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suitable employment. We conclude that the compensation court did not err in finding Becerra was entitled to a vocational rehabilitation plan consisting of formal training.

CONCLUSION

Because Becerra was a part-time hourly employee who suffered a permanent impairment, the compensation court properly calculated his average weekly wage for vocational rehabilitation purposes under § 48-121(4). We agree with the compensation court that seeking to place Becerra in employment where he would earn wages similar to those based upon the calculation used for permanent disability purposes would best achieve the goal of restoring him to suitable employment. Accordingly, we affirm the court's award of vocational rehabilitation consisting of formal training.

AFFIRMED.

IN RE INTEREST OF ASHLEY W., A CHILD UNDER 18 YEARS OF AGE. STATE OF NEBRASKA, APPELLEE, V. ASHLEY W., APPELLANT.

821 N.W.2d 706

Filed October 5, 2012. No. S-11-535.

1. **Motions to Suppress: Investigative Stops: Warrantless Searches: Probable Cause: Appeal and Error.** A trial court's ruling on a motion to suppress based on the Fourth Amendment, apart from determinations of reasonable suspicion to conduct investigatory stops and probable cause to perform warrantless searches, is to be upheld on appeal unless its findings of fact are clearly erroneous.
2. **Trial: Investigative Stops: Warrantless Searches: Appeal and Error.** The ultimate determinations of reasonable suspicion to conduct an investigatory stop and probable cause to perform a warrantless search are reviewed de novo, and findings of fact are reviewed for clear error, giving due weight to the inferences drawn from those facts by the trial judge.
3. **Constitutional Law: Evidence: Appeal and Error.** When the State seeks to submit evidence as sufficiently attenuated from a previous Fourth Amendment violation, an appellate court reviews the trial court's findings of historical facts for clear error but reviews de novo the court's ultimate attenuation determination based on those facts.

4. **Juvenile Courts: Rules of Evidence.** The Nebraska Evidence Rules control adduction of evidence at an adjudication hearing under the Nebraska Juvenile Code.
5. **Trial: Evidence: Motions to Suppress: Waiver: Appeal and Error.** The failure to object to evidence at trial, even though the evidence was the subject of a previous motion to suppress, waives the objection, and a party will not be heard to complain of the alleged error on appeal.
6. **Trial: Rules of Evidence: Appeal and Error.** Under Neb. Evid. R. 103, Neb. Rev. Stat. § 27-103 (Reissue 2008), an error may not be predicated upon a ruling which admits evidence unless a timely objection or motion to strike appears of record, stating the specific ground of objection, if a specific ground was not apparent from the context.
7. **Trial: Evidence.** An objection to the admission of evidence is generally not timely unless it is made at the earliest opportunity after the ground for the objection becomes apparent.
8. **Constitutional Law: Search and Seizure: Motor Vehicles.** Even though the purpose of a stop is limited and the resulting detention quite brief, stopping a vehicle and detaining its occupants constitute a seizure within the meaning of the 4th and 14th Amendments.
9. ____: ____: ____. An occupant of a vehicle ordinarily has a legitimate expectation to be free of unreasonable governmental intrusion so as to give the occupant standing to challenge a stop as violative of his or her Fourth Amendment rights.
10. **Constitutional Law: Criminal Law: Police Officers and Sheriffs: Investigative Stops.** Pursuant to the 4th and 14th Amendments to the U.S. Constitution and article I, § 7, of the Nebraska Constitution, a law enforcement officer may legally conduct an investigatory stop of a person suspected of criminal activity only when the officer has a reasonable suspicion based upon articulable facts that the person has been, is, or is about to be involved in criminal activity.
11. **Criminal Law: Investigative Stops.** Generalized suspicions or unparticularized hunches that a person has been or is engaged in criminal activity do not suffice to justify a detention.
12. **Police Officers and Sheriffs: Probable Cause.** Reasonable suspicion depends upon both the content of information possessed by police and its degree of reliability.
13. **Investigative Stops.** Finding the necessary quantum of individualized suspicion only after a stop occurs cannot justify the stop.
14. **Search and Seizure: Evidence: Trial.** Evidence obtained as the direct or indirect "fruit" of an illegal search or seizure, "the poisonous tree," is inadmissible in a state prosecution and must be excluded.
15. **Constitutional Law: Evidence: Appeal and Error.** In addressing whether the connection between a prior illegality and challenged evidence has become so attenuated as to dissipate the taint, courts must take into account considerations relating to the exclusionary rule and the constitutional principles which it is designed to protect.
16. **Evidence.** The relevant factors for attenuation will depend upon the facts of a particular case but include (1) the proximity between the actual illegality and the

evidence sought to be suppressed, (2) the presence of intervening factors, and (3) the flagrancy of the governmental misconduct involved in the case.

17. **Search and Seizure: Police Officers and Sheriffs.** Consent to search given in very close temporal proximity to the official illegality is often a mere submission or resignation to police authority.
18. **Evidence: Words and Phrases.** Intervening circumstances are intervening events of significance that render inapplicable the deterrence and judicial integrity purposes which justify excluding tainted evidence.
19. **Search and Seizure: Evidence: Confessions: Appeal and Error.** Where a confession follows confrontation of the defendant with illegally seized evidence, the Nebraska Supreme Court has repeatedly said there has been an exploitation of that illegality.

Petition for further review from the Court of Appeals, INBODY, Chief Judge, and CASSEL and PIRTLE, Judges, on appeal thereto from the Separate Juvenile Court of Douglas County, ELIZABETH CRNKOVICH, Judge. Judgment of Court of Appeals reversed, and cause remanded with directions.

Thomas C. Riley, Douglas County Public Defender, and Melinda S. Currans for appellant.

Donald W. Kleine, Douglas County Attorney, and Cortney Wiresinger for appellee.

HEAVICAN, C.J., WRIGHT, CONNOLLY, STEPHAN, MCCORMACK, and MILLER-LERMAN, JJ.

MCCORMACK, J.

I. NATURE OF CASE

The juvenile court adjudicated Ashley W. as a child within the meaning of Neb. Rev. Stat. § 43-247(1) (Reissue 2008) for possession of marijuana. Ashley appealed, and the Nebraska Court of Appeals affirmed in a memorandum opinion filed on December 15, 2011. The Court of Appeals declined to address issues previously raised by Ashley in a motion to suppress, concluding that she had failed to preserve the alleged errors. We granted further review.

II. BACKGROUND

In June 2010, police officers Dan Wootton and Josiah Warren investigated a fireworks complaint in Omaha, Nebraska. In the process of their investigation, they issued Ashley, a minor

child, a citation for possession of less than 1 ounce of marijuana. The county attorney filed a petition to have Ashley adjudicated as a child as defined by § 43-247(1). Ashley's attorney made a motion to suppress the evidence relating to the citation. The juvenile court scheduled the hearing on Ashley's motion to suppress on the same day as the adjudication hearing.

1. Wootton and Warren Testimony

At the hearing on the motion to suppress, held January 26, 2011, the State offered the testimony of Wootton and Warren. No other testimony or evidence was presented.

Wootton and Warren testified that about 5 minutes after receiving the call relating to the fireworks complaint, they were "[w]ithin 50 feet" of the area where the complaint came from. There, the officers noticed a vehicle parked on the street with its headlights on and two occupants inside. Many other unoccupied cars were similarly parked along the street. The officers did not observe anyone else in the area. The officers did not see any fireworks or fireworks debris in the area.

As the officers drove by, the individuals in the vehicle reportedly "looked" at the officers. After the cruiser passed, the vehicle's driver pulled away from the curb and started to drive down the street.

The officers turned around, engaged their cruiser's flashing lights, and pulled the vehicle over. Wootton explained that the vehicle aroused suspicion because, "[w]ell, the lights on, sitting in the area."

The officers told the individuals in the vehicle that they were investigating a fireworks complaint and asked for identification. During this initial contact, Warren stood by the driver's side, where he conversed with the driver. Wootton stood by the passenger side of the vehicle, where the window was rolled up. Ashley was the passenger. Ashley and the driver denied any involvement with or knowledge of the fireworks.

Warren testified that he had smelled marijuana upon their initial approach to the vehicle after it was stopped. The officers returned to their cruiser to process identification and discussed searching the vehicle. It took 10 to 15 minutes to process the driver's and Ashley's identifications.

Wootton then asked the driver whether they could search the vehicle. Wootton did not tell the driver that he had a right to refuse, and the driver gave his permission.

The officers removed the driver and Ashley from the vehicle to conduct the search. Warren conducted a pat-down of the driver for weapons and escorted him to the front of the cruiser. Ashley was also directed to stand in front of the cruiser. Wootton searched the area inside the vehicle, while Warren stood watch over Ashley and the driver. Wootton testified that Ashley was not free to go while the search was conducted.

Wootton testified that he found a baggie of marijuana on the passenger side of the vehicle. He approached the driver and Ashley, held up the baggie, and asked, "Who does this belong to?" Wootton testified that Ashley "said it was mine." After issuing a citation to Ashley, the officers drove her home. The officers estimated that approximately 25 minutes passed from the time they initiated the stop to the time they issued the citation. The officers did not give *Miranda* warnings.

The officers had been employed by the Omaha Police Department approximately 2 years. Both had received field training and classes involving narcotics. The officers did not, however, elaborate on such training or how it related to their ability to identify the substance seized as marijuana. Nor did the officers provide a detailed explanation as to how or why they concluded that the substance they found in the vehicle was marijuana.

2. Adjudication Postponed

After hearing testimony from the two officers, the juvenile court denied Ashley's motion to suppress. Following confirmation that both parties were ready to proceed to trial, the following dialog occurred between the juvenile court, the State, and Ashley's counsel:

> THE COURT: All right. Let me ask this of you. Will the evidence presented by the State be any different than the evidence that was just heard?
>
> [State]: No, Your Honor.
>
> THE COURT: Would you have any other witnesses?
>
> [State]: No, Your Honor.

THE COURT: Would there be any agreement to stipulating that that would be the State's case in chief rather than sit for 30 minutes and hear the precise same evidence, given the fact that we just heard the evidence and you did have an opportunity to cross-examine. Do you want to ask your client whether that would be all right?

. . . .

[Ashley's counsel]: Judge, I do not have an objection to the Court taking judicial notice of the testimony as long — I would like to renew my objections to the evidence of the statements that I put forth in the motion to suppress.

THE COURT: Okay. You would have done that at trial, so you — and so I will note that. And then I will — as I would have at trial, will further indicate that that has been ruled on.

[Ashley's counsel]: (Nods head.)

THE COURT: All right. So does the State rest then?

[State]: Well, Your Honor, I would briefly call Officer Wootton to the stand.

THE COURT: Okay. Well, now we're going — now we're in a different place, because here's what I asked the State. Would your evidence be any different? You said no. Do you have any other witnesses? You said no. So I was trying to address the interest of time and [Ashley's] right and insistence on maintaining that right. We'll have to continue it to a later date. We will set this for trial at a later date.

(Wherein, the bailiff was called.)

THE COURT: May I have a trial date, please? Half an hour. Soon.

[State]: Your Honor, we would only need 15 minutes.

THE COURT: No, madam, because I gave you an opportunity, respectfully. I was respecting the State. But we can't do it both ways. And that's fine. That's fine. But we will adjudicate it. You will recall your witnesses and present the same testimony.

[To Ashley] And who will you be calling as a witness?

[Ashley's counsel]: Ashley.

THE COURT: Unless you wish to accept the previous deal and just have Ashley come to the stand?

[State]: I didn't know she was going to call her, so —

THE COURT: Well, we would — all right . . . . I would have — I'm going to suggest that that might have occurred to you given what has transpired in the last ten minutes and/or with a question to counsel.

We're adjourned. Date and time will be provided at a later date.

3. Adjudication Hearing

The adjudication hearing was held on March 25, 2011. The hearing began with Ashley's attorney's request "as a preliminary matter, in reading over the transcript and the order, I believe we are requesting the Court make specific findings of facts and conclusions of law as to the motion to suppress before we proceed to trial." The court stated, "Okay. We are going to proceed to trial today." The dialog continued:

[Ashley's counsel]: Okay.

THE COURT: Go ahead. I am not continuing the trial.

[Ashley's counsel]: I'm not asking that. I'm just asking for specific findings of facts and conclusions of law.

THE COURT: Okay. I can do that in the order that I issue today.

[Ashley's counsel]: As to the motion to suppress?

THE COURT: Yes.

[Ashley's counsel]: Okay. All right.

[State]: At this time, Your Honor, the State would offer what has been marked as Exhibit No. 2. It is a certified copy of a certificate of live birth for Ashley . . . , and her date of birth is March . . . 1994; Exhibit No. 3, which is a transcript of the motion to suppress hearing that was set and heard before this Court on January 26, 2011. The transcript was typed by . . . the court reporter.

THE COURT: Okay. Any objection?

[Ashley's counsel]: No objections.

THE COURT: All right. They will be received.

. . . .

THE COURT: Any other evidence?

[State]: No other evidence at this time, Your Honor.

THE COURT: All right. Counsel, are you presenting evidence?

[Ashley's counsel]: Yes, Judge. But I would like to make a preliminary motion. I would move to dismiss the case, being that the State has failed to prove their prima facie case; specifically due to the inconsistencies in the officers' statements and also due to the fact that there was no evidence establishing that what was found was actually marijuana.

THE COURT: Overruled.

[Ashley's counsel]: Okay. And can I ask for a reasoning on that, Judge?

THE COURT: Because the Court finds that the State presented a prima facie case and your motion to dismiss for failure to state a prima facie case is overruled.

[Ashley's counsel]: Specifically, Judge, I am objecting — I'm sorry — to the State — the testimony of the State's witnesses subject to my motion to suppress.

THE COURT: Now, just a moment.

[Ashley's counsel]: Yes.

THE COURT: You just —

[Ashley's counsel]: I know.

THE COURT: — said no objection. That has been ruled on. You may not go back, Counsel.

[Ashley's counsel]: Okay.

THE COURT: You have passed the moment when that would have been an appropriate motion. You raised no objection. The evidence is presented. The State has rested. You — you appropriately made a motion to dismiss for failure to state a prima facie case. I have overruled it. The next step is, do you have evidence to present?

[Ashley's counsel]: I do.

THE COURT: You may proceed then.

Ashley presented her defense, which consisted of her testimony. Ashley denied that the marijuana was hers or that she had ever said it was hers. According to Ashley, she had said, "It's not mine." Ashley also testified that she had no knowledge there was marijuana in the vehicle until they were pulled

over and the driver told her. She said that she had only been in the car less than 2 minutes. She explained that the driver had pulled to the curb a couple of houses down from her house in order to pick up a compact disc and look for change to buy food.

On May 26, 2011, the court issued a written order adjudicating Ashley as a child under § 43-247(1). The court also set forth its findings of fact and conclusions of law "regarding the Motion to Suppress held on January 26, 2011." The findings reiterated the undisputed portions of the officers' testimony, and the court found that Ashley had admitted to the officers that the baggie of marijuana was hers. The court concluded that (1) the initial stop was based on a reasonable and articulable suspicion of criminal activity, (2) there was probable cause for the stop, (3) a rights advisory was not required as the child in interest was not in a custodial situation or under arrest, (4) the officers were conducting a voluntary search of the vehicle, and (5) the statements were spontaneous and were freely and voluntarily given.

The Court of Appeals affirmed in a memorandum opinion. The Court of Appeals reasoned that Ashley's trial counsel did not object at trial to the evidence that was the subject of her motion to suppress and thus failed to preserve the issue for appellate review. The Court of Appeals also concluded that the circumstantial evidence was sufficient for the trier of fact to conclude the substance seized was marijuana. We granted Ashley's petition for further review.

III. ASSIGNMENTS OF ERROR

Ashley asserted in her appellate brief that the juvenile court erred in denying her motion to suppress, because she was illegally seized without reasonable, articulable suspicion and the statements and evidence obtained were fruit of the poisonous tree. Ashley further asserted that the court erred in failing to suppress her statements to the officers, because she was in custody and was not advised of her *Miranda* rights. Finally, she asserted that the juvenile court erred in concluding there was sufficient evidence that the substance in question was marijuana.

Ashley asserts in her petition for further review that the Court of Appeals erred in (1) concluding that she failed to object at trial and thus preserve for appellate review the evidence that was the subject of the motion to suppress and (2) finding that the evidence in the record was sufficient to establish beyond a reasonable doubt that the substance in question was marijuana.

IV. STANDARD OF REVIEW

[1] A trial court's ruling on a motion to suppress based on the Fourth Amendment, apart from determinations of reasonable suspicion to conduct investigatory stops and probable cause to perform warrantless searches, is to be upheld on appeal unless its findings of fact are clearly erroneous.[1]

[2] The ultimate determinations of reasonable suspicion to conduct an investigatory stop and probable cause to perform a warrantless search are reviewed de novo, and findings of fact are reviewed for clear error, giving due weight to the inferences drawn from those facts by the trial judge.[2]

[3] When the State seeks to submit evidence as sufficiently attenuated from a previous Fourth Amendment violation, we review the trial court's findings of historical facts for clear error but review de novo the court's ultimate attenuation determination based on those facts.[3]

V. ANALYSIS

1. The Objection

The Court of Appeals determined that Ashley failed to timely object to the introduction of evidence at trial which was the subject of her previous motion to suppress. Therefore, Ashley had not preserved the issue for appellate review and the court did not address the underlying merits. We agree with Ashley that this was error. The record shows that Ashley made the necessary objection.

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[1] See *State v. Royer*, 276 Neb. 173, 753 N.W.2d 333 (2008).

[2] See *State v. Lee*, 265 Neb. 663, 658 N.W.2d 669 (2003).

[3] *State v. Gorup*, 279 Neb. 841, 782 N.W.2d 16 (2010).

[4-6] The Nebraska Evidence Rules control adduction of evidence at an adjudication hearing under the Nebraska Juvenile Code.[4] We have said that the failure to object to evidence at trial, even though the evidence was the subject of a previous motion to suppress, waives the objection, and a party will not be heard to complain of the alleged error on appeal.[5] Neb. Evid. R. 103, Neb. Rev. Stat. § 27-103 (Reissue 2008), provides that an error may not be predicated upon a ruling which admits evidence unless "a timely objection or motion to strike appears of record, stating the specific ground of objection, if a specific ground was not apparent from the context." Thus, an untimely renewal of an objection, even though the subject of a previous motion to suppress, will waive the objection.

[7] An objection to the admission of evidence is generally not timely unless it is made at the earliest opportunity after the ground for the objection becomes apparent.[6] Thus, an objection to testimony is not usually considered timely when the testimony has already been adduced without objection and where the grounds for the motion should have been apparent at the time of the testimony.[7] And, in *State v. Rodgers*,[8] and *State v. DiBaise*,[9] we said that an objection made at trial after the close of the State's case in chief fails to preserve the question of the admissibility of exhibits which were the subjects of previous motions to suppress. In both *Rodgers* and *DiBaise*, defense counsel stated during the State's case in chief that there was no objection to the introduction of the exhibits, but then tried to renew the motion to suppress those same exhibits after the close of the State's case.

However, we have excused an attorney's failure to object in circumstances where the need to object was not reasonably

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[4] *In re Interest of J.L.M. et al.*, 234 Neb. 381, 451 N.W.2d 377 (1990).

[5] *State v. Trotter*, 262 Neb. 443, 632 N.W.2d 325 (2001).

[6] *State v. Rodgers*, 237 Neb. 506, 446 N.W.2d 537 (1991).

[7] See *State v. Giessinger*, 235 Neb. 140, 454 N.W.2d 289 (1990).

[8] *State v. Rodgers, supra* note 6.

[9] *State v. DiBaise*, 232 Neb. 217, 440 N.W.2d 223 (1989).

apparent. In *State v. Giessinger*,[10] we determined that because of the confusing nature of the proceedings, we would address the defendant's alleged error despite counsel's failure to object at trial. Prior to the suppression hearing in *Giessinger*, the judge had told defense counsel it was the judge's usual practice to handle the motion to suppress and the trial "'collectively, at the same time.'"[11] This was incorrect insofar as the motion to suppress must be ruled on and finally determined before trial.[12] Counsel had made an objection to the disputed evidence during that portion of the proceedings relating to the motion to suppress. We concluded counsel may have failed to renew that objection "because of the confusion introduced into the proceedings by the county court judge's suggestion that the suppression hearing and the trial be combined."[13]

Because of the unique nature of the proceedings, the grounds for Ashley's objection were not apparent before the State concluded its case in chief. Cases such as *Rodgers* and *DiBaise*, which are relied upon by the State, are not dispositive.

First, Ashley's counsel was asked whether she had any objection to exhibit 3, the transcript of the hearing on the motion to suppress, almost immediately after Ashley's counsel concluded a discussion with the juvenile court regarding her request for specific findings on her motion to suppress. The admission of exhibit 3 was arguably necessary in order for the court to comply with Ashley's request for specific findings on her motion to suppress. Furthermore, we can find no case where we have deemed an objection waived when the objection was being discussed almost at the same moment as the alleged waiver of the objection.

Second, the January 26, 2011, adjudication hearing was postponed only because the State changed its mind and wanted to call witnesses. Given this history, it is unclear whether, at the March 25 continuation of the adjudication hearing,

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[10] *State v. Giessinger, supra* note 7.

[11] See *id.* at 143, 454 N.W.2d at 292.

[12] See *State v. Harms*, 233 Neb. 882, 449 N.W.2d 1 (1989).

[13] See *State v. Giessinger, supra* note 7, 235 Neb. at 144, 454 N.W.2d at 292.

Ashley's counsel could have expected that the entirety of the State's evidence would be a birth certificate and the transcript of the suppression hearing. Ashley's counsel was arguably taken by surprise that the State's case in chief began and ended almost instantaneously.

This is distinguishable from circumstances where defense counsel sits idly by while the State presents a more lengthy presentation of its case. We have never found an objection to an exhibit untimely when made within seconds of its being offered and received. Likewise, we have not found an objection to come too late because it was made after the State's case in chief, when the State's entire case in chief lasted a matter of seconds. Especially in a bench trial, the rules of evidence should not devolve into a game of "gotcha."

Lastly, the need to object to the transcript of the suppression hearing would not be apparent, because Ashley's objection to the officers' testimony is embedded within it. The evidence offered and received in other waiver cases was not the entire transcript of the suppression hearing.[14]

Not only is exhibit 3 a "transcript of the motion to suppress hearing," but that transcript contains counsel's express renewal of Ashley's objection to the officers' testimony. At the beginning of the adjudication hearing on March 25, 2011, when Ashley's counsel believed the parties were proceeding to a stipulated trial on the suppression hearing record, Ashley's counsel diligently renewed her objection to the evidence. If an exhibit implicitly and explicitly containing an objection is entered into evidence, then the objection itself has arguably been reasserted with the admission of the exhibit.

It was an abuse of discretion for the juvenile court to consider Ashley's objection untimely. Ashley moved to suppress the evidence, discussed her previous motion to suppress, and then stated she did not object to a transcript of the hearing on that motion. All parties and the juvenile court understood that Ashley objected to the disputed evidence contained within that objection. As soon as Ashley's counsel realized what had

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[14] *State v. Rodgers, supra* note 6; *State v. DiBaise, supra* note 9. See, also, e.g., *State v. Timmens*, 263 Neb. 622, 641 N.W.2d 383 (2002).

occurred, she renewed her motion to suppress. This was almost immediately after the admission of exhibit 3.

At the very least, the stop-start nature of these proceedings and the presentation of the exhibit as a "transcript of the motion to suppress hearing" rendered the need for an objection unapparent. Ashley's counsel objected to the officers' testimony at the earliest opportunity after the ground for the objection became apparent. The Court of Appeals erred in holding otherwise. We therefore address the merits of Ashley's motion to suppress.

2. The Stop

Ashley asserts that the stop of the vehicle was unconstitutional because the officers lacked a reasonable, articulable suspicion that the occupants were engaged in criminal activity. She asserts that Warren's subsequent observation of a suspicious odor, the driver's acquiescence to Wootton's request to search the vehicle, the marijuana found as a result of the search, and Ashley's statements when confronted with the marijuana were all obtained through exploitation of the illegal stop. We agree that the officers lacked reasonable suspicion for the stop and that the State has failed to prove the evidence obtained during the stop was sufficiently attenuated from the primary illegality to be "purged" of its unconstitutional "taint." Accordingly, the juvenile court erred in denying Ashley's motion to suppress.

(a) Reasonable Suspicion

[8-10] Even though the purpose of a stop is limited and the resulting detention quite brief, stopping a vehicle and detaining its occupants constitute a seizure within the meaning of the 4th and 14th Amendments.[15] An occupant of a vehicle ordinarily has a legitimate expectation to be free of unreasonable governmental intrusion so as to give the occupant standing to challenge the stop as violative of his or her Fourth Amendment rights.[16] Pursuant to the 4th and 14th

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[15] See *Delaware v. Prouse*, 440 U.S. 648, 99 S. Ct. 1391, 59 L. Ed. 2d 660 (1979).

[16] *State v. Giessinger, supra* note 7.

Amendments to the U.S. Constitution and article I, § 7, of the Nebraska Constitution, a law enforcement officer may legally conduct such an investigatory stop only when the officer has a reasonable suspicion based upon articulable facts that the person has been, is, or is about to be involved in criminal activity.[17]

[11,12] The police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion.[18] Generalized suspicions or unparticularized hunches that a person has been or is engaged in criminal activity do not suffice to justify a detention.[19] Reasonable suspicion therefore depends upon both the content of information possessed by police and its degree of reliability.[20]

Geographical proximity of a suspect to a recently perpetrated offense[21] and the number of people in that area[22] can be factors supporting reasonable suspicion. However, time of day and reports of crime in the area will not, in and of themselves, justify a *Terry* stop.[23] The U.S. Supreme Court has said that "presence in an area of expected criminal activity, standing alone, is not enough to support a reasonable, particularized suspicion that the person is committing a crime."[24]

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[17] See *In re Interest of Jabreco G.*, 12 Neb. App. 667, 683 N.W.2d 386 (2004). See, also, *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968).

[18] *Terry v. Ohio, supra* note 17.

[19] See *id.*

[20] See *State v. Ortiz*, 257 Neb. 784, 600 N.W.2d 805 (1999).

[21] See, e.g., *U.S. v. Goodrich*, 450 F.3d 552 (3d Cir. 2006); *U.S. v. Wimbush*, 337 F.3d 947 (7th Cir. 2003); *U.S. v. Brown*, 334 F.3d 1161 (D.C. Cir. 2003); *U.S. v. Brown*, 159 F.3d 147 (3d Cir. 1998); *U.S. v. Raino*, 980 F.2d 1148 (8th Cir. 1992).

[22] See, *U.S. v. Goodrich, supra* note 21; *U.S. v. Moore*, 817 F.2d 1105 (4th Cir. 1987).

[23] *State v. Maybin*, 27 Kan. App. 2d 189, 2 P.3d 179 (2000). See, also, *State v. Lee, supra* note 2.

[24] *Illinois v. Wardlow*, 528 U.S. 119, 124, 120 S. Ct. 673, 145 L. Ed. 2d 570 (2000). See, also, e.g., *State v. Eric K.*, 148 N.M. 469, 237 P.3d 771 (N.M. App. 2010).

Thus, in *M.M. v. State*,[25] the court found insufficient evidence to justify a stop after a caller reported a fight between a group of juveniles and the officers encountered four dishevelled juveniles in the area of the report. Similarly, in *U.S. v. Massenburg*,[26] the court concluded that the officers lacked reasonable suspicion when the stop was based on a report of possible gunshots fired in a high-crime area and the officers' observation of a group of four men alone four blocks from the reported shots. The court noted that the report provided no physical description of the perpetrators and that the only link between the report and the group of men was their general proximity to the alleged gunshots.

The court in *Massenburg* reasoned that a lone group of individuals present in a high-crime area and in the general vicinity of reported gunshots was a state of affairs simply "'too generic and susceptible to innocent explanation to satisfy the reasonable suspicion inquiry.'"[27] The court expressed concern about "'the way in which the Government attempts to spin . . . mundane acts into a web of deception.'"[28]

At the time of the stop at issue in this case, the officers were apparently aware only that someone in the area had heard fireworks. There is no evidence that the caller provided any description of the alleged perpetrators. There is no evidence that the caller knew where these fireworks were being set off. In other words, there is no evidence the caller indicated with any specificity from what direction the caller heard the noise of the fireworks or how loud it was. The officers did not indicate that they knew, in their experience, what the potential radius might be from the location of a caller hearing fireworks noise to the site where the fireworks are being set off.

Close to the house of the caller who reported hearing fireworks, the officers saw a vehicle legally parked alongside the

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[25] *M.M. v. State*, 72 So. 3d 328 (Fla. App. 2011).

[26] *U.S. v. Massenburg*, 654 F.3d 480 (4th Cir. 2011).

[27] *Id.* at 488, quoting *Illinois v. Wardlow, supra* note 24 (Stevens, J., concurring in part and in part dissenting; Souter, Ginsburg, and Breyer, JJ., join)).

[28] *Id.* at 489, quoting *U.S. v. Foster*, 634 F.3d 243 (4th Cir. 2011).

curb. Other vehicles were similarly parked. It was night, and the vehicle had its lights on. Unlike other vehicles along the street, the vehicle was occupied. But there was no evidence that the officers knew how long the occupants had been in the vehicle.

The officers observed no particular suspicious behavior from the occupants of the vehicle. There was no evidence that the officers had seen fireworks residue in or around the vehicle—or even in that general area. When the officers passed the vehicle, the occupants "looked" at them. The occupants then pulled onto the street and proceeded in a normal fashion.

Wootton explained they suspected the occupants of the vehicle because, "[w]ell, the lights on, sitting in the area." That is not enough. Intentionally or not, the State is doing nothing more than "'spin[ning] . . . mundane acts.'"[29] The demand for specificity in the information upon which police action is predicated is the central teaching of the U.S. Supreme Court's Fourth Amendment jurisprudence.[30] At the time of the stop, Wootton and Warren lacked even a minimal quantum of specific information that the occupants of the vehicle had been, were, or were about to be involved in criminal activity.

[13] While the State points to the fact that Warren thought he smelled marijuana, this was only after the vehicle was stopped. Finding the necessary quantum of individualized suspicion only after a stop occurs cannot justify the stop.[31] Because Wootton and Warren lacked reasonable suspicion to stop the vehicle, the stop was illegal, in violation of Ashley's Fourth Amendment rights.

(b) "Fruit of the Poisonous Tree"

[14] Evidence obtained as the direct or indirect "fruit" of an illegal search or seizure, "the poisonous tree," is inadmissible in a state prosecution and must be excluded.[32] To determine

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[29] *Id.*

[30] *Terry v. Ohio*, *supra* note 17.

[31] See *U.S. v. Yousif*, 308 F.3d 820 (8th Cir. 2002).

[32] See, e.g., *State v. Kelley*, 265 Neb. 563, 658 N.W.2d 279 (2003); *State v. Fitch*, 255 Neb. 108, 582 N.W.2d 342 (1998).

whether the evidence is a "fruit" of the illegal search or seizure, the question is not as simple as whether the evidence would have come to light but for the warrantless apprehension.[33] The question is whether the evidence has been come at by exploitation of the primary illegality or whether it has instead been come at by means sufficiently distinguishable to be purged of the primary taint.[34]

The juvenile court concluded that any taint of an illegal stop was purged by the driver's voluntary consent to search and the voluntary nature of Ashley's statement to the officers when confronted with the fruits of that search. When a consensual search is preceded by a Fourth Amendment violation, the prosecution must prove two things in order to avoid the exclusionary rule: (1) that the consent was voluntary and (2) that there was sufficient attenuation, or a break in the causal connection, between the illegal conduct and the consent to search.[35] The same two-part analysis is conducted for allegedly voluntary and spontaneous statements following a Fourth Amendment violation.[36]

When the State seeks to submit evidence as sufficiently attenuated from a previous Fourth Amendment violation, we review the trial court's findings of historical facts for clear error but review de novo the court's ultimate attenuation determination based on those facts.[37] We find, in our de novo review, that the driver's consent to search and Ashley's statement were not sufficiently attenuated from the primary violation so as to purge its taint.

[15,16] In addressing whether the connection between a prior illegality and challenged evidence has become so

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[33] *Brown v. Illinois*, 422 U.S. 590, 95 S. Ct. 2254, 45 L. Ed. 2d 416 (1975).

[34] See *Wong Sun v. United States*, 371 U.S. 471, 83 S. Ct. 407, 9 L. Ed. 2d 441 (1963).

[35] See *State v. Gorup, supra* note 3.

[36] See, *Brown v. Illinois, supra* note 33; *Kaupp v. Texas*, 538 U.S. 626, 123 S. Ct. 1843, 155 L. Ed. 2d 814 (2003); *U.S. v. Yousif, supra* note 31; *People v. Lewis*, 975 P.2d 160 (Colo. 1999); *State v. Towai*, 234 Or. App. 292, 228 P.3d 601 (2010); *U.S. v. Khamsouk*, 57 M.J. 282 (C.A.A.F. 2002).

[37] See *State v. Gorup, supra* note 3.

attenuated as to dissipate the taint, courts must take into account considerations relating to the exclusionary rule and the constitutional principles which it is designed to protect.[38] The relevant factors for attenuation will depend upon the facts of a particular case[39] but include (1) the proximity between the actual illegality and the evidence sought to be suppressed, (2) the presence of intervening factors, and (3) the flagrancy of the governmental misconduct involved in the case.[40]

[17] Consent to search given in very close temporal proximity to the official illegality is often a mere submission or resignation to police authority.[41] If only a short period of time has passed, a court is more likely to consider the consent or statement as a "poisonous fruit" of the illegal act.[42] The officers testified that they asked to search the vehicle as soon as they were done running the occupants' identification, which took 10 to 15 minutes. In total, the stop lasted approximately 25 minutes. The factor of temporal proximity weighs against attenuation and in favor of suppression of the evidence in this case.

[18] Intervening circumstances are intervening events of significance that render inapplicable the deterrence and judicial integrity purposes which justify excluding tainted evidence.[43] These can include representation of counsel, termination of illegal custody, and intervening lawful arrest.[44] In the case of allegedly voluntary statements, whether *Miranda* warnings were given is also a factor that may be considered with other evidence indicating that the defendant has acted independently

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[38] See *United States v. Ceccolini*, 435 U.S. 268, 98 S. Ct. 1054, 55 L. Ed. 2d 268 (1978).

[39] See *State v. Gorup*, 275 Neb. 280, 745 N.W.2d 912 (2008).

[40] See *Brown v. Illinois, supra* note 33.

[41] See *State v. Gorup, supra* note 3.

[42] See *id.*

[43] See *U.S. v. Washington*, 387 F.3d 1060 (9th Cir. 2004).

[44] See 6 Wayne R. LaFave, Search and Seizure, a Treatise on the Fourth Amendment § 11.4(b) (4th ed. 2004).

of the unlawful inducement.[45] Similarly, advisements of the right to refuse a request to search may be a relevant factor—although one of limited significance.[46] *Miranda* warnings and right-to-refuse advisements are not a cure-all and will not, by themselves, purge the taint.[47]

[19] In this case, there were no advisements which the State could argue made these acts independent of the initial illegality. Indeed, the State points to no intervening circumstances at all. Where a confession follows confrontation of the defendant with illegally seized evidence, we have repeatedly said there has been an "'"exploitation of that illegality."'"[48] "'This is because "the realization that the 'cat is out of the bag' plays a significant role in encouraging the suspect to speak."'"[49] There are no intervening circumstances attenuating the consent to search from the illegality of the stop in this case, and Ashley's statement when confronted with the marijuana was certainly not independent of the officers' finding it.

The third factor, purposeful and flagrant conduct, includes instances when the officer knew the conduct was likely unconstitutional or should have known the conduct was an obvious violation of the Fourth Amendment, but engaged in it nonetheless.[50] It also includes "'fishing expeditions'" conducted in the hope that "'"something might turn up."'"[51] Given the obvious dearth of particularized information pointing toward the occupants of the vehicle, this factor also weighs in favor of exclusion.

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[45] See, *U.S. v. Paradis*, 351 F.3d 21 (1st Cir. 2003); *U.S. v. Patzer*, 277 F.3d 1080 (9th Cir. 2002). See, also, *State v. Abdouch*, 230 Neb. 929, 434 N.W.2d 317 (1989).

[46] See, e.g., *U.S. v. Perry*, 437 F.3d 782 (8th Cir. 2006). See, also, *State v. Gorup, supra* note 3.

[47] See *State v. Abdouch, supra* note 45.

[48] See *id.* at 945, 434 N.W.2d at 327, quoting 4 Wayne R. LaFave, Search and Seizure, a Treatise on the Fourth Amendment § 11.4(c) (2d ed. 1987).

[49] *Id.*

[50] See *State v. Gorup, supra* note 3.

[51] See *id.* at 863, 782 N.W.2d at 33.

Even assuming that the consent to search and Ashley's statements met the constitutional standards for voluntariness under the Fifth Amendment, the Fourth Amendment standard that this evidence be purged of the taint of the illegality of the original stop has not been met. All the evidence derived from the officers' testimony was obtained through exploitation of the illegality of the stop made without reasonable, articulable suspicion. Therefore, the juvenile court erred in overruling Ashley's motion to suppress.

In a bench trial of a law action, including a criminal case tried without a jury, erroneous admission of evidence is not reversible error if other relevant evidence, admitted without objection or properly admitted over objection, sustains the trial court's factual findings necessary for the judgment or decision reviewed.[52] But in this case, the only evidence presented against Ashley was the evidence we now deem inadmissible. Accordingly, we reverse the Court of Appeals' decision affirming the adjudication and we remand the matter to that court with directions to remand the cause to the juvenile court with directions to vacate and dismiss.

VI. CONCLUSION

The juvenile court erred in denying Ashley's motion to suppress and in finding that she had waived her objection to the evidence at the adjudication hearing. The Court of Appeals erred in finding Ashley's objection was waived and in affirming the order of adjudication.

REVERSED AND REMANDED WITH DIRECTIONS.

CASSEL, J., not participating.

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[52] *State v. Lujano*, 251 Neb. 256, 557 N.W.2d 217 (1996).