

FILED
FIFTH JUDICIAL DISTRICT COURT
2007 JUN 29 PM 2:42

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF UTAH
WASHINGTON COUNTY, ST. GEORGE DEPARTMENT

STATE OF UTAH,

Plaintiff,

vs.

WARREN STEED JEFFS,

Defendant.

FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER ON MOTION
TO SUPPRESS

Case No. 061500526

Judge James L. Shumate

On June 13, 2007, the Court took testimony and heard argument regarding defendant's Motion to Suppress. Defendant was present and represented by Richard A. Wright, Walter F. Bugden, Jr., and Tara L. Isaacson; the Washington County Attorney's Office was represented by Brock R. Belnap and Ryan J. Shaum. At the hearing the Court made certain findings of fact and ordered additional argument from the parties on aspects of Nevada law. Having fully considered the testimony, the original memoranda, and the supplemental material, the Court makes the following:

FINDINGS OF FACT

1. On August 28, 2006, at approximately 9:00 p.m., Nevada Highway Patrol Trooper Eddie Dutchover ("Dutchover") was on duty on the northbound lanes of I-15 near Apex, Nevada. Dutchover is a member of the Criminal Interdiction Unit, trained to be on the alert for various signs of criminality on the highways, particularly the transportation of narcotics, and was

patrolling what was considered a "high volume" traffic stop area.

2. Dutchover observed a 2007 Cadillac Escalade with no permanent license plate and a temporary Colorado registration tag. The Escalade was not traveling above the posted speed limit of 75 miles per hour. It was then dark and Dutchover was unable to see the temporary tag clearly enough to determine if it was valid. Dutchover turned on the lights of his marked Highway Patrol vehicle and stopped the Escalade at approximately 9:04 p.m.

3. On approaching the stopped car, he was able to see that the temporary tag displayed "9-14-06," meaning it did not expire until September 14, 2006, but the numbers on the lower part of the permit were partially obscured by the license bracket and not readable except upon close examination. As shown in the photographs submitted to the Court during the hearing, the temporary tag had to be examined closely to tell what the printed numbers and letters were. They could not be discerned from a moving vehicle, even when immediately following the Escalade.

4. Dutchover approached the vehicle, told the driver the reason for the stop was an obstructed temporary license, and asked the driver for his operator's license, vehicle registration, and proof of insurance. The trooper noticed that driver's right hand was shaking as he produced the required documents. Dutchover also noted a radar detector and global positioning system, both of which items are legal to possess in Nevada, but which the trooper, from past experience and training, has found are often employed in criminal activities, such as the transport of illegal drugs. Additionally, he noted the vehicle's heavily tinted windows. Dutchover observed the two other occupants of the Escalade, a man sitting in the row behind the driver and a woman in the row behind that, a seating arrangement that seemed peculiar.

5. The driver's license identified him as Isaac Jeffs ("Isaac"), and his home was in

Hildale, Utah, but the vehicle registration was in the name of a company and one John Wayment ("Wayment") of West Des Moines, Iowa. Dutchover found this unusual in light of the Colorado temporary registration, and he asked Isaac if he would step out of the vehicle.

6. Trooper Dutchover attempted to radio the highway patrol dispatch to run the vehicle identification number provided, but was informed the system server was not working. The CAD log reflects a message at about 9:16 p.m. confirming the server was down. Trooper Dutchover did not attempt to run the driver's license or VIN again and did not thereafter inquire if the server was working. The trooper did testify that in his experience the server problem usually lasted about two hours. In this setting the Court cannot make any findings as to when the server was again available because Trooper Dutchover never made inquiry after 9:16. By 10:00 the focus of the troopers' investigation had turned to the identity of Mr. Warren Steed Jeffs.

7. The trooper then spoke again with Isaac, asking him out of earshot of the passengers about Mr. Wayment's ownership of the car and the group's itinerary. Isaac stated that the group had gone to San Francisco to see the ocean and had visited friends in Modesto, California and the party was returning to Hildale, Utah. He further explained that Wayment was his employer and currently lived in Las Vegas. Wayment, Isaac said, had lent the Escalade to the travelers as a favor because it was a roomier vehicle for such travel. Trooper Dutchover thought the explanation strange, given that this meant Wayment had delivered the car in Hildale, Utah and would have had to then arrange transportation for the return trip to Las Vegas. Trooper Dutchover did not know where Hildale, Utah was located at the time of the stop, and none of his conversations with the occupants of the Escalade enlightened him as to the geography involved.

(In fact, Hildale, Utah is approximately 179 miles north and east of the location of the stop at

mile marker 60 of I-15 in Nevada. Depending on its location in the Las Vegas area the Wayment home could be well over 200 miles from Hildale, Utah. Trooper Dutchover was aware that St. George, Utah is the closest Utah city to mile marker 60, and that is still at least 117 miles north and east of Las Vegas.) Trooper Dutchover noted Isaac's lack of eye contact, his unusual nervousness, and his apparent evasiveness in the way that he carefully and haltingly fashioned his responses to Trooper Dutchover's questions.

8. Trooper Dutchover also spoke to the male passenger, later identified as Warren Steed Jeffs, the defendant, who was still inside the Escalade. The female passenger, later identified as Naomi Jeffs, listened to the conversation and agreed with defendant's responses. The defendant stared straight ahead and rapidly ate a salad as he responded to Trooper Dutchover's questions. The defendant's demeanor and lack of eye contact seemed suspicious to the trooper, as did his account of the group's plans and previous movements; contrary to Isaac's assertions, defendant stated that the party was on the way to Denver, Colorado and had spent the previous night at the Courtyard Marriot in Las Vegas. At one point defendant appeared so visibly nervous that Dutchover told him he (the defendant) was making *him* (the trooper) nervous.

9. The trooper inquired of Isaac if he had any contraband, weapons, or large sums of money in the vehicle and Isaac denied each item in turn. Isaac gestured to the vehicle and indicated that Dutchover could "take a look." Dutchover asked if Isaac would consent to a search of the vehicle and Isaac said he would, signing, dating and noting the time on consent form at 9:30.

10. Dutchover had previously radioed for backup, at about 9:22, and a car containing two Highway Patrol officers arrived shortly thereafter. The officers remained in their vehicle some

distance away, until after the consent to search of the Escalade had been given by Isaac Jeffs in writing..

11. The passengers were asked to exit the vehicle for the search, which commenced almost immediately after Isaac had executed the form. The search uncovered tools, a good deal of luggage, a CB radio, a fairly large amount of money, wigs, a number of cell phones, and letters to "WSJ" or "the President." Other religious writings were also uncovered.

12. These circumstances led one of the troopers to suspect they had stopped Warren Steed Jeffs, who at that time was on the FBI's "Ten Most Wanted List." Accordingly, more police officers and agents of FBI were called and the troopers on the scene became more interested in the identities of the passengers. Defendant refused to give his name and also denied when asked directly that his name was Warren Jeffs. The request of Mr. Warren Jeffs for identification was made within the first 60 minutes of the traffic stop.

13. The stop continued while the troopers on the scene awaited the arrival of other Highway Patrol officers and agents of the FBI. Though the timeline is not precisely clear, it appears from the CAD log that Dutchover's sergeant was in progress to the scene at 9:52; because the FBI agents had to come from Las Vegas, they could not have arrived until some time after 10:00.

14. Eventually, FBI Special Agent Hendricks asked defendant if he was Warren Steed Jeffs, and defendant admitted that he was. About 10:45, defendant was handcuffed and transported in a police vehicle to the FBI office, where he was interrogated into the early morning. The FBI impounded the Escalade and its contents.

