

IN THE CIRCUIT COURT OF GREENE COUNTY, MISSOURI
Division V

STATE OF MISSOURI,)	
Plaintiff,)	
)	
vs.)	Case No. 1431-CR01042-01
)	
SHANTA D. SCOTT,)	
Defendant.)	

**DEFENDANT’S MEMORANDM IN SUPPORT OF HER
MOTION TO SUPPRESS ALL EVIDENCE IN THIS CASE**

Introduction

The defendant, an African-American female, was driving a rental car with Texas license plates on I-44 when she was spotted by the officer in question – who works a K-9 unit. The officer testified that he very quickly recognized the driver to be black and from out of state. He conducted a traffic stop because she was following too closely to another vehicle.

While that constitutes a traffic violation, it is so routine on I-44 – as can be seen from the dash camera video – that it becomes somewhat suspicious he selected a black female with Texas plates to enforce this particular traffic provision. This is particularly true given the Missouri Attorney General’s recent report detailing how law enforcement personnel stop black drivers at a much higher rate than white drivers.¹

The officer’s focus soon shifted from the minor traffic violation to an investigation regarding whether she was transporting illegal drugs. At the suppression hearing, the officer claimed that when she spoke, her voice cracked and was nervous. The video clearly shows otherwise. He claimed that her hands were shaking. But when we see her clearly, they are not.

¹ See <http://ago.mo.gov/VehