeal, our Supreme Court reversed the district court's ruling. 308 Kan. at 356. Our Supreme Court concluded that, even though Schooler's travel plans were not relevant to a traffic infraction for a license tag obscured by snow, the police officer's questioning did not impermissibly extend the stop because the [*14] questioning occurred concurrently with the officer performing tasks to complete the stop and was justified based on the discrepancies between Schooler's story and the rental agreement. 308 Kan. at 347-48.

Then, in Lowery, our Supreme Court dealt with another traffic stop where a police officer pulled Lowery over for following too closely. Lowery then provided the police officer with his driving license and vehicle registration, and Lowery advised the police officer the vehicle belonged to his friend. Lowery eventually accompanied the police officer to his police vehicle. While inside, the police officer asked about Lowery's travel plans, and Lowery told the police officer where he had been and where he was going. The police officer asked Lowery's passenger similar questions. Not long after, the police officer issued Lowery a citation and told him he could leave. Even so, the police officer continued to ask Lowery questions, including whether he could search the vehicle. Lowery declined, and the police officer eventually detained Lowery.

The police officer contacted the police department and asked if any canine units were available, but he never got a response. The police officer then had a backup officer stay [*15] with Lowery while he drove home to retrieve his drug dog. When the police officer returned, the dog alerted the police officer to Lowery's trunk. A subsequent search revealed drug-related evidence, and the State later charged Lowery with criminal transportation of drug proceeds, possession of marijuana, and criminal transfer of drug proceeds. Following a hearing on Lowery's motion to suppress said evidence, the district court granted the motion.

On appeal, our Supreme Court again applied the Rodriguez ruling, as well as Jimenez and Schooler. In doing so, our Supreme Court took no issue with the police officer's travel plan questions because such questions "could reasonably relate to an infraction for driving too closely." 308 Kan. at 365 (citing 4 LaFave, Search & Seizure § 9.3(d) [5th ed. 2017]). Even so, our Supreme Court concluded that the police officer did not have reasonable suspicion to extend the stop based on all of the circumstances. Our Supreme Court found that the six circumstances the police officer relied on did not favor finding reasonable suspicion. As a result, our Supreme Court affirmed the district court's suppression of the evidence. 308 Kan. at 366-70.

We turn now to the criminal prosecution to put the application of these [*16] Kansas rulings into perspective. The Jimenez, Schooler, and Lowery opinions were all issued on June 22, 2018. That same day, Henderson moved to suppress in his criminal case. Henderson later supplemented his motion to suppress shortly after those opinions were issued. In the supplement, Henderson argued the evidence discovered during the June 2015 traffic stop should be suppressed based on our Supreme Court's rulings in Jimenez and Lowery.

In the criminal prosecution, the district court denied Henderson's motion to suppress, finding that Officer Blake had a reasonable basis to perform the traffic stop because Henderson failed to use his turn signal when pulling away from the shoulder of the road. The district court then summarized how the traffic stop began, with Officer Blake approaching Henderson's vehicle on the passenger side. When Officer Blake asked Henderson to join him in his vehicle, Henderson did so.

While inside the police vehicle, Officer Blake asked Henderson various questions, including his travel plans. But the district court did not question Officer Blake's questioning because he continued to move forward with the enforcement action. Put differently, Officer Blake asked the questions concurrently [*17] with the tasks he performed during the stop. Thus, the questioning did not measurably extend the stop. Nor did the fact that Officer Blake used his drug dog to go around the camper because Officer Blake did this task while he waited for Henderson's criminal background check information. The district court summarized its ruling by stating there was no extra delay:

"Again, to look at it a different way, if the questions that aren't directly related to travel plans are not asked, if the K-9 is not run around the camper, the stop lasts the same amount of time as it did if you measure . . . the original enforcement action ending when dispatch returns."

Without explicitly citing Rodriguez, the district court still applied the reasoning of the case to its ruling. See 575 U. S. at 357 ("The critical question, then, is not whether [an unrelated investigation] occurs before or after the officer issues a ticket, . . . but whether conducting the [unrelated investigation] 'prolongs'—i.e., adds time to—the stop."). And in Jimenez, our Supreme Court stated:

"[O]fficers engaging in traffic stops in Rodriguez' wake must be attentive to how and when they conduct what may be viewed as unrelated inquiries. They must be especially careful to ensure [*18] nonconsensual inquiries occur concurrently with the tasks permitted for such stops so they will not measurably extend the time it would otherwise take. We would more simply describe this today as multitasking. If not, the unrelated inquiries must be supported by reasonable suspicion, probable cause, or consent. Without this, the detention becomes unconstitutional." 308 Kan. at 325-26.

The district court's ruling in Henderson's criminal case shows it believed that Officer Blake's questioning occurred concurrently with him completing the "mission" of his stop, which was to issue Henderson a warning ticket for failing to signal when pulling away from the shoulder of the road.

With this record, we are not persuaded by Henderson's argument that the criminal court used an incorrect analysis in reaching its conclusion. This undermines his argument that a new ruling on his motion to suppress is warranted to consider an intervening change in the applicable legal context. See KPERS, 262 Kan. at 671.

Henderson then argues that we should not use collateral estoppel when dealing with pure questions of law. See KPERS, 262 Kan. at 671. But an issue of fairness must be considered when making such a ruling. As our United State Supreme Court pointed out:

"When the [*19] claims in two separate actions between the same parties are the same or are closely related . . . it is not ordinarily necessary to characterize an issue as one of fact or of law for purposes of issue preclusion. . . . In such a case, it is unfair to the winning party and an unnecessary burden on the courts to allow repeated litigation of the same issue in what is essentially the same controversy, even if the issue is regarded as one of "law." [Citation omitted.]" United States v. Stauffer Chemical Co., 464 U.S. 165, 171, 104 S. Ct. 575, 78 L. Ed. 2d 388 (1984).

The subject matter of Henderson's motions to suppress filed in both his criminal case and civil forfeiture case are related. The motions involve the same parties, the same facts, and the same overriding issue—whether the evidence Officer Blake discovered during the June 2015 traffic stop should be suppressed.

In our view, the general prohibition against using issue preclusion on pure questions of law should not apply here. The district court did not err by applying collateral estoppel because the district court in Henderson's criminal case rendered a prior judgment on the merits regarding Henderson's motion to suppress, the parties are the same or in privity with one another, and the issue litigated was determined and is [*20] necessary to support the judgment. See In re Care & Treatment of Easterberg, 309 Kan. at 502; In re Tax Appeal of Fleet, 293 Kan. at 778.

Henderson offers an additional argument in support of his position that the civil court should not have relied on collateral estoppel. He claims there has been a change in the law and relies upon the holding in Carpenter v. United States, 585 U.S. , 138 S. Ct. 2206, 201 L. Ed. 2d 507 (2018). In that case, prosecutors applied for court orders allowing it to access cell-site location information as part of an investigation into four men suspected of robbing a series of Radio Shack and T-Mobile stores in Detroit.

Federal magistrate judges had issued two orders allowing the government to access such information. Both orders produced several days' worth of location information from MetroPCS and Sprint. That data allowed the government to access nearly 13,000 location points cataloguing Carpenter's movements. At trial, an FBI agent testified about this data, and Carpenter was ultimately convicted of six counts of robbery and five counts of carrying a firearm during a federal crime of violence. He was sentenced to more than 100 years in prison. Carpenter eventually appealed those convictions, arguing the government violated his rights under the Fourth Amendment to the United States Constitution.

The Carpenter Court overturned the convictions, ruling that the government must obtain a warrant [*21] supported by probable cause to obtain cell-site location information. The Supreme Court expressly narrowed the Carpenter ruling:

"Our decision today is a narrow one. We do not express a view on matters not before us: real-time CSLI or 'tower dumps' (a download of information on all the devices that connected to a particular cell site during a particular interval). We do not disturb the application of [*Smith v. Maryland*, 442 U.S. 735, 99 S. Ct. 2577, 61 L. Ed. 2d 220 (1976)] and [*United States v. Miller*, 425 U.S. 435, 96 S. Ct. 1619, 48 L. Ed. 2d 71 (1976)] or call into question conventional surveillance techniques and tools, such as security cameras. Nor do we address other business records that might incidentally reveal location information. Further, our opinion does not consider other collection techniques involving foreign affairs or national security." 138 S. Ct. at 2220.

Henderson's argument is not persuasive. First, no cell-site location information was used by the police in the prosecution of Henderson for making his bribe or for the other charges. But the Police Department did obtain information from a license plate reader operated by the Boone County Missouri Sheriff's Office on I-70 in Missouri. The information indicated that the license plate on the pickup truck had passed through that location several times. This additional information gave the officers [*22] reason to disbelieve what Henderson was telling them.

There is a fundamental difference between cell-site location information and the information contained on a license plate. A license plate is made to be seen by all who care to look. No one has an expectation of privacy of their vehicle's license plate number. License plate information from a plate reader recording the numbers from cars passing beneath it is not similar to the location information derived from cell towers. License plate information is a recording of public information.

In contrast, in *Carpenter*, the FBI agent had access to almost 13,000 location points in mapping Carpenter's movements. That information was automatically collected by the cell phone companies for commercial purposes—the efficient use of a cell phone. This was not a collection of public information. The expectation of privacy arises from a person's movements and that person's cell phone is not recording public information as a license plate reader does. It records information purely for technical reasons.

To sum up, we do not see how the ruling in *Carpenter* applies here. This argument does not persuade us that there has been a change in the law that would bar the application [*23] of collateral estoppel by the district court.

Henderson's final argument concerning the findings of the district court is unpersuasive.

Henderson also argues that the district court's conclusion is not supported by substantial competent evidence and the court's factual findings are insufficient.

Here, the facts are undisputed. Henderson argues the district court's decision is not supported by substantial competent evidence because "the forfeiture case presented additional facts beyond those offered in support of his motion to suppress in the criminal proceeding." This contention is unpersuasive.

In Henderson's criminal case, the district court did not consider the transcripts of Henderson's previous probable cause hearing, his previous suppression hearing, or his preliminary hearing. But this is essentially a distinction without a difference. In ruling on the motion to suppress in his criminal case, the district court considered Henderson's motions and held a hearing on the matter. As stated above, the district court then denied the motion.

In this civil proceeding, the district court considered all those transcripts and arrived at the same conclusion, based in part on the criminal court's [*24] rulings. But the other transcripts were simply not pertinent to whether Henderson's motion to suppress should be granted. That issue has remained the same throughout—whether the district court should relitigate the motion to suppress in this civil case. The record shows that the district court's ruling is supported by substantial competent evidence. Henderson does not challenge the evidence—he simply disagrees with the court's conclusion.

Henderson also argues that the district court's judgment lacks sufficient factual findings. The district court's findings about Henderson's motion to suppress were clear—collateral estoppel prevented it from relitigating the issue since

2023 Kan. App. Unpub. LEXIS 282, *24

it had been decided. Though the findings were succinct, they do not prevent meaningful appellate review of the issue. We reject this argument.

We find no reason in this record to disturb the district court's judgment.

Affirmed.

End of Document

This document lists all of the cases decided after *Carpenter v. United States*, 585 U.S. 296 (2018), addressing the constitutionality of LPR technology. Even after *Carpenter*, courts remain uniform in holding that the use of LPRs does not constitute a Fourth Amendment “search” and thus require a warrant.

- Federal
 - Courts of Appeals
 - Fifth Circuit
 - *United States v. Porter*, No. 25-60163, 2026 WL 746292 (5th Cir. Mar. 17, 2026)
 - Ninth Circuit
 - *United States v. Yang*, 958 F.3d 851, 862 (9th Cir. 2020) (Bea, J., concurring)
 - Eleventh Circuit
 - *United States v. Wilcox*, 415 F. App'x 990, 992 (11th Cir. 2011)
 - District Courts
 - Alabama
 - Middle District
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 - Northern District
 - *United States v. Toombs*, 671 F. Supp. 3d 1329, 1341 (N.D. Ala. 2023)
 - Arizona
 - *Sidor v. Thornell*, No. CV-25-08141-PCT-DWL (DMF), 2025 WL 3282976, at *1 (D. Ariz. Oct. 24, 2025), report and recommendation adopted, No. CV-25-08141-PCT-DWL, 2025 WL 3281746 (D. Ariz. Nov. 25, 2025)
 - California
 - Northern District
 - *United States v. Rubin*, 556 F. Supp. 3d 1123, 1130 (N.D. Cal. 2021)
 - Florida
 - Middle District
 - *United States v. Floyd*, No. 8:23-CR-305-TPB-SPF, 2025 WL 3250951 (M.D. Fla. Nov. 21, 2025)
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 - Illinois
 - Northern District
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 - *United States v. Porter*, No. 21-cr-00087, 2022 WL 124563 (N.D. Ill. Jan. 13, 2022)
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- Indiana
 - Southern District
 - *United States v. Griffin*, No. 1:24-CR-00190-TWP-MKK, 2025 WL 1474679, at *9 (S.D. Ind. May 22, 2025)
- Kansas
 - *United States v. Jackson*, No. 24-cr-10010-JWB, 2025 WL 1530574 (D. Kan. May 29, 2025)
- Louisiana
 - Eastern District
 - *United States v. Cooper*, No. CR 23-131, 2025 WL 35035, at *7 (E.D. La. Jan. 6, 2025)
 - Western District
 - *United States v. James*, No. 6:21-CR-00176-01, 2023 WL 3370421, at *4-6 (W.D. La. January 30, 2023)
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 - Southern District
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- North Dakota
 - *United States of Am., Plaintiff, v. Adolph Akwe Lawrence, Defendant.*, No. 3:22-CR-69, 2026 WL 765307 (D.N.D. Mar. 18, 2026)
- Ohio
 - Northern District
 - *United States v. Sturdivant*, No. 1:22-cr-00615, 2025 WL 1633754 (N.D. Ohio June 9, 2025)
- Oklahoma
 - Eastern District
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 - Northern District
 - *United States v. Acosta*, No. 25-CR-00239-GKF, 2025 WL 2427700 (N.D. Okla. Aug. 22, 2025)
 - Western District

- *United States v. Brown*, Case No. CR-25-188-D, 2025 WL 2444596 (W.D. Okla. Aug. 25, 2025)
 - Pennsylvania
 - Eastern District
 - *Heller v. Brookhaven Borough*, No. CV 25-5550, 2026 WL 381175, at *8 (E.D. Pa. Feb. 11, 2026)
 - Western District
 - *United States v. Bowers*, No. 2:18-CR-00292-DWA, 2021 WL 4775977, at *3 (W.D. Pa. Oct. 11, 2021)
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 - Western District
 - *United States v. Gamboa Valadez*, No. 4:25-cr-00173-DC (W.D. Tx. Feb. 28, 2026)
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 - Arizona
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 - Minnesota
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- Texas
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- Virginia
 - *Commonwealth v. Church*, 2025 WL 2908089, Record No. 0737-25-1 (Va. Ct. App. Oct. 14, 2025)
 - *Robinson v. Commonwealth*, No. 1912-24-1, 2026 WL 932504, at *1 (Va. Ct. App. Apr. 7, 2026)
- Washington
 - *Washington v. Simonson*, No. 40732-2-III, 2026 WL 242157, at *7 (Wash. Ct. App. Jan. 29, 2026)

United States v. Jackson

United States District Court for the District of Kansas

May 29, 2025, Decided; May 29, 2025, Filed

Case No. 24-cr-10010-JWB

Reporter

2025 U.S. Dist. LEXIS 101960 *; 2025 LX 158463; 2025 WL 1530574

UNITED STATES OF AMERICA, Plaintiff, v. SIDNEY JAMAR JACKSON, Defendant.

Counsel: [*1] For Sidney Jamar Jackson, Defendant: Ellen Albritton, LEAD ATTORNEY, Office of the Federal Public Defender, Wichita, KS; Ellen Christine Bertels, LEAD ATTORNEY, Federal Public Defenders, District of Kansas, Wichita, KS.

For USA, Plaintiff: Molly M. Gordon, LEAD ATTORNEY, Office of United States Attorney - Wichita, Wichita, KS.

Judges: JOHN W. BROOMES, UNITED STATES DISTRICT JUDGE.

Opinion by: JOHN W. BROOMES

Opinion

MEMORANDUM AND ORDER

This matter came on for hearing on April 16, 2025, on Defendant's motion to suppress evidence obtained from the warrantless use of the Flock Safety, Inc. ("Flock Safety") system of license-plate-reading cameras and search database ("Flock" or "Flock System"). Defendant argues that the warrantless use of the Flock System violates the Fourth Amendment's prohibition against unreasonable searches. (Doc. 22.) At the hearing, the court granted Defendant's three motions to take judicial notice of 1) Google Maps of the Wichita, KS area, 2) Flock Safety's internet page, and 3) prior testimony of Captain Casey Slaughter of the Wichita Police Department. (Doc. 43, 44, 45; Def. Ex. H.) The court then heard testimony regarding the use and deployment of the Flock System in and around Wichita, Kansas. The court heard [*2] testimony from five witnesses. The court first heard testimony from Defendant Sidney Jackson. It then heard testimony from two officers who participated in the use of the Flock System on January 3, 2024: Jorge Fernandez and Jonathan Marr. Afterwards it heard from Mike Molina, who is an attorney for Flock Safety, and then from Captain Casey Slaughter. After hearing all the testimony, the court took the motion to suppress under advisement. For the reasons set forth herein, Defendant's motion to suppress is denied.

I. Facts

After hearing testimony and receiving exhibits into evidence, the court finds the following facts in accordance with Rule 12(d) of the Federal Rules of Criminal Procedure and based on a preponderance of the evidence. United States v. Shrum, 908 F.3d 1219, 1229 n.7 (10th Cir. 2018).

A) Flock System use and deployment

Flock Safety is a technology company based out of Atlanta, Georgia, that provides law enforcement with a system of automatic license plate reading ("ALPR") cameras and an affiliated search database. Flock Safety's flagship product, "LPR" (formerly called "Falcon") cameras, are black, oval shaped cameras which are powered by an

SHARON DICKGRAFE

attached battery and a solar panel. These cameras can be mounted to dedicated 12- to 14-foot-high Flock poles or attached to other pre-existing utility [*3] poles. Like traditional ALPR's, Flock's cameras are stationary and capture high speed pictures of every rear-facing license plate that passes by the camera twenty-four hours a day, seven days a week, so long as the Flock camera is operational. Flock Safety also creates "deployment plans" for clients to help find optimal placement for Flock cameras.¹ However, Flock cameras have an intentionally narrow field of view, with motion detection triggering up to 75 feet away and a field of view around 20 feet wide. Usually, these cameras can cover two to four lanes of traffic. Flock Safety also offers pan tilt zoom video cameras which record video in addition to pictures, and a temporary Falcon Flex camera which is powered by a battery and intended for use at large events or other temporary settings. In total, there are currently close to 100,000 Flock cameras that have been deployed around the country. Although Flock retains ownership of the hardware, all photos and data are owned by the local agency or Flock customer.

Flock cameras use infrared technology to capture license plate numbers, time and geographic location, and a still image of each passing vehicle. The camera takes numerous highspeed [*4] photos of passing cars and then a Flock-created artificial intelligence pulls the best photo to upload to the Flock System. In addition to license plate numbers, Flock cameras can also identify the make, model, color, resident status, type of license plate, and any damages or alteration of the subject vehicle (such as bumper stickers or a roof rack). Although the Flock photographs are able to tell the direction that a vehicle is traveling at the time the photo is taken, the Flock System cannot discern the speed of the vehicle, the identity of any vehicle occupant (apart from some camera angles showing that the vehicle may have multiple occupants), or the end destination to which any vehicle is travelling. Flock cameras are also able to photograph motorcycles and bicycles, though users cannot initially search for bicycles in the Flock System.

After a Flock camera takes a photo of a passing vehicle, these photos are then uploaded via a wireless data network to Flock Safety's encrypted cloud servers with a latency upload period of a couple of seconds. Upon upload, Flock's proprietary software runs a "vehicle fingerprint" on any vehicle in the photo and uses a machine learning algorithm to [*5] look for the vehicle identifiers stated above. After this upload and processing, local law enforcement can access the photographs via an online dashboard and search the resulting photo database by the cataloged vehicle characteristics and by specific license plate numbers. Law enforcement officers can also narrow their search radius by geographic location or by an area search. It should be noted that Flock Safety cannot access this data; rather local users are the only ones who can access the data from their local Flock cameras. These Flock photos are only retained on the cloud for 30 days, and after that time, they are permanently deleted unless they are saved to a local hard drive by a Flock user.² And Flock Systems are not limited to only law enforcement. Private companies, homeowners' associations ("HOA"), and neighborhoods can also install and use Flock Systems, and Flock Safety claims on their website to be used by more than 5,000 communities.³ These non-law enforcement groups can set their systems to identify residents vs. non-residents after the residents register their vehicle license

¹These Flock Safety deployment plans consider geographic limitations to placing cameras, such as access to sunlight or wireless LTE network coverage to keep the Flock cameras functional, but also consider local data about where cameras can be placed for the highest volume of traffic or crime deterrence. Generally, Flock recommends placing cameras on main thoroughways, at the ingress and egress point of shopping centers, or in high crime areas. However, the goal is not to put a camera on every intersection.

²According to testimony at the suppression hearing from Mike Molina, some jurisdictions require retention of historic data longer than 30 days by statute. In these jurisdictions, Flock Safety follows the guidelines set by statute, but in all other jurisdictions, the data is deleted after 30 days.

³Mike Molina testified at the suppression hearing that Flock Safety started its business by selling cameras to communities and HOAs for the purpose of providing evidence should a crime be committed within the community. They then expanded their business model to include traditional ALPRs for law enforcement and more recently cameras for commercial customers.

plates with their neighborhood's Flock Safety system. However, the searchable Flock database [*6] is limited to authorized law enforcement personnel, and all access to the Flock System is recorded and subject to audit.⁴

Besides the data that is native to an individual municipality or HOA, Flock allows entities to share data with each other to create a broad, searchable network of aggregated data. This network can include other law enforcement agencies in the same state as well as agencies from other states. Any two municipalities can sign a memorandum of understanding (MOU) to share the data captured by each of their local Flock Systems with one another, thereby increasing the geographic reach and volume of data available to any authorized Flock user for that local system. Nevertheless, Flock Safety claims that it complies with state data laws, which sometimes limit the amount of data that can be shared between municipalities or law enforcement agencies. Yet, apart from these various state laws, data sharing decisions are left to the local policies of the individual law enforcement agencies that are Flock Safety clients. For HOAs and private communities with local Flock cameras, they do not have to sign a MOU with local law enforcement to share data. Rather, they can choose to share [*7] their data with local law enforcement in the Flock System and can toggle this feature on or off. This characteristic is native to the Flock System network and this community data will be both shared directly to and searchable by local law enforcement if it is toggled on.

In addition to aggregating data, the Flock system also provides real-time alerts for vehicles which are placed on a Flock "Hot List." A Hot List can be locally created by a Flock user to target specific vehicles, and it is automatically sent to a local Flock System when a vehicle is identified from the Federal Bureau of Investigation's National Crime Information Center ("NCIC"). When a vehicle on a Hot List is identified, law enforcement is given real-time notification about the location of that vehicle. This information can be provided on the Flock online dashboard or pushed to a mobile phone. Notifications from a Hot List are pushed to a Flock System user several seconds after a Flock photo is taken and the vehicle algorithmically identified. Since vehicles are moving when they are photographed by Flock cameras, a Flock System Hot List hit could potentially be a stale lead by the time officers arrive at the location. [*8] Nevertheless, Hot Lists can be used by law enforcement to narrow a geographic search on the ground and to confirm a general area to try and locate a target vehicle. If a local law enforcement agency has signed a MOU with another agency or municipality, local Hot Lists can also search the wider Flock System network for a target vehicle.

The City of Wichita (the "City" or "Wichita") and the Wichita Police Department ("WPD") have utilized license plate readers since 2014 and have grown the program from using mobile scanning to also deploying Flock stationary cameras. Although the City initially used cameras from a different manufacturer for license plate scanning, it switched to the Flock System at the end of 2020. They initially began with a demo of 66 Flock cameras deployed around the city, and then increased the Flock camera count to 110 cameras when the demo was successful. By January 2024 (which is the month of the arrest underlying this motion), the City had increased their camera count to 160 Flock cameras. Since 2024, the City has increased the number of Flock stationary cameras in their network from 160 to 190. This number is driven by budget or other funding concerns, and with [*9] more funding the City and WPD hope to deploy even more Flock cameras. Within Wichita, there are roughly 500 lane miles of road,⁵ which means that the Flock camera coverage is roughly one camera per 2.6 lane miles of road.

Given these inherent geographical limitations, the City and WPD used data analytics to strategically place Flock cameras in high crime areas or on roads with a high volume of traffic. This deployment strategy led the City and the WPD to capture images of over 775,000 vehicles in the month of February 2025 alone. (See Def. Ex. A.) Access to the Flock System in Wichita is limited to commissioned law enforcement officers and not generally available to the

⁴ Mike Molina also testified that Flock Safety and Axon had a partnership, where Flock could run its vehicle fingerprint algorithm through Axon cameras and these cameras would also produce searchable images in the Flock database. However, he also testified that this relationship is currently in flux and is scheduled to expire later in 2025.

⁵ A lane mile is the number of miles of pavement going in one direction on a road within a single lane. Miles of roadway multiplied by the number of lanes results in the total lane miles for a given road. See Road Terms and Definitions, MICH. DEPT OF TRANSP., <https://www.michigan.gov/mdot/About/mdot-road-terms-and-definitions> (last visited May 28, 2025). See also Bryant Walker Smith, *Managing Autonomous Transportation Demand*, 52 Santa Clara L. Rev. 1401, 1422 n.12 & n.13 (2012).

public under the Kansas Open Records Act. Moreover, any unauthorized use of the Wichita Flock System can lead to termination and criminal prosecution. Within the WPD, authorized users of the Flock System receive several hours of instruction prior to accessing the Flock database. Additionally, the WPD uses Flock daily in a wide variety of investigations, from simple cases of shoplifting to complex cases of homicide and kidnapping. The WPD uses the [*10] historical location data from the Flock System to help build timelines and track movements related to criminal investigations. However, the tracking is not continuous. The data is limited to only those locations where a Flock camera is stationed, and it is possible to evade detection by driving in areas without Flock camera coverage.

Testimony from Capt. Slaughter confirmed that his WPD property crimes task force alone uses Flock on an hourly basis to assist in ongoing investigations or detect wanted vehicles for intervention and interception. On the day of the hearing, the Flock transparency page for the WPD showed that the WPD had run 2,705 Flock searches and had 37,113 Hot List hits in the 30 days prior to April 16, 2025 (though the majority of the Hot List hits were automatically created by Flock from the NCIC according to Capt. Slaughter). However, according to WPD policy, searching the Flock System or receiving an alert from the Flock System does not give probable cause or reasonable suspicion to stop a target vehicle. The City has MOUs with approximately 150 other jurisdictions across the country, but nearly all the other jurisdictions with which Wichita shares data are in Kansas, [*11] Missouri, Oklahoma, and Texas. Additionally, local HOAs and national businesses, such as Lowe's, share data with the Wichita Flock System. However, this shared data is only available to the Wichita Flock System and cannot be shared with other law enforcement agencies with which Wichita has signed an MOU. According to Capt. Slaughter, all local HOAs that have a Flock System currently share data with the WPD.

B) Events of January 3, 2024

To help meet its mission and mandate, the United States Drug Enforcement Administration ("DEA") creates local domestic task forces, which are cooperative efforts between the DEA and local law enforcement agencies, to maximize resource usage and access local knowledge. One such taskforce is based out of Wichita and Jorge Fernandez is a DEA Agent and Task Force Officer ("TFO") working out of this Wichita DEA office. Around 12:30 p.m. on January 3, 2024, TFO Fernandez received a phone call from Special Agent Colin Strickland in the Omaha, Nebraska, DEA office. On this phone call, Agent Strickland informed TFO Fernandez that a white, four-door sedan with Nebraska plates and registered to Adam Safar was in Wichita to pick up five pounds of methamphetamine. [*12] Agent Strickland also said that Adam and a person named "Sid" were going to be driving the vehicle, and that two females were also likely to be present.⁶

Since TFO Fernandez did not have authorized access to any local Flock System, he passed this vehicle information to Officer Jonathan Marr, who was a member of the Haysville Police Department and assigned to the DEA taskforce. As part of his employment with the Haysville Police Department, Officer Marr had access to the Haysville Flock System.⁷ Since only members of local law enforcement are allowed to access their Flock Systems, the DEA taskforce must rely on local officers assigned to the taskforce to use any functionality of a Flock System when they want to search for a vehicle.

When Officer Marr initially ran a Flock search on the very generic vehicle descriptions of a white sedan with Nebraska plates, the Wichita Flock System returned numerous results, and the taskforce began to run individual plates to see if any were registered to Adam Safar. Agent Strickland then called TFO Fernandez a second time and provided him with a list of specific vehicles registered to Adam Safar. Using this knowledge, the taskforce was able to refine their [*13] Flock search query by the known license plate numbers for vehicles registered to Adam Safar and the Wichita Flock System returned a positive hit on a white, four-door Chevy Cruz which had been driving in

⁶ Defendant does not challenge the sufficiency of this tip from Agent Strickland as a basis for officers to try and locate the target vehicle; instead, Defendant's challenge is limited to only the taskforce's use of the Flock System.

⁷ At the time of Officer Marr's use of the Haysville Flock System, Wichita and City of Haysville had signed a MOU that allowed Haysville officers to access data from Wichita's Flock System and vice versa.

Wichita that day. However, the officers did not know the specifics of who was in the vehicle nor what the vehicle contained; instead, they only knew that the vehicle itself was in Wichita.

Once the officers confirmed that a vehicle matching the description from Agent Strickland was in Wichita, four DEA agents in separate cars and three WPD community resource team members deployed onto the city streets to locate the vehicle. Officer Marr then set up a Flock Hot List for this target Chevy Cruz in the Wichita Flock System, and anytime the Wichita Flock System got a hit on this vehicle, he relayed the approximate location and direction of travel to all the officers on patrol. After approximately nine Flock System hits and four hours of searching (see Def. Ex. S), the taskforce finally found the target vehicle around 4:30 p.m. parked at a smoke shop on the southwest corner of 13th and Oliver streets in Wichita. The officers then followed the vehicle and surveilled it for several hours, until [*14] officers observed the target vehicle run a red light. At this point, officers initiated a traffic stop on the target vehicle, whereupon they discovered Defendant Sidney Jamar Jackson sitting in the front passenger seat. During the stop, a drug dog alerted to the presence of narcotics in the car and the officers searched the vehicle. This search led them to find approximately 2.38 kilograms of methamphetamine inside a bag in the trunk. Defendant was then arrested along with the three other occupants of the car.

On January 23, 2024, a federal grand jury returned a one-count indictment against Defendant for possession with intent to distribute 50 grams or more of methamphetamine in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A). (Doc. 7.) Defendant then filed the present motion, arguing that the warrantless use of the Flock System violates the Fourth Amendment's prohibition against unreasonable searches. (Doc. 22.) The government contends that Defendant had no reasonable expectation of privacy in his movements on public roads and that the officers' limited use of the Flock database did not impinge on the totality of Defendant's movements. (Doc. 26.)

II. Analysis

The Fourth Amendment provides that the "right of the people to be secure in their persons, [*15] houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." U.S. Const. amend. IV. When a defendant challenges a search as violative of his Fourth Amendment rights, the court must consider two primary factors: 1) whether the defendant manifested a subjective expectation of privacy in the area searched and 2) whether society is prepared to recognize that expectation as objectively reasonable. United States v. Erwin, 875 F.2d 268, 270 (10th Cir. 1989). Given that Fourth Amendment rights are personal rights, every defendant who seeks to suppress evidence in a criminal matter must show that he has standing to challenge the illegality of any search or seizure. Rakas v. Illinois, 439 U.S. 128, 99 S. Ct. 421, 58 L. Ed. 2d 387 (1978). In this case, Defendant was not the owner of the target vehicle, nor was he the driver. However, "[d]rivers and passengers have similar interests in seeing that their persons remain free from unreasonable seizure." Erwin, 875 F.2d at 270; see also Brendlin v. California, 551 U.S. 249, 251, 127 S. Ct. 2400, 168 L. Ed. 2d 132 (2007) ("We hold that a passenger is seized [when a traffic stop occurs] and so may challenge the constitutionality of the stop."). Although the Tenth Circuit has held that a passenger needs a possessory interest, or a property interest, in a vehicle to challenge any evidence obtained from it, see United States v. DeLuca, 269 F.3d 1128, 1132 (10th Cir. 2001), the challenge raised by Defendant here involves a fundamental question of "permeating police [*16] surveillance," which is at the core of what the Fourth Amendment was intended to protect against. United States v. Di Re, 332 U.S. 581, 595, 68 S. Ct. 222, 92 L. Ed. 210 (1948). Accordingly, the court concludes that Defendant has standing to challenge the use of the Flock System to track his movements.

A) Defendant does not have a reasonable expectation of privacy with regards to the use of an Automated License Plate Reader under the *Katz* Test

To assess whether a "reasonable expectation of privacy" exists, the Supreme Court has applied Justice Harlan's two-fold approach as explained in his concurrence in Katz v. United States, 389 U.S. 347, 88 S. Ct. 507, 19 L. Ed.

2d 576 (1967).⁸ To claim a privacy interest under the Fourth Amendment, a defendant first must "have exhibited an actual (subjective) expectation of privacy," and second, that expectation must "be one that society is prepared to recognize as 'reasonable.'" Katz, 389 U.S. at 361 (Harlan, J., concurring). See also United States v. Jacobsen, 466 U.S. 109, 113, 104 S. Ct. 1652, 80 L. Ed. 2d 85 (1984) (noting that unreasonable searches occur "when an expectation of privacy that society is prepared to consider reasonable is infringed"). This reasoning embodies the practical application of the Court's oft used phrase, "the Fourth Amendment protects people, not places." Katz, 389 U.S. at 351.

In this case, Defendant testified at the hearing that he did not know about the Flock System, its capabilities, or its deployment in Wichita, Kansas. [*17] However, he did testify that he believed that law enforcement could not track him without a warrant. This testimony by Defendant may satisfy the first requirement for a reasonable expectation of privacy; namely, that the Defendant has a subjective expectation of privacy in his movements. However, the Katz test requires more than subjective belief; it requires that a defendant have a subjective expectation of privacy "that society is prepared to recognize as reasonable." Carpenter v. United States, 585 U.S. 296, 304, 138 S. Ct. 2206, 201 L. Ed. 2d 507 (2018).

With regard to this second part of the Katz test, Supreme Court jurisprudence has long held that a person travelling in an automobile on public thoroughfares has no reasonable expectation of privacy in his movements from one place to another. United States v. Knotts, 460 U.S. 276, 281, 103 S. Ct. 1081, 75 L. Ed. 2d 55 (1983). Visual surveillance of vehicles in plain view does not constitute an unreasonable search for Fourth Amendment purposes. See, e.g., New York v. Class, 475 U.S. 106, 114, 106 S. Ct. 960, 89 L. Ed. 2d 81 (1986) (involving inspection of vehicle identification number ordinarily visible from outside vehicle, but which was obscured from plain view by papers). This is true even if the surveillance is aided by technology which augments an officer's sensory faculties. See United States v. Knotts, 460 U.S. at 282 (involving use of radio transmitter on container which was under visual surveillance to help track transport). "One [*18] has a lesser expectation of privacy in a motor vehicle because its function is transportation and it seldom serves as one's residence or as the repository of personal effects. A car has little capacity for escaping public scrutiny. It travels public thoroughfares where both its occupants and its contents are in plain view." Cardwell v. Lewis, 417 U.S. 583, 590, 94 S. Ct. 2464, 41 L. Ed. 2d 325 (1974) (plurality opinion).

In line with this reasoning, the Tenth Circuit has held that license plates are "in plain view on the outside of the car" and as a result "no expectation of privacy was infringed" when police observe and run license plates on vehicles. United States v. Matthews, 615 F.2d 1279, 1285 (10th Cir. 1980). See also United States v. Walraven, 892 F.2d 972, 974 (10th Cir. 1989) ("Because they are in plain view, no privacy interest exists in license plates"); Becerra v. City of Albuquerque, No. 23-2053, 2023 U.S. App. LEXIS 29608, 2023 WL 7321633, at *2 (10th Cir. Nov. 7, 2023) (holding that since a defendant "had no expectation of privacy in his license plate information, the officers did not conduct a Fourth Amendment 'search' by examining it"). As the Seventh Circuit opines, "observing and recording the registration number [is] not a search within the meaning of the Fourth Amendment." United States v. Miranda-Sotolongo, 827 F.3d 663, 668 (7th Cir. 2016). Additionally, the police use of a license plate tag reader to scan a license plate is not violative of the Fourth Amendment. United States v. Wilcox, 415 F. App'x 990, 992 (11th Cir. 2011). Indeed, the very purpose of having a license plate is to communicate identifying information to officers and state officials. [*19] United States v. Ellison, 462 F.3d 557, 561 (6th Cir. 2006). "The reasoning . . . of the Supreme Court . . . leads us to agree that a motorist has no reasonable expectation of privacy in the information contained on his license plate under the Fourth Amendment." *Id.*

This is not to say that a defendant never has any expectation of privacy in a vehicle. Indeed, "[a]n individual operating or traveling in an automobile does not lose all reasonable expectation of privacy simply because the automobile and its use are subject to government regulation." Delaware v. Prouse, 440 U.S. 648, 662, 99 S. Ct.

⁸The court notes that Defendant's motion relies largely on Carpenter v. United States, 585 U.S. 296, 138 S. Ct. 2206, 201 L. Ed. 2d 507 (2018), and the reasonable expectation of privacy derived from Katz. See *id.* at 304. Conversely, Defendant does not rely on property-based theories of Fourth Amendment protection; thus, the court focuses its attention on the theories presented in this case. See *id.* at 406 (Gorsuch, J., dissenting).

1391, 59 L. Ed. 2d 660 (1979). Private conversations within the car are likely protected in the same way that the private conversations in the phone booth at issue in *Katz* were. However, because "[t]he exterior of a car . . . is thrust into the public eye, . . . to examine it does not constitute a 'search.'" *Class*, 475 U.S. at 114. Thus, under current guidance from the Supreme Court, Defendant does not have a reasonable expectation of privacy in his license plate or in his movements on roads which would make the actions of the police in using the Flock System to capture pictures of his license plate violative of the Fourth Amendment.

B) Law enforcement's limited use of the Flock System to track Defendant in one day is not violative of the Fourth Amendment under *Carpenter*

Although Defendant does not have [*20] a reasonable expectation of privacy in his movements in a vehicle, he contends that the Flock System, which captured the Chevy Cruz's movements on nine different occasions around Wichita on January 3rd, violated his expectation of privacy in the totality of his movements under the Supreme Court's 2018 decision of *Carpenter v. United States*, 585 U.S. at 310. In *Carpenter*, police used historical cell-site location information ("CSLI") obtained from a cell phone service provider to track the movements of a defendant over the course of 127 days. This data included 12,898 individual location points which "catalog[ed] [the defendant's] movements—an average of 101 data points per day." *Id.* at 302. This CSLI data was not only "detailed, encyclopedic, and effortlessly compiled" but also "continuously reveal[ed] [an individual's] location." *Id.* at 309. The Supreme Court held that although law enforcement may be able to track an individual's location for a short period of time, they could not "secretly monitor and catalogue every single movement of an individual's car for a very long period." *Id.* at 310 (citing *United States v. Jones*, 565 U.S. 400, 132 S. Ct. 945, 181 L. Ed. 2d 911 (ALITO, J., concurring in judgment)).⁹ The Court held that individuals have a reasonable expectation of privacy "in the whole of their physical movements." [*21] *Id.* at 310. Defendant here argues that a search for a license plate number in the Flock System was akin to a search of historical cell-site location information, which the Supreme Court held in *Carpenter* required a search warrant. Defendant contends that the Flock System is comparable to the CSLI in *Carpenter* since (1) Flock provides highly detailed data of a sensitive nature to law enforcement, (2) Flock produces and stores huge quantities of data, (3) Flock's surveillance is widespread and indiscriminate, and (4) Flock's database allows law enforcement automatic and retrospective access to this data. Although there are certainly privacy concerns when any law enforcement agency possesses aggregated data for its use in surveillance, the court is not convinced that *Carpenter* applies to this case.

First, there is a distinct difference in the quantity and quality of the photos at issue in this case as opposed to the data at issue in *Carpenter*. In reaching its decision that law enforcement's use of CSLI data required a warrant, the Supreme Court considered Fourth Amendment precedent regarding GPS tracking. In particular, the Court paid special attention to the distinction between the cases of *Knotts* and *Jones*. In deciding [*22] that *Carpenter* fit within the GPS tracking framework of *Jones*, the Court held that the volume of data "provide[d] an intimate window into a person's life" such that the aggregation would provide law enforcement access to otherwise unknowable information. *Carpenter*, 585 U.S. at 311. This included access to private places and gave law enforcement a volume of information "as if [the government] had attached an ankle monitor to the phone's user." *Id.* at 312.

The Flock System at issue here lacks the wide and continuous tracking of a defendant which the Supreme Court has stated is constitutionally suspect. In this case, there were only nine distinct points where the Flock System captured the Chevy Cruz on camera, and these photographs occurred over the course of just one day. The photos

⁹ In *U.S. v. Jones*, 565 U.S. 400, 132 S. Ct. 945, 181 L. Ed. 2d 911 (2012), police placed a GPS-tracking device on a vehicle belonging to a suspected narcotics trafficker and then used that device to track the defendant's movements. *Id.* at 402, 404. The police recorded Jones' vehicle's movements over a four-week period, with the GPS providing over 2,000 pages of data on the vehicle's location with an accuracy of 50-100 feet. *Id.* at 403. The Court avoided the question of whether Jones had a reasonable expectation of privacy in the vehicle's locations on the "public roads, which were visible to all." *Id.* at 406. Instead, the Supreme Court held that a search had occurred in violation of the Fourth Amendment because placing the GPS on Jones' car constituted a physical intrusion on a constitutionally protected area which necessitated a warrant. *Id.* at 406-07.

did not show the identity of anyone inside the car, nor did the photos provide any insight into any intimate details of their personal lives. At best, the photos show that the car is occupied by multiple individuals, but there is no way for police to use this information to discern private details that would otherwise be covered by a reasonable expectation of privacy. The police in this case did not even know the identity of Defendant until [*23] after the target vehicle was pulled over for a traffic stop. This stands in stark contrast to the thousands of datapoints and over one hundred days of surveillance in *Carpenter*, and the 2,000 pages of data over a 4-week period which the Supreme Court construed as a dragnet style of search in *United States v. Jones*, 565 U.S. at 409 n.6. "Ultimately, resolution of this issue focuses on 'the extent to which a substantial picture of the defendant's public movements are revealed by the surveillance' from the ALPR." *United States v. Cooper*, No. CR 23-131, 2025 U.S. Dist. LEXIS 1466, 2025 WL 35035, at *5 (E.D. La. Jan. 6, 2025) (citing *Commonwealth v. McCarthy*, 484 Mass. 493, 142 N.E.3d 1090, 1104 (2020)). Thus, given the limited amount of information available to law enforcement, the court is not convinced that the amount of data derived from the Flock System is constitutionally suspect. And this court is not alone in reaching this conclusion. In evaluating similar questions on the extent of data obtained by ALPR systems, numerous courts have held that the use of ALPR systems is not violative of Fourth Amendment rights when faced with questions nearly identical to the ones raised by Defendant here.¹⁰

It is also instructive to look at cases where courts have found law enforcement surveillance violates the Fourth Amendment. In *Leaders of a Beautiful Struggle v. Baltimore Police Department*, the Fourth Circuit faced a challenge [*24] to the city of Baltimore's Aerial Investigation Research program which used aerial photography to track movement across 90% of the city. 2 F.4th 330, 334 (4th Cir. 2021). This program used cameras that could capture 32 square miles per image per second and obtained 12 hours of coverage per day. *Id.* The Fourth Circuit ruled that this program of mass surveillance was a search under the Fourth Amendment and *Carpenter* and enjoined the program from continuing. *Id.* at 347-48. Similarly, the Fifth Circuit recently addressed the question of whether the use of Google's geofencing data constituted a search under the Fourth Amendment which required a warrant. *United States v. Smith*, 110 F.4th 817, 830 (5th Cir. 2024). Google maintains an extensive location history database by tracking a Google account user's location on average every two seconds, and Google stores this data for at least eighteen months. *Id.* at 823. Law enforcement began accessing this data to identify all Google users who were in a geographic area during a given time frame. *Id.* at 824-25. Using the *Carpenter* framework, the court found that the quantity and quality of data used to establish a user's location constituted a general warrant and was unconstitutional under the Fourth Amendment. *Id.* at 840.

Contrast these two clear examples of widespread mass surveillance with the limited surveillance of the Flock [*25] System in this case. It is true that the Flock System captures photographs of any car that passes a camera; however, the limited number of cameras means that the amount of data collected is incomplete and does not track

¹⁰ See *United States v. Martin*, 753 F. Supp. 3d 454, 456 (E.D. Va. 2024); *United States v. Cooper*, No. CR 23-131, 2025 U.S. Dist. LEXIS 1466, 2025 WL 35035, at *6 (E.D. La. Jan. 6, 2025) which deal specifically with the Flock System.

Other cases deal with ALPR systems generally and hold that their use does not violate a reasonable expectation of privacy: *USA v. Rubin*, 556 F. Supp. 3d 1123 (N.D. Cal. 2021); *United States v. Bowers*, No. 2:18-CR-00292-DWA, 2021 U.S. Dist. LEXIS 196899, 2021 WL 4775977 (W.D. Pa. Oct. 11, 2021); *United States v. Brown*, No. 19 CR 949, 2021 U.S. Dist. LEXIS 206153, 2021 WL 4963602 (N.D. Ill. Oct. 26, 2021); *United States v. Porter*, No. 21-CR-00087, 2022 U.S. Dist. LEXIS 6755, 2022 WL 124563 (N.D. Ill. Jan. 13, 2022); *United States v. Graham*, No. CR 21-645 (WJM), 2022 U.S. Dist. LEXIS 163818, 2022 WL 4132488 (D.N.J. Sept. 12, 2022), *aff'd*, No. 23-3197, 2025 U.S. App. LEXIS 2110, 2025 WL 342190 (3d Cir. Jan. 30, 2025); *United States v. Toombs*, 671 F. Supp. 3d 1329 (N.D. Ala. 2023); *United States v. Jiles*, No. 8:23-CR-98, 2024 U.S. Dist. LEXIS 34957, 2024 WL 891956 (D. Neb. Feb. 29, 2024).

But cf. *Schmidt v. City of Norfolk*, No. 2:24CV621, 2025 U.S. Dist. LEXIS 21096, 2025 WL 410080, at *7 (E.D. Va. Feb. 5, 2025) (holding in a federal civil case against the use of Flock Systems in Norfolk, Virginia, that the plaintiff survived a motion under Fed. R. Civ. Proc. 12(b)(6) since "well-pled facts plausibly allege a violation of an objectively reasonable expectation of privacy"); *Commonwealth v. Bell*, 113 Va. Cir. 316 (2024) ("the Court finds the collection and storage of license plate and location information by the FLOCK system constitutes a search within the meaning of the Fourth Amendment and should require a warrant"). However, these two cases appear to be outliers within the broader movement of the judiciary.

the totality of an individual's movements. As persuasively noted by Judge Ambrose in the Western District of Pennsylvania, "[u]nlike the all-pervasive cell-site location data collection in *Carpenter*, and its 'all-encompassing' and 'near-perfect surveillance' of a cell phone user's comings and goings, the ALPR technology at issue captures only the public movements of vehicles that happen to pass by locations on a public street in view of an ALPR camera . . . Even in the aggregate, the ALPR cameras [sic] 'capability to capture multiple shots of a single vehicle and/or store historical data does not approach the near-constant surveillance of cell-phone users' public and private moves that so concerned the Court in *Carpenter*.'" *United States v. Bowers*, No. 2:18-CR-00292-DWA, 2021 U.S. Dist. LEXIS 196899, 2021 WL 4775977, at *3 (W.D. Pa. Oct. 11, 2021). Judge Milazzo in the Eastern District of Louisiana agreed, noting, "the data collected by the ALPR system is far more limited than CSLI. A person must actively pass by one of the cameras for any data to be collected and even then, only a small amount [*26] of information is collected and retained. Individual snapshots in certain locations at specific times 'hardly rise to the level of persistent, unceasing public surveillance that the courts found troublesome in *Carpenter*.'" *United States v. Cooper*, No. CR 23-131, 2025 U.S. Dist. LEXIS 1466, 2025 WL 35035, at *6 (E.D. La. Jan. 6, 2025) (citing *United States v. Martin*, 753 F. Supp. 3d 454, 473 (E.D. Va. 2024)). The above reasoning convinces the court that the amount of information currently obtained by the Flock System in Wichita is not the pervasive and continuous gathering of information with which the Supreme Court was concerned in *Carpenter* and *Jones*, but rather is the limited sort of information that augments law enforcement's natural abilities in *Knotts*. Ultimately, "the Constitution does not forbid the government from using technology to conduct lawful investigations more efficiently." *United States v. Gregory*, 128 F.4th 1228, 1235 (11th Cir. 2025).

Second, Flock cameras do not capture images of people, but rather the Flock System is limited to capturing only pictures of vehicles. As a result, data obtained from Flock cameras is very different from data obtained from cell phones. At the hearing, Mike Molina testified that the Flock System may be able to gain some information about the passengers in a vehicle if they are sticking their hands out the window at the time a photograph is taken by a Flock camera. However, the [*27] Flock System cannot identify any biographical or biological information which would allow law enforcement to track individuals instead of just their vehicles. Ultimately, the Flock cameras "exposed no details about where [Defendant] traveled, what businesses he frequented, with whom he interacted in public, or whose homes he visited, among many other intimate details of his life." *United States v. Brown*, No. 19 CR 949, 2021 U.S. Dist. LEXIS 206153, 2021 WL 4963602, at *3 (N.D. Ill. Oct. 26, 2021). Instead, a search of the Flock System "only reveals when, where, and in which direction a certain vehicle was driving—information of limited value, and data from which it is difficult to discern an individual's familial, political, professional, religious, and sexual associations." *United States v. Jiles*, No. 8:23-CR-98, 2024 U.S. Dist. LEXIS 34957, 2024 WL 891956, at *19 (D. Neb. Feb. 29, 2024). Given that the Flock System does not capture any biographical details of any individuals apart from incidental details to driving on a public road, using the Flock System to track a vehicle is not the same kind of personal search that the Supreme Court critiqued in *Carpenter*.

Moreover, it is instructive to observe the fundamental differences between the nature of the surveillance in cases like *Carpenter* and *Jones* versus the surveillance at issue in this case. In *Carpenter*, the use of CSLI data allowed the government to continuously [*28] monitor the movements of essentially everyone. As shown by the facts in that case, once suspicion focused on Carpenter, the government was able to retrospectively glean information about the totality of Carpenter's movements over a wide span of time. Similarly, the GPS tracker in *Jones* allowed the government to track Jones' movements all the time, at least so long as he was travelling in the target vehicle. By contrast, the Flock System, as employed in this case, allows the government to monitor the movements of all the vehicles in Wichita at limited points in time. The data gathered is limited to the locations of particular vehicles at specific points in time, with no real indication of who is in those vehicles. When armed with that information in the present case, law enforcement obtained only nine data points on the Chevy Cruz over the four-hour period that it took them to find the target vehicle and commence on-the-ground surveillance. Given the facts of this case, the intrusiveness of the surveillance facilitated by the Flock System is far less than (and fundamentally different from) the pervasive surveillance found to violate the *Fourth Amendment* in *Carpenter* and *Jones*.

As for the Fourth Circuit's [*29] decision in *Leaders of a Beautiful Struggle*, the court noted that once word spread about the Baltimore Police Department's aerial surveillance pilot program, "[i]n the face of public outcry, the program was discontinued." 2 F.4th at 333. While it does not appear that the Fourth Circuit attached legal

significance to that information, such a reaction by the public would seem to have at least some bearing on the inquiry as to whether "an expectation of privacy that society is prepared to consider reasonable is infringed." Jacobsen, 466 U.S. at 113. In this case, no evidence was presented that such a public response to use of the Flock System by law enforcement has occurred.

To be sure, the court is concerned that the aggregation and searchability of the photos taken on the Flock System could rise to the level where "the retrospective quality of the data ... gives police access to a category of information otherwise unknowable." Carpenter, 585 U.S. at 312. However, the limited nature of the photographs taken in this case and the 30-day limitation on retention of photographs assuages the court's concerns at this time.¹¹

Therefore, Defendant has not shown that his Fourth Amendment rights were violated by the Government's warrantless use of the Flock System to search [*30] for a specific license plate number and to create a Hot List to track that specific license plate number.

Nevertheless, the fact that the Flock System does not presently violate an expectation of privacy does not foreclose the potential for Flock to one day rise to the level of dragnet search with which the Supreme Court has voiced concern. Indeed, the court can easily see how the more widespread and pervasive deployment of Flock cameras (or cameras connected to the Flock System) could eventually rise to the level of systemic and continuous tracking with which the Supreme Court took issue in Carpenter. As was noted by Judge Carlos Bea of the Ninth Circuit, "I understand that ALPRs may in time present many of the same issues the Supreme Court highlighted in Carpenter. ALPRs can effortlessly, and automatically, create voluminous databases of vehicle location information . . . In retrospective searches, detailed and potentially private information may be exposed." United States v. Yang, 958 F.3d 851, 863 (9th Cir. 2020) (Bea, J., concurring). Undeniably, the use of automatic license-plate readers to generate a pretext for stopping drivers is something which is not new. See United States v. Ellison, 462 F.3d 557, 564 (6th Cir. 2006) (Moore, J., dissenting) (noting that an officer running a license plate [*31] number through a computer database search without any heightened suspicion could raise Fourth Amendment concerns); see also United States v. Lurry, 483 F. App'x 252, 255 (6th Cir. 2012) (Moore, J., dissenting). However, the court is not convinced that the use of the Flock System in Wichita has yet risen to an insidious level such as would warrant the drastic and remedial action of invoking the exclusionary rule in this case.¹² "This Court must rule on the facts as they are and may not speculate about what the future may hold for Flock's capabilities." United States v. Martin, 753 F. Supp. 3d 454, 476 (E.D. Va. 2024).

With the rise of new technologies, courts are left to apply aging Fourth Amendment doctrines in an era of increasing government surveillance. Increased computing power, when combined with artificial intelligence, allows the government to process vast amounts of data on nearly all its citizens. We live in a constitutional republic, not a burgeoning authoritarian society. Many Fourth Amendment carveouts and doctrines were crafted in an era where there was no capacity to replace human surveillance with computer surveillance. This presents unique challenges, since aggregated data on actions and movements can now be cross referenced to create individual profiles once suspicion has become centered on an individual. As the Supreme [*32] Court in Carpenter noted with regard to CSLI information, "the retrospective quality of the data here gives police access to a category of information

¹¹ It also should be noted that any photographs can be downloaded from the Flock System and saved locally by individual clients. In this case, the evidence is that the WPD downloads photographs only when there is a police purpose, otherwise the photographs are deleted. However, the testimony from Captain Slaughter exemplifies how important the role of local law enforcement evidence retention policies can be in preventing the violation of Fourth Amendment rights.

¹² As Judge Bea later noted in his Yang concurrence, "It's clear to me that the database search did not reveal the whole, or even any, of Yang's physical movements. It would be folly to hold that searches of ALPR databases require a warrant without identifying even one case where the 'whole of [one's] physical movements' was implicated in an ALPR database search . . . If the technology evolves in the way that amici hypothesize, then perhaps in the future a warrant may be required for the government to access the LEARN [license plate] database, but this should only be the case if the database evolves to provide comparable location information to the records at issue in Carpenter." United States v. Yang, 958 F.3d 851, 864 (9th Cir. 2020) (Bea, J., concurring).

otherwise unknowable. In the past, attempts to reconstruct a person's movements were limited by a dearth of records and the frailties of recollection . . . this newfound tracking capacity runs against everyone. Unlike with the GPS device in *Jones*, police need not even know in advance whether they want to follow a particular individual, or when." *Carpenter*, 585 U.S. at 312. As of now, "[n]o specific federal legislative framework exists that governs federal law enforcement use of ALPRs."¹³ KRISTIN FINKLEA, CONG. RSCH. SERV., R48160, LAW ENFORCEMENT AND TECHNOLOGY: USE OF AUTOMATED LICENSE PLATE READERS 6 (2024). Perhaps a solution to this dilemma between oversight and privacy would be to establish statutory guidelines akin to how the Electronic Communications Privacy Act of 1986 set new guidelines on the use of wiretaps in a digital era.¹⁴ However, this is something that is better left to the purview of the legislative branch, rather than courts.

Indeed, the Fourth Amendment is a rather crude tool to fashion rules on such a rapidly evolving realm of technology. By the time hundreds of trial court judges apply their own [*33] individual notions of what the Constitution requires on this subject and the appellate process has run its full course, the creative application of newer technology may have rendered those rules obsolete or otherwise inadequate to curb the abuses of an ever-growing surveillance state. For this reason, it seems incumbent on legislative bodies to address those concerns. Those institutions are far better equipped to regulate the use of surveillance systems like the Flock System through the legislative process of hearings and investigations. This legislative process, subject to the public accountability of the ballot box, can craft detailed requirements suited to the current state of technology and revise those requirements as the capabilities of those systems, and how they are deployed, inevitably change. By contrast, the Fourth Amendment is a blunt instrument wielded by judges who are limited by the record compiled before them. These judges oftentimes lack the authority and the information necessary to effectively and timely craft rules with the exacting detail that these types of surveillance systems require to lawfully promote public safety while preserving the ever-shrinking sphere of privacy to [*34] which citizens are entitled. But, if legislatures refuse to meet that challenge, it is likely only a matter of time before the courts will be compelled to intervene.

Given the current status and configuration of the Flock System in the Wichita area, the court finds that, in this particular case, there is no violation of an expectation of privacy that society would see as reasonable.

III. Conclusion

Defendant's motion to suppress (Doc. 22) is DENIED. The court notes that there are only six days remaining for trial under the Speedy Trial Act. This would not allow the parties much time to prepare for trial, nor would it allow sufficient time to summon a jury. The court finds it is in the interests of justice to continue the trial on its own motion to allow the parties additional time to prepare and so that a jury may be scheduled in due course. See 18 U.S.C. § 3161(h)(7)(A). The ends of justice are served by granting this continuance and excluding, for Speedy Trial purposes, the time from the entry of this order to the new trial date. The case is set for status conference Friday, May 30, 2025, at 10:30 A.M. in chambers, and the trial is set to begin on June 9, 2025.

IT IS SO ORDERED. Dated this 29th day of May 2025.

/s/ John Broomes [*35]

JOHN W. BROOMES

¹³ Although there is no federal legislative framework for governing use of ALPRs, some states have enacted guidelines for the use of ALPRs. See, e.g., 2025 Va. Acts ch. 720 (establishing regulations for the use of ALPRs in Title 2.2, Chapter 55.6, section 2.2-5517 Code of Virginia).

¹⁴ This is not to suggest that accessing ALPR databases deserves all the layers of oversight and authorization required for the far more intrusive surveillance of a wiretap under the Electronic Communications Privacy Act; but, rather, the court simply references that act as a well-known example of how a legislative body crafted detailed requirements for a form of electronic surveillance that would have been essentially impossible for courts to devise through interpretation of the Fourth Amendment.

2025 U.S. Dist. LEXIS 101960, *35

UNITED STATES DISTRICT JUDGE

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