From the foregoing Findings of Fact the Court now enters the following:

CONCLUSIONS OF LAW

1. The Defense argues that the legal justification for Trooper Dutchover's stop of the 2007 Cadillac Escalade was based upon a faulty interpretation and application of the relevant Nevada statute. The pertinent portions of the Nevada Revised Statutes are as follows:

Nev. Rev. Stat. Ann. § 482.545 (2007)

482.545. Certain unlawful acts.

It is unlawful for any person to commit any of the following acts:

1. To operate, or for the owner thereof knowingly to permit the operation of, upon a highway any motor vehicle, trailer or semitrailer which is not registered or which does not have attached thereto and displayed thereon the number of plate or plates assigned thereto by the Department for the current period of registration or calendar year, subject to the exemption allowed in NRS 482.316 to 482.3175, inclusive, 482.320 to 482.363, inclusive, 482.385 to 482.3965, inclusive, and 482.420.

Nev. Rev. Stat. Ann. § 482.275 (2007)

482.275. License plates: Display.

4. Every license plate must at all times be securely fastened to the vehicle to which it is assigned so as to prevent the plate from swinging and at a height not less than 12 inches from the ground, measuring from the bottom of such plate, in a place and position to be clearly visible, and must be maintained free from foreign materials and in a condition to be clearly legible.

The Defense argues that the Nevada code only applies to license plates issued by the State of Nevada and, since the temporary registration on the Escalade is a product of the State of Colorado, a Nevada trooper cannot insist that the temporary tag be "clearly visible" and "in a condition to be clearly legible." The Defense has alleged that the identifying number of this temporary tag is clearly shown in Exhibit #1 from the hearing as "431644D." This Court has not found that fact. The Court has found that the frame for the permanent license plate obscured the number so that only a close observation, not possible during night time hours in a moving vehicle at 75 miles per hour, could

discern the actual number and confirm that the tag number was not, for instance, "A316AAD." No authority has been supplied to this Court for the Defense theory that a Nevada trooper can only investigate a Nevada registration. The more sensible reading of the statute and the facts before this Court establish that where a temporary registration tag is obscured, a Nevada trooper has legal cause to stop the vehicle and investigate the registration regardless of the origin of that registration.

2. Because the initial stop has been found to be valid, the next concern of the Court is to examine the duration of the detention to determine if it was unreasonable. As counsel for both parties have pointed out, such a determination is highly fact-sensitive. Trooper Dutchover had the right to stop the Escalade to determine if it was properly registered under the temporary tag. Once the stop was made the trooper could examine the tag on the rear of the Escalade and compare it to the registration documents inside the vehicle. The trooper also had the right to examine the status of the driver's license held by Mr. Isaac Jeffs, the driver. Trooper Dutchover's efforts and the process he followed could have resulted in a very brief detention, were it not for the continuing discovery of questionable circumstances regarding this vehicle, the possession of this vehicle by these parties, the explanation of the travel plans of these parties, the behavior of these parties while being questioned, the physical appearance of the vehicle and its contents.

3. The fact that the computer system used by the Nevada Highway Patrol was inoperable at the time of the stop is only one of the factors to be examined in this analysis, but it is not dispositive. Counsel for the State has supplied a Maryland case that holds that a non-functioning computer system justifies an extension of the duration of a traffic stop. However, the factual setting of that decision, *Byndloss v. State*, 893 A.2d 1119 (Md. 2006) is distinguishable from the facts here because the Maryland officer was without the computer-supplied data for only 30 minutes before the

intervening fact of a canine response to the suspect vehicle took the officer's attention into another path. Neither side has supplied any Nevada authority on this issue, and this Court is unaware of any Utah authority that might supply guidance in this review. The Maryland case is helpful, but a common-sense reaction to a perpetual computer failure could not extend a traffic stop indefinitely, and the factual distinctions between the matter at hand and *Byndloss* are substantial. A constitutional standard of reasonableness, therefore, must still be applied.

4. There is a useful feature of Nevada law that gives this Court meaningful assistance. Both the State and the defense have directed this Court to a Nevada Statute, NRS 171.123, and two Nevada cases, *State v. McKellips*, 49 P.3d 655 (Nevada, 2002) and *Barrios-Lomeli v. State*, 961 P.2d 750 (Nevada, 1997). The two cases cited are only marginally useful because of the great variance between their facts and the facts here. However, the statute is highly probative. It reads as follows:

Nev. Rev. Stat. Ann. § 171.123 (2007)

171.123. Temporary detention by peace officer of person suspected of criminal behavior or of violating conditions of parole or probation: Limitations.

1. Any peace officer may detain any person whom the officer encounters under circumstances which reasonably indicate that the person has committed, is committing or is about to commit a crime.
2. Any peace officer may detain any person the officer encounters under circumstances which reasonably indicate that the person has violated or is violating the conditions of his parole or probation.
3. The officer may detain the person pursuant to this section only to ascertain his identity and the suspicious circumstances surrounding his presence abroad. Any person so detained shall identify himself, but may not be compelled to answer any other inquiry of any peace officer.
4. A person must not be detained longer than is reasonably necessary to effect the purposes of this section, and in no event longer than 60 minutes. The detention must not extend beyond the place or the immediate vicinity of the place where the detention was first effected, unless the person is arrested.

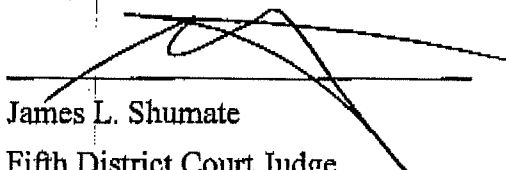
This specific statute has been upheld by the United States Supreme Court in the case of *Hiibel v. Sixth Judicial District Court of Nevada*, 542 U.S. 177 (2004). Amazingly, neither party to this litigation cited the *Hiibel* case to this Court. Under the statute and the U.S. Supreme Court's reasoning in *Hiibel*, Trooper Dutchover had legal justification in stopping the Escalade for the licence tag violation. He also had legal justification to ask the identity of the driver, Mr. Isaac Jeffs. The inconsistency of the stories between Isaac and Warren, and the odd behavior of Warren under questioning, justified the trooper's inquiry as to Warren Jeffs' identity. When Trooper Dutchover's attempt to ascertain Warren Jeffs' identity was rebuffed, the defendant was subject to immediate arrest under Nevada law upheld by the United States Supreme Court. At that point Mr. Warren Jeffs was in a state of de facto arrest under circumstances approved by the highest Court in this nation.

ORDER

The Motion to Suppress is Overruled and Denied.

DATED this 29 day of June, 2007.

BY THE COURT:


James L. Shumate
Fifth District Court Judge

CERTIFICATE OF MAILING/DELIVERY

I hereby certify that on this 29 day of June, 2007, I provided a true and correct copy of the foregoing **RULING** to each of the parties/attorneys named below by placing a copy in such attorney's file in the Clerk's Office at the Fifth District Courthouse in St. George, Utah and/or by placing a copy in the United States Mail, first-class postage prepaid, and addressed as follows:

Brock R. Belnap, Esq.
Ryan J. Shaum, Esq.
Washington County Attorney
178 North 200 East
St. George, Utah 84770

Walter F. Bugden, Jr., Esq.
Tara L. Isaacson, Esq.
BUGDEN AND ISAACSON, LLC
445 East 200 South, Suite 150
Salt Lake City, Utah 84111

Richard A. Wright, Esq.
WRIGHT, JUDD & WINKLER
Bank of America Plaza
300 South Fourth Street, Suite 701

Las Vegas, Nevada 89101

David C. Reymann, Esq.

Jeffrey J. Hunt, Esq.

PARR WADDOUPS BROWN GEE & LOVELESS

Attorney for Media Intervenors

185 South State Street, Suite 1300

Salt Lake City, Utah 84111



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