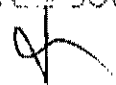


FILED

MAR 19 2007

FIFTH DISTRICT COURT
WASHINGTON COUNTY



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**IN THE FIFTH DISTRICT COURT
WASHINGTON COUNTY, STATE OF UTAH**

STATE OF UTAH,

Plaintiff,

vs.

WARREN STEED JEFFS,

Defendant.

**DEFENDANT'S MEMORANDUM IN
SUPPORT OF MOTION
TO SUPPRESS**

Case No. 061500526

Judge James L. Shumate

Defendant Warren Steed Jeffs, respectfully submits the following memorandum in support of his motion to suppress pursuant to Utah R. Crim. Pro. 12(d), and the Constitution of the United States and State of Utah.

STATEMENT OF FACTS

At approximately 9:00 p.m. on August 28, 2006, a Nevada Highway Patrol trooper stopped a Cadillac Escalade traveling northbound on the I-15 near Apex, Nevada. Defendant Jeffs was one of two passengers in the vehicle, which was driven by his brother. The trooper purported to stop the vehicle based on a traffic violation involving the failure to display a registration or license plate. However, a valid temporary Colorado registration permit was prominently displayed on the rear of the vehicle.

The driver provided the trooper with his license and the temporary registration permit which was in the name of his employer. The trooper questioned the driver about his travel plans and how he came into possession of his employer's vehicle. The driver explained that he was traveling to Hillsdale, Utah, and had borrowed the car from his employer who resided in Las Vegas to travel to California to visit family. They had spent a day in Las Vegas visiting friends. Based on the driver's nervousness and responses, the trooper reported that he became suspicious of possible criminal activity, so he began to question Defendant Jeffs about their travel plans. He stated that they were coming from Las Vegas and going to Denver. The trooper reported that Defendant Jeffs also appeared nervous. The trooper called for back-up and two troopers responded to the scene.

Upon the arrival of the back-up, the trooper returned the license and registration to the driver and began questioning him on whether the car contained weapons, marijuana, cocaine, methamphetamine or illicit currency. At approximately 9:30 p.m., the trooper obtained a written consent to search the car from the driver and directed the

passengers to exit the vehicle while the search was conducted. At some point after the search began, one of the troopers responding as back-up suspected that Defendant Jeffs was wanted by the FBI as a fugitive. He began questioning the passengers about their identity. Defendant Jeffs stated that he did not care to answer any questions.

The FBI eventually responded and affirmatively identified Jeffs as a wanted fugitive. It appears that a trooper placed the Jeffs in his squad car at about 10:45 p.m. and he transported to the FBI field office in Las Vegas. The FBI also impounded the vehicle and its contents. Certain religious documents were amongst the items seized. The FBI apparently provided copies of some of the seized religious documents to the State, which the State intends to introduce at trial in the instant matter. At approximately 4:00 a.m. on August 29, 2007, FBI agents interrogated Defendant Jeffs about his whereabouts and religious beliefs. Defendant Jeffs made statements in response to the questions.

ARGUMENT

A passenger has standing to seek suppression of evidence discovered in a vehicle as fruit of an unlawful traffic stop or detention. *United States v. Hernandez-Velasco*, slip op. 2006 WL 2129468, *3 (D. Utah 2006); see, *State v. Chism*, 107 P.3d 706 (Utah Ct. App. 2005); *State v. Johnson*, 805 P.2d 761 (Utah 1991). A traffic stop is a seizure within the purview of the Fourth Amendment and, therefore, must be based on reasonable and articulable suspicion that the driver has committed a traffic violation. *Chism*, 107 P.3d at 709-10; *State v. Lopez*, 873 P.2d 1127, 1131-32 (Utah 1994). The state must establish that a traffic stop was justified at its inception, meaning that the stop was incident to a traffic violation observed by the officer. *Lopez*, 873 P.2d at 1132.

Assuming that the traffic stop is justified, the state must then establish that the officer's actions were reasonably related in scope to the traffic violation. Id.

The traffic stop in the instant case ran afoul of the Fourth Amendment because no reasonable suspicion of a traffic violation can be articulated. A valid temporary registration permit was prominently displayed on the rear of the vehicle. As such, the detention of the defendant was illegal.

Even if the initial traffic stop could be justified, the trooper's actions exceeded the scope of the stop and it evolved into an unreasonable detention of Defendant Jeffs. When an officer's inquisitiveness regarding the validity of a temporary registration sticker is dispelled by a closer examination of the registration sticker, the purpose of the stop is satisfied *United States v. McSwain*, 29 F.3d 558, 561-62 (10th Cir. 1994); see also *Chism*, 107 P.3d at 712-13 n. 9 (listing cases holding that officer's observation of valid temporary tag dispels reasonable suspicion of registration violation). The Utah Highway Patrol trooper in *McSwain* stopped the defendant's car because he believed that the temporary Colorado registration tag was invalid. Before making contact with the driver, the officer noticed that the tag was valid and had not expired. The trooper obtained consent to search the car and discovered cocaine. The Tenth Circuit ruled that the trooper exceeded the scope of the justification for the stop when he requested that the driver produce a license and registration; inquired into the driver's travel plans; and requested permission to search for contraband. Id. at 560-62.

Likewise, the Nevada Highway Patrol trooper in the instant case undoubtedly saw that the temporary Colorado registration tag on the Escalade was valid and didn't expire until September 14, 2006. Upon observing the validity of the tag, the justification

for stopping the vehicle was satisfied and the occupants should have been free to go. The trooper, however, exceeded the scope of the stop by questioning the driver.

The mere fact that the driver or the defendant exhibited nervous behavior does not justify elevating the traffic stop into an investigative detention for some other reasonably suspected criminal activity. *United States v. Brown*, 405 F. Supp. 2d 1291, 1298 (D. Utah 2005)(listing cases criticizing suspicion based on nervous behavior). In *Brown*, the trooper grounded his suspicion on the nervous behavior of the passengers who sat still, avoided eye contact, and paused before answering questions. *Id.* The *Brown* Court noted that reliance on the nervous behavior of people confronted by law enforcement officers is "nothing more than an 'inchoate suspicion or hunch.'" *Id.* [citations omitted]. The trooper in the instant case had no further justification for prolonging the detention beyond establishing the validity of the temporary registration tag.

Physical evidence or verbal statements resulting from an illegal detention must be suppressed unless the government bears the heavy burden of showing that the taint of the illegal detention is sufficiently attenuated. *Wong Sun v. United States*, 371 U.S. 471, 487-88 (1963). A traffic stop does not "de-escalate" into a consensual encounter unless the totality of circumstances shows that a reasonable person would feel free to end the encounter and drive away. *State v. Hansen*, 63 P.3d 650, 661-62 (Utah 2002).

After the trooper observed the valid temporary registration tag, the police encounter in the instant case continued to escalate. The trooper who initially stopped the vehicle retained control of the driver's license and the registration document until two more troopers arrived. Only upon the arrival of the back-up units did the trooper

return the documents and begin interrogating the driver on whether contraband was in the car. No mention was made of any registration violation. Under these circumstances, a reasonable person would believe that the encounter was escalating rather than de-escalating. See, *Id.* As such, the evidence seized from the vehicle was tainted by the illegality of the initial traffic stop and the unjustified expansion of the stop beyond its original purpose. The FBI interrogated Defendant Jeffs at about 4:00 a.m., on August 29, 2006. The voluntariness of this interrogation is also dubious given the violation of the defendant's Fourth Amendment rights.

In conclusion, no reasonable suspicion justified the initial stop of the vehicle. No reasonable suspicion justified the questioning of the driver. No attenuation removed the taint of the illegal detention. Accordingly, the physical evidence and verbal statements should be suppressed.

DATED this 13th day of March, 2007.

BUGDEN & ISAACSON, L.L.C.

By: 
WALTER F. BUGDEN, JR.
TARA L. ISAACSON

WRIGHT, JUDD & WINCKLER
RICHARD A. WRIGHT

Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that, on the 15 day of March, 2007, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Brock R. Belnap
Washington County Attorney
178 North 200 East
St. George, UT 84770

- HAND DELIVERY
- U.S. MAIL
- OVERNIGHT MAIL
- FACSIMILE:

