

Kansas Troopers ‘Waged War on Motorists,’ Federal Judge Finds

The judge said the Highway Patrol had made a habit of wrongly questioning out-of-state drivers in hopes of turning up drugs.



By Mitch Smith

July 21, 2023

They called it the “Kansas two-step.”

When a mundane traffic stop was nearing its end, a state trooper would turn to leave. But after a couple of paces toward the squad car, the trooper would whirl around and go back to the window of the pulled-over driver, hoping to strike up a conversation and find enough reason to scour the car for drugs. Perhaps the driver would say something the trooper deemed suspicious, or perhaps the driver would just agree to a search.

But that two-step, which troopers used often against out-of-state drivers, was part of a “war on motorists” waged by the Kansas Highway Patrol in violation of the Fourth Amendment, a federal judge said in a blistering opinion on Friday.

“The war is basically a question of numbers: stop enough cars and you’re bound to discover drugs,” wrote Senior Judge Kathryn H. Vratil of the Federal District Court. “And what’s the harm if a few constitutional rights are trampled along the way?”

Judge Vratil, who was appointed by President George H.W. Bush, described in scathing terms what she said was the Highway Patrol’s practice of pulling over drivers with out-of-state license plates on Interstate 70, which transects hundreds of miles of Kansas prairie between Colorado and Missouri, both states where marijuana is legal, and of prolonging traffic stops in hopes of searching for contraband. Marijuana is illegal in Kansas.

Judge Vratil wrote that Kansas troopers had been trained to “consider the fact that a motorist is traveling to or from a ‘drug source’ or ‘drug destination’ state” in deciding whether they had probable cause to search a car for drugs. In her ruling on Friday, she ordered troopers to stop factoring that in when dealing with drivers on Interstate 70.

“Now that both states have legalized recreational marijuana, any traveler on I-70 between Colorado and Missouri — that is, anywhere on I-70 in Kansas, traveling in either direction — is by definition traveling both to and from a ‘drug source’ state,” the judge wrote.

Col. Erik Smith, the acting superintendent of the Highway Patrol, said in a statement on Saturday that “we are carefully reviewing the court’s decision and respect the judge’s conclusions and recommendations.” He said the agency “will continue its endeavor to ensure that our enforcement operations respect constitutional rights and comply with the law.”

A spokeswoman for Gov. Laura Kelly, a Democrat who recently appointed Colonel Smith to his position, did not respond to a request for comment on Friday.

Judge Vratil proposed, but did not immediately issue, an injunction that would require additional training for troopers and additional protections for drivers who agree to have their cars searched. Though it was not clear how many drivers experienced stops that the judge considered unconstitutional, she cited data suggesting that motorists from other states had been pulled over, and that their cars had been examined by drug-sniffing dogs, at far higher rates than Kansans.

Sharon Brett, the legal director of the American Civil Liberties Union of Kansas, whose lawyers brought the case on behalf of several drivers who said they had been victims of the two-step, said she was pleased that the judge had “stepped in to stop the department’s widespread misconduct.”

“Today’s decision,” she said in a statement, “validates that motorists’ constitutional rights cannot be cast aside under the guise of a ‘war on drugs.’”

Mitch Smith covers the Midwest and the Great Plains. Since joining The Times in 2014, he has written extensively about gun violence, oil pipelines, state-level politics and the national debate over police tactics. He is based in Chicago. [More about Mitch Smith](#)