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FIFTH JUDICIAL DISTRICT COURT
WASHINGTON COUNTY, STATE OF UTAH

STATE OF UTAH,
Plaintiff,

vs.

WARREN STEED JEFFS,
Defendant.

STATE'S MEMORANDUM
OPPOSING MOTION TO SUPPRESS

Criminal No. 061500526

Judge James L. Shumate

The Court should deny defendant's Motion to Suppress because Nevada Highway Patrol Trooper Eddie Dutchover's stop of the red Cadillac Escalade was lawful from its inception and the suspicious circumstances encountered by Trooper Dutchover increased rather than dissipated during the course of the stop. Moreover, due to the computer malfunction, additional questioning was permissible even without additional reasonable suspicion. Consequently, Trooper Dutchover's detention of the Escalade and its passengers was appropriate under both federal and Nevada law.

1. Upon Stopping the Escalade, Trooper Dutchover Immediately Encountered Suspicious Circumstances that Justified Further Detention and Investigation

The Court has already found that Trooper Dutchover engaged in a valid initial traffic

stop. Suppression Hrg. Transcr. 103:8-13 (June 13, 2007). Under federal and Nevada law, an officer may extend the scope of a traffic stop if he notices additional suspicious factors that are particularized and objective. *United States v. Murillo*, 255 F.3d 1169, 1174 (9th Cir.2001); see also *United States v. Mayo*, 394 F.3d 1271, 1276 (9th Cir.2005) (The period of detention was permissibly extended because new grounds for suspicion of criminal activity, based upon specific, articulable facts, continued to unfold.).

In this case, upon approaching the vehicle to check for license and registration, Trooper Dutchover immediately encountered additional suspicious circumstances: the vehicle was registered in Colorado (Suppression Hrg. Transcr. 16:15 (June 13, 2007)); the registered owner's address was Des Moines, Iowa (*Id.* at 12:11); none of the occupants was the Escalade's registered owner (*Id.* at 22:15-20); the driver gave an unusual story about how he obtained the vehicle (*Id.* at 22:24-23:6); the occupants told conflicting stories regarding their travel plans and activities (*Id.* at 19:21-20:17, *Id.* at 25:15-17); the passengers occupied unusual seating arrangements (*Id.* at 13:5-14); the driver was unusually nervous (*Id.* at 11:17); the driver had delayed responses to questions that would ordinarily require no deliberative thought (*Id.* at 23:8-9); and the occupants did not engage in appropriate eye contact. *Id.* at 23:7-8, 24:19-20.

In addition, Trooper Dutchover testified that in light of his experience as an interdiction officer, he suspected that the vehicle and its occupants may have been engaged in transporting drugs, cash, or other criminal activity. *Id.* at 26:17-27:3. The Trooper's suspicions were heightened by the combination of heavily tinted windows, a GPS device, radar detector, and multiple cell phones. *Id.* at 13:15-14:2. While these items may be innocently possessed and

commonly used, their presence in combination with the occupant's conduct and inconsistent statements objectively raised suspicion of criminal activity.

For example, Isaac Jeffs explained that his "boss" had driven the brand new Cadillac from Las Vegas to Hildale, Utah so that the occupants could use the vehicle for their travel. *Id.* at 22:24-23:1-2. The boss had then returned to Nevada with someone else. *Id.* at 23:6. Thus, an apparent Nevada boss with an Iowa address gave a brand new Colorado-registered Escalade to an employee in Utah to go on a trip. Trooper Dutchover testified that in his experience with drug interdiction, drug traffickers will often use "blind mules" to transport drugs or cash so that they can claim to be ignorant because they do not own the vehicle. *Id.* at 67:22-68:8. Trooper Dutchover also noted that the interior condition of the vehicle and large amount of luggage seemed excessive based on the occupants' description of their travels. *Id.* at 25:12-23.

These circumstances aroused within Trooper Dutchover an objectively reasonable suspicion of criminal activity. Under *Terry v. Ohio*, "where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot, the officer may briefly stop the suspicious person and make 'reasonable inquiries' aimed at confirming or dispelling his suspicions." *Minnesota v. Dickerson*, 508 U.S. 366, 373 (1993) (quoting *Terry v. Ohio*, 392 U.S. 1, 30 (1968)). Under federal law, there is no specific limit to how long the detention may be extended to confirm or dispel suspicious circumstances of criminal activity. *United States v. Sharpe*, 470 U.S. 675, 685 (1985). "An investigative stop is not subject to strict time limitations as long as the officer is pursuing the investigation in a diligent and reasonable manner." *Haynie v. County of Los Angeles*, 339 F.3d 1071, 1076 (9th

Cir.2003) (citing *Sharpe*, 470 U.S. at 686-87).

The Supreme Court in *Sharpe* gave the following guidance for considering whether an investigative detention is impermissibly extended:

In assessing whether a detention is too long in duration to be justified as an investigative stop, we consider it appropriate to examine whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly, during which time it was necessary to detain the defendant. A court in making this assessment should take care to consider whether the police are acting in a swiftly developing situation, and in such cases the court should not indulge in unrealistic second-guessing. A creative judge engaged in post hoc evaluation of police conduct can almost always imagine some alternative means by which the objectives of the police might have been accomplished. But the fact that the protection of the public might, in the abstract, have been accomplished by less intrusive means does not, itself, render the search unreasonable. The question is not simply whether some other alternative was available, but whether the police acted unreasonably in failing to recognize or to pursue it.

Sharpe, 470 U.S. at 686-87 (internal citation and quotation marks omitted).

Trooper Dutchover pursued his investigation in a diligent and reasonable manner. He took steps to dispel his suspicions by asking questions and making observations designed to determine whether the occupants were engaged in innocent travel or suspicious activity. However, rather than dispel the suspicions, the occupants' responses increased Trooper Dutchover's suspicions that criminal activity was afoot. As a result, he was entitled to continue the stop to dispel objectively reasonable concerns of suspicious activity. *See United States v. Baron*, 94 F.3d 1312, 1319 (9th Cir. 1996) (holding that the totality of factors must be considered when determining whether reasonable justification for continued detention exists); *United States v. Perez*, 37 F.3d 510, 513 (9th Cir. 1994) (holding that an officer may broaden his or her line of questioning such that it extends the duration of the traffic stop if he or she notices additional

suspicious factors, so long as those factors are "particularized" and "objective."); *United States v. Rojas-Millan*, 234 F.3d 464 (9th Cir. 2000) (holding that detention of suspect after the resolution of traffic violation was justified because of continued reasonable suspicion of illegal activity); *United States v. Baron*, 94 F.3d 1312, 1319 (9th Cir. 1996) (holding that Arizona Department of Public Safety officer, during a traffic stop, was justified in broadening his line of questioning based on the following particularized and objective factors: (1) the vehicle did not belong to the driver; (2) the driver could not name the registered owner; (3) the driver was traveling interstate under circumstances which sounded suspicious because of the apparent inconsistencies in his stories; (4) the inside of the vehicle looked too clean and contained no personal belongings; (5) there was an overpowering cherry smell coming from inside the car with no visible source; and (6) the driver appeared nervous when handing the officer his identification.); *United States v. Garcia*, 139 Fed.Appx. 887, 889 (9th Cir. 2005) (holding that an NHP trooper, during a traffic stop, acted reasonably and "was justified in expanding the scope of his inquiry and continuing the detention because (1) defendant was nervous; (2) [the trooper] detected an 'overwhelming' odor from the multiple air fresheners in the vehicle, which could suggest illicit drug activity was afoot; (3) defendant was engaged in an unusual long-distance, one-day turnaround drive; (4) defendant had a California driver's license but the vehicle had Illinois plates; and (5) the vehicle was registered to an absent third party.").

However, the Nevada state code imposes a sixty-minute limit on investigatory detentions. Nev. Rev. Stat. § 171.123 (1995). Any detention that exceeds sixty minutes must be supported by probable cause. *State v. McKellips*, 49 P.3d 655 (Nev. 2002).

In this case, Trooper Dutchover and his fellow officers developed probable cause that fugitive Warren Jeffs was a passenger in the Escalade well within sixty minutes of the original stop. The traffic stop began at about 9:04 p.m. Suppression Hrg. Transcr. 29:17 (June 13, 2007). Trooper Dutchover testified that he received consent from Isaac Jeffs to search the vehicle at about 9:30 p.m. *Id.* at 29:15. Within minutes of starting that search, Trooper Dutchover and back-up officers observed letters addressed to "WSJ" and "The President" and realized that the occupants may have some connection to fugitive Warren Jeffs. *Id.* at 35:17-24. Trooper Dutchover testified that before an hour had expired, he asked the defendant if he were Warren Jeffs and the defendant refused to answer. *Id.* at 37:1-6. Thus, by the time Nevada's sixty minute limit on investigatory stops expired, the continued detention of the defendant was supported not only by reasonable suspicion of criminal activity, but by probable cause that defendant was in fact the fugitive Warren Jeffs.

2. The Computer Malfunction Extended the Stop Even Without Additional Reasonable Suspicion

Trooper Dutchover testified that he was unable to run a drivers license and registration check because dispatch informed him that the computer system was down. *Id.* at 18:2-4. The Supreme Court, the Ninth Circuit, and the courts of Nevada have not directly addressed whether the unavailability of computer resources justifies the extension of a traffic stop.

However, in *Byndloss v. State*, 893 A.2d 1119, 1123 (Md. 2006), Maryland's highest court held that a malfunctioning computer system that prevented an officer from confirming or dispelling doubts about the legal registration and ownership of a vehicle justified the extension of

the duration of a traffic stop. In that case, the court refused to suppress evidence found when a drug dog arrived at the scene after thirty minutes and hit on cocaine and marijuana in the trunk of the car. The defendant argued his thirty-minute detention before the arrival of the drug dog exceeded the reasonable duration of the traffic stop, and was not supported by additional articulable suspicion. The Maryland court looked to the Supreme Court's ruling in *Sharpe* and determined that the officer had diligently pursued a means of investigation that was likely to confirm or dispel suspicions quickly regarding the license and registration, during which it was necessary to detain the defendant. *Id.* at 1137. Since the length of the traffic stop was extended by the computer malfunction and not by the officer's lack of diligence, the drug dog's alert did not exceed the scope of the original stop and did not require suppression. *Id.* at 1137 ("The initial stop [for concealed license plate] was not concluded at the time the K-9 dog alerted to the presence of narcotics.").

In this case, Trooper Dutchover's purpose for the traffic stop was to investigate a license plate violation. Suppression Hrg. Trascr. 8:22-9:3. Trooper Dutchover diligently sought to confirm the validity of the driver's license and registration, which is an expected part of a traffic stop. *Berkemer v. McCarty*, 468 U.S. 420, 437 (1984). Due to the malfunctioning computer system, the length of the stop was extended as Trooper Dutchover attempted to determine the validity of the driver's license and registration by questioning the occupants—which in turn lead to increasing suspicions of criminal activity.

According to the Supreme Court, "mere police questioning does not constitute a seizure" unless it prolongs the detention of the individual, and thus no reasonable suspicion is required to

justify questioning that does not prolong the stop. *Muehler v. Mena*, 544 U.S. 93, 101 (2005). The Ninth Circuit acknowledges this point, holding that when an “officer’s questioning did not prolong the stop, we are compelled to hold that the expanded questioning need not have been supported by separate reasonable suspicion.” *United States v. Mendez*, 476 F.3d 1077, 1081 (9th Cir. 2007).

Because the duration of the stop was extended due to a computer malfunction and not through a lack of diligence by Trooper Dutchover, his questioning of the vehicle’s occupants would have been entirely permissible even without additional reasonable suspicion. However, as detailed in the previous section, Trooper Dutchover encountered independent suspicious circumstances that would have justified prolonging the detention without regard to the malfunctioning computer. Consequently, Trooper Dutchover’s detention of the occupants was entirely appropriate both because 1) the malfunctioning computer rather than the trooper’s questioning extended the length of the stop and 2) because Trooper Dutchover had independent reasonable suspicion which he was entitled to confirm or dispel in any event.

3. There is no “Fruit of the Poisonous Tree” for Post-Arrest Statements

Defendant asserts that his post-arrest statements to FBI agents and other investigating officers should be suppressed as “fruit of the poisonous” tree. Because the traffic stop was legally authorized and violated no rights of the defendant, this argument is moot.

However, even if the traffic stop were constitutionally flawed, the defendant’s arrest on a valid warrant was a subsequent intervening Fourth Amendment event and any potential flaws in the traffic stop do not affect the defendant’s post-arrest questioning. The Exclusionary Rule,

which prohibits the introduction of unconstitutionally obtained evidence in a criminal prosecution, was created in the case of *Weeks v. United States*, 232 U.S. 383 (1914) and made of general applicability to the states in *Mapp v. Ohio*, 367 U.S. 463 (1961). This rule, however, has as an exception that such unconstitutionally obtained evidence may be suppressed only if there is a clear, causal connection between the illegal police action and the evidence sought to be suppressed. *Nardone v. United States*, 308 U.S. 338 (1939); *Wong Sun v. United States*, 371 U.S. 471 (1963).

In this case, Defendant is seeking suppression of statements made during his detention by the FBI. The Exclusionary Rule might apply if the arrest had been made as a result of the traffic violation and subsequent investigation by Nevada authorities. However, Defendant was arrested not as a result of the traffic violation, but rather was arrested on the outstanding federal arrest warrant. Therefore, the two events—the contested Fourth Amendment violation and the questioning by the federal agents—are too attenuated to be considered part of the same “poisonous tree.”

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CONCLUSION

Trooper Dutchover did not impermissibly extend the duration of a lawful traffic stop. Moreover, his investigation and questioning of the Escalade's occupants was supported by independent reasonable suspicion. Hence, the Court should deny the motion to suppress.

Respectfully submitted this 25th day of June 2007.



Brock R. Belnap
Washington County Attorney

CERTIFICATE OF DELIVERY

I hereby certify that, on the 25th day of June, 2007, I caused a true and correct copy of the foregoing document to be served as follows:

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