[CAPTION]

MOTION TO SUPPRESS EVIDENCE (TRAFFIC STOP)

The Defendant, by counsel, respectfully requests that this Court suppress all property seized by the arresting officers, all observations made by the arresting officers, and all statements made by the Defendant. In support of this Motion, the Defendant states the following:

1. The Defendant is charged with [insert offenses].
2. On [insert date], a police officer, without lawful authority, stopped the Defendant's vehicle and detained the Defendant.
3. Any information from the stop of the Defendant's vehicle, including the Defendant's blood alcohol level and demeanor, was unlawfully obtained because:
    a. At the time the police officer stopped the Defendant's vehicle, the police officer lacked reasonable suspicion that the Defendant was committing a crime and the Defendant was not committing a traffic violation. Thus, the stop and any continued detention violated the Fourth Amendment to the United States Constitution.
    b. The police officer exceeded the scope of the stop by detaining the Defendant for an unnecessary length of time, thus, violating the Fourth Amendment to the United States Constitution and invalidating any consent to search obtained during the unconstitutional detention.
    c. Considering the totality of the circumstances, the police officer's warrantless stop of the Defendant's vehicle was unreasonable and, thus, violated Article I, Section 11 of the Indiana Constitution.
    d. Considering the totality of the circumstances, the length of the police officer's detention of the Defendant was unreasonable and, thus, violated Article I, Section 11 of the Indiana Constitution.

e. The police officer's seizure of evidence and observations of the Defendant was a direct result of the unlawful stop and detention, and thus, must be suppressed from evidence.

WHEREFORE, the Defendant requests the Court to:

1. Suppress and bar from use as evidence in the trial of this cause any seized items observations, including Defendant's blood alcohol level and her demeanor, which resulted from the illegal stop and detention.
2. Suppress and bar from use in the trial of this cause all testimony relating to any seized items and observations, including the Defendant's blood alcohol level and her demeanor, which resulted from the illegal stop and detention.

(Signature)

REASONABLE SUSPICION

Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968) (a police officer can stop and detain an individual or an individual's property on the basis of reasonable suspicion for an amount of time to investigate whether probable cause exists for a search or arrest).

Cash v. State, 593 N.E.2d 1267 (Ind.Ct.App. 1992) (swinging license plate did not create reasonable suspicion that car was stolen).

State v. Snyder, 538 N.E.2d 961 (Ind.Ct.App. 1989) (the Defendant's act of making U-turn to avoid sobriety roadblock justified Terry stop; however, merely turning off road where roadblock is located may not by itself give rise to reasonable suspicion). See also Bass v. Commonwealth, 525 S.E.2d 921 (Va. 2000) (legally turning to avoid road block does not justify stop).

State v. Bulington, 802 N.E.2d 435 (Ind. 2004) (good analysis under the Indiana Constitution; store employee's information that two men had separately bought three boxes of antihistamines, entered the same truck and removed tablet packages from boxes was insufficient to provide officer with reasonable suspicion to stop the defendant's truck).

Florida v. J.L., 120 S.Ct. 1375, 146 L.Ed.2d 254 (2000) (an accurate description of a subject's readily observable location and appearance is of course reliable in this limited sense: it will help the police correctly identify the person whom the tipster means to accuse; such a tip, however, does not show that the tipster has knowledge of concealed criminal activity).

Johnson v. State, 659 N.E.2d 116 (Ind. 1995) (confidential informant's tip that the Defendant would be in brown Jaguar carrying cocaine was not supported by fact that the Defendant was actually in brown Jaguar or by fact that the Defendant displayed large amounts of cash, had indicated that he would be taking long trips, and he was worried about his car's road-worthiness; no reasonable suspicion to stop).

Jamerson v. State, 870 N.E.2d 1051 (Ind.Ct.App. 2007) (a report over dispatch merely indicated that they were to locate Defendant "in reference to a carjacking" which had allegedly occurred at another location and did not provide reasonable suspicion to stop vehicle).

Berry v. State, 766 N.E.2d 805 (Ind.Ct.App. 2002) (investigatory stop based on anonymous tip must be corroborated by police and must exhibit sufficient indicia of reliability; here, officer could not make Terry stop without meeting reliability requirement even though he stopped the Defendant to determine whether violence was imminent and whether armed felony had occurred). See also Washington v. State, 740 N.E.2d 1241 (Ind.Ct.App. 2000) (anonymous tip reporting possible drunk driver, describing car, and giving license plate number, lacked sufficient indicia of reliability to serve as sole basis for investigatory detention).

State v. Glass, 769 N.E.2d 639 (Ind.Ct.App. 2002) (the tipster simply providing a name is insufficient to validate a tip; there must be corroboration of suspicious driving to stop for suspicion of OWI based on anonymous tip). See also Powell v. State, 841 N.E.2d 1165 (Ind.Ct.App. 2006); Sellmer v. State, 842 N.E.2d 358 (Ind. 2006).

Russell v. State, 993 N.E.2d 1176 (Ind.Ct.App. 2013) (tipster's susceptibility to prosecution for false reporting heightens the likelihood of the reliability of a concerned citizen tip relied upon for justifying a stop and is a circumstance bearing on the reasonableness of suspicion).

Kellems v. State, 842 N.E.2d 352 (Ind.) (tip from individual who identified herself to the police, gave her date of birth and whose address was known to police was not an anonymous tipster), *rev'd on other grounds*, 849 N.E.2d 1110 (Ind. 2006).

Bovie v. State, 760 N.E.2d 1195 (Ind.Ct.App. 2002) (police officer's observations of the Defendant and his passenger, a known drug user and seller, leave known drug house, proceed to gas station, and stop their vehicle, did not rise to level of reasonable and articulable suspicion required to make investigatory stop).

Segar v. State, 937 N.E.2d 917 (Ind.Ct.App. 2010) (anonymous tip that burglary was in progress and burglar was white and wearing a dark coat did not constitute reasonable suspicion to stop Defendant who was white and wearing a dark coat while walking down the street).

Rhodes v. State, 950 N.E.2d 1261 (Ind.Ct.App. 2011) (call from concerned citizen, which failed to describe Defendant or his vehicle, did not give officer reasonable suspicion that Defendant was operating while intoxicated).

Robinson v. State, 5 N.E.3d 362 (Ind. 2014) (police officer had reasonable suspicion of criminal activity necessary to stop Defendant's vehicle after observing the vehicle drift over roadway's fog line and completely off the roadway on two occasions). See also Atkinson v. State, 992 N.E.2d 899 (Ind.Ct.App. 2013) (even if Defendant did not commit a driving infraction, officer had reasonable suspicion to stop him because he swerved back and forth many times between center line and over fog line, thus driving in a way consistent with a person driving while intoxicated).

United States v. Uribe, 709 F.3d 646 (7th Cir. 2013) (a color discrepancy between the registration and the actual car is, alone, insufficient to give rise to reasonable suspicion of criminal activity justifying a traffic stop).

Bowers v. State, 980 N.E.2d 911 (Ind.Ct.App. 2012) (stop of Defendant's vehicle was justified, where Defendant's ex-wife's intoxication and the fighting between the two provided reasonable suspicion that Defendant was also intoxicated).

Santana v. State, 10 N.E.3d 76 (Ind.Ct.App. 2014) (although officer began following Defendant's vehicle after he mistakenly ran wrong license plate number, resulting traffic stop was based on reasonable suspicion; officer may not have followed Defendant if he had entered the correct license plate number, but the officer still had an objectively justifiable reason to stop Defendant for failing to signal a turn less than 200 feet before turning).

J.B. v. State, 30 N.E.3d 51 (Ind.Ct.App. 2015) (Defendant's discarding of gun provided reasonable suspicion for investigatory stop under both federal and state constitutions).

TRAFFIC VIOLATION

Brendlin v. California, 551 U.S. 249, 127 S.Ct. 2400, 168 L.Ed.2d 132 (2007) (when a police officer makes a traffic stop, a passenger in the car, like the driver, is seized for Fourth Amendment purposes and so may challenge the stop's constitutionality).

Whren v. U.S., 517 U.S. 806, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996) (police may stop a vehicle after observing minor traffic violations, regardless of the police officer's subjective motives in stopping the vehicle. As long as officers "could have" made a stop on the basis of a traffic violation, it does not matter what reasonable officers "would have" done).

Turner v. State, 862 N.E.2d 695 (Ind.Ct.App. 2007) (pretextual traffic stop of questionable validity was not reasonable under the totality of circumstances, where officer estimated Defendant's speed at 55 mph, but did not know speed limit in area when he stopped the vehicle, and officer had been instructed to look for a traffic violation so that police could talk to Defendant about his involvement in series of burglaries).

Baldwin v. Reagan, 715 N.E.2d 332 (Ind. 1999) (police officer may not stop motorist to enforce seat belt law unless officer observes circumstances that would cause an ordinary person to agree that driver or passenger is not wearing seat belt). See also State v. Massey, 887 N.E.2d 151 (Ind.Ct.App. 2008).

Meredith v. State, 906 N.E.2d 867 (Ind. 2009) (Defendant's placement of his temporary paper plate in vehicle's back window amounted to a traffic infraction). See also Young v. State, 906 N.E.2d 875 (Ind. 2009); Merritt v. State, 829 N.E.2d 472 (Ind. 2005) (because displaying a license plate in the rear of the back window clearly did not satisfy I.C. 9-18-2-26(a), the traffic stop was reasonable). But see Darringer v. State, 46 N.E.3d 464 (Ind.Ct.App. 2015) (statute as amended allows for an interim license plate to be displayed on the left rear window of Defendant's vehicle; officer stopped Defendant's vehicle based upon an unreasonable mistake of law).

Armfield v. State, 918 N.E.2d 316 (Ind. 2009) (an officer has reasonable suspicion to stop a vehicle when: (1) the officer knows that the registered owner of a vehicle has a suspended license; and (2) the officer is unaware of any evidence or circumstances which indicate that the owner is not the driver of the vehicle). See also Bannister v. State, 904 N.E.2d 1254 (Ind. 2009).

Denton v. State, 805 N.E.2d 852 (Ind.Ct.App. 2004) (stop based on suspect driving vehicle with broken rear window that was uncovered despite rain was not proper).

Williams v. State, 28 N.E.3d 293 (Ind.Ct.App. 2015) (reasonable suspicion necessary for a car stop can rest on a mistaken understanding of the scope of a legal prohibition, as long as the error of law is objectively reasonable; officer's belief that Defendant's act of driving with a broken tail light violated traffic law, while ultimately mistaken, was nevertheless objectively reasonable); see also Heien v. North Carolina, 135 S.Ct. 530, 190 L.Ed.2d 475 (2014).

Gunn v. State, 956 N.E.2d 136 (Ind.Ct.App. 2011) (officer's mistaken belief that Defendant committed an infraction by failing to enter roadway in the lane closest to the center line after making a left turn did not justify traffic stop; I.C. 9-21-8-12 only requires a person making a left turn to "leave the intersection to the right of the center line of the roadway being entered").

State v. Rhodes, 950 N.E.2d 1261 (Ind.Ct.App. 2011) (State did not show that it was possible under circumstances for Defendant to comply with turn signal statute).

Goens v. State, 943 N.E.2d 829 (Ind.Ct.App. 2011) (Defendant did not commit an infraction by having one inoperable brake light; officer's stop of his car was invalid, and the resulting evidence of his intoxication should have been suppressed). See also Kroft v. State, 992 N.E.2d 818 (Ind.Ct.App. 2013).

State v. Keck, 4 N.E.3d 1180 (Ind. 2014) (Defendant's driving did not violate statute prohibiting "driving left of center," and therefore police lacked reasonable suspicion for investigatory stop, where there was

testimony from both Defendant and passenger showing that the sides of the road at issue were covered in gravel and had more potholes than normal).

Sanders v. State, 989 N.E.2d 332 (Ind. 2013) (officer had reasonable suspicion to believe that tint on windows of Defendant's vehicle was in violation of statute, such that initial stop of vehicle was justified, although tint on windows was ultimately found to be in compliance with statute, it closely bordered the statutory limit); see also Johnson v. State, 992 N.E.2d 955 (Ind.Ct.App. 2013).

Killebrew v. State, 976 N.E.2d 775 (Ind.Ct.App. 2012) (Defendant's driving through an intersection with an activated turn signal without turning or changing lanes was not a traffic violation; turn signal statutes addressed the failure to use a turn signal, not the continued use of a turn signal).

Veerkamp v. State, 7 N.E.3d 390 (Ind.Ct.App. 2014) (officer's stop of Defendant's truck due to the truck emanating excessive fumes was proper under both state and federal constitutions).

United States v. Stanbridge, 813 F.3d 1032 (7th Cir. 2016) (officer's mistaken belief that driver violated Illinois traffic statute when he pulled to curb while simultaneously signaling, instead of using turn signal at least 100 feet before pulling to curb, was not objectively reasonable).

Croom v. State, 996 N.E.2d 436 (Ind.Ct.App. 2013) (police officer's good-faith reasonable belief that Defendant's interim dealer license plates were expired was sufficient to establish reasonable suspicion to initiate investigatory stop, even though officer's belief was mistaken).

United States v. Paniagua-Garcia, 813 F.3d 1013 (7th Cir. 2016) (officer lacked reasonable suspicion that Defendant was violating Indiana's no-texting while driving law at time of traffic stop, where officer did not see Defendant texting, and what officer had seen, that Defendant was holding a cell phone in his right hand, and that his head was bent toward the phone, was consistent with any one of a number of lawful uses of cell phones while driving under Indiana law).

SCOPE OF STOP

Holly v. State, 918 N.E.2d 323 (Ind. 2009) (reasonable suspicion to pull a car over does not confer unconditional authority to request the driver's license and registration; thus, when an officer who stops a car over based on a license plate check that shows a suspended owner realizes that the driver is not the owner, the officer cannot continue with the stop by asking for identification); see also Johnson v. State, 21 N.E.3d 841 (Ind.Ct.App. 2014).

Florida v. Royer, 460 U.S. 491, 103 S.Ct. 1319, 75 L.E.d2d 229 (1983) (police must use the least restrictive means to effectuate a stop).

Mitchell v. State, 745 N.E.2d 775, 788 (Ind. 2001) (reasonable search under Article 1, § 11 would permit officer to briefly detain motorist only as necessary to complete officer's work related to illegality for which motorist was stopped; under Ind. Constitution, officers must use investigative methods during vehicle stops that are reasonable in scope, duration, and relation to the stop; here, 100-minute detention of the Defendant was reasonable because police discovered illegal weapon and drugs in possession of the Defendant's passenger).

Washingon v. State, 898 N.E.2d 1200 (Ind. 2008) (under U.S. and Indiana Constitutions, a police officer, without reasonable suspicion, can inquire as to possible further activity when a motorist is stopped for a

traffic infraction; here, officer properly asked whether Defendant had "any guns, drugs or anything" that might harm the officer).

Cade v. State, 872 N.E.2d 186 (Ind.Ct.App. 2007) (request for passenger's identification during traffic stop not unreasonable under the Indiana Constitution).

Lockett v. State, 747 N.E.2d 539 (Ind. 2001) (police may, as a matter of routine practice, ask motorist stopped for traffic violation if he has any weapons in vehicle or on his person *during* the stop).

Tumblin v. State, 736 N.E.2d 317 (Ind.Ct.App. 2000) (the Defendant was unlawfully detained and subjected to pat-down search beyond parameters of routine traffic stop).

Illinois v. Caballes, 543 U.S. 405, 125 S.Ct. 834, 160 L.Ed.2d 842 (2005) (dog sniff to the exterior of a vehicle, conducted during a lawful traffic stop, that does not improperly extend the duration of the stop and that reveals no information other than the presence and location of contraband, does not violate the 4th Amendment).

State v. Quirk, 842 N.E.2d 334 (Ind. 2006) (twenty minute detention of Defendant for canine sniff of his vehicle after Defendant was first advised he was free to leave was unreasonable under Article 1, Section 11 of the Indiana Constitution). But see State v. Gibson, 886 N.E.2d 639 (Ind.Ct.App. 2008); Austin v. State, 997 N.E.2d 1027 (Ind. 2013) (canine search was reasonable when Defendant was allowed to drive away after initial encounter with officer, who then called canine officer who stopped Defendant's vehicle again after observing two traffic violations).

Cannon v. State, 722 N.E.2d 881 (Ind.Ct.App. 2000) (regardless of whether officers had reasonable suspicion to stop the Defendant in the first place, if the reasonable suspicion has dissipated, further detention to conduct a canine sniff is illegal). See also D.K. v. State, 736 N.E.2d 758 (Ind.Ct.App. 2000). But see Myers v. State, 839 N.E.2d 1154 (Ind. 2005) (reasonable individualized suspicion was not required by Fourth Amendment before officials could use a canine to sniff outside of Defendant's unoccupied motor vehicle).

Bush v. State, 925 N.E.2d 787 (Ind.Ct.App. 2010) (because State failed to show that either the canine sniff was conducted while the purpose of the stop was ongoing or the canine sniff did not materially increase the duration of the stop, the sniff was not justified; officers had effectuated the arrest of the passenger for an outstanding warrant by the time they conducted the canine sniff, and there was no reason to detain driver; Defendant and passenger were cooperative at all times), *aff'd on rehearing*, 929 N.E.2d 897. See also State v. Gray, 997 N.E.2d 1147 (Ind.Ct.App. 2013).

Walls v. State, 714 N.E.2d 1266 (Ind.Ct.App. 1999) (police officer may not order passenger of vehicle to stay at car and not walk away during stop unless officer has reasonable suspicion that criminal activity is afoot). But see Tawdul v. State, 720 N.E.2d 1211 (Ind.Ct.App. 1999) (disagreeing with Walls); Harper v. State, 922 N.E.2d 75 (Ind.Ct.App. 2010).

Wilson v. State, 745 N.E.2d 789 (Ind. 2001) (officer who suspected that the Defendant was intoxicated could have conducted a variety of field sobriety test instead of putting the Defendant in the officer's patrol car thereby requiring a pat down search; evidence found during pat down suppressed).

Clark v. State, 804 N.E.2d 196 (Ind.Ct.App. 2004) (traffic stop based on failure of either driver or passenger to wear seatbelt does not by itself provide reasonable suspicion for police to unilaterally expand their investigation and fish for evidence of other possible crimes). But see State v. Washington, 898 N.E.2d 1200 (Ind. 2008) (to the extent that Clark holds that Section 11 of Indiana Constitution generally

prohibits police from questioning motorists or seeking consent to search following a terminated traffic stop, it is incorrect).

Wells v. State, 922 N.E.2d 697 (Ind.Ct.App. 2010) (Defendant's extreme fidgetiness and other furtive gestures raised legitimate safety concerns that justified removing Defendant from car and conducting a pat-down search, but once concerns were alleviated, there was no reasonable suspicion to keep Defendant until K-9 unit arrived).

Graham v. State, 971 N.E.2d 713 (Ind.Ct.App. 2012) (58-minute traffic stop was not unduly prolonged where it was Defendant's willingness to answer officer's question regarding presence of drugs or weapons in the vehicle that led to his arrest and extended the duration of the stop).

Lucas v. State, 15 N.E.3d 96 (Ind.Ct.App. 2014) (traffic stop for expired license plates was more intrusive than authorized for a permissible investigatory stop; officer relocated Defendant from her own vehicle to squad car, but could not articulate a legitimate reason as to why he could not complete his investigation standing alongside Defendant's vehicle, and did not have reasonable suspicion to investigate Defendant for OWI until after she was inside the squad car).

United States v. Walton, 763 F.3d 655 (7th Cir. 2014) (driver of car does not lose all Fourth Amendment protections simply because his license is invalid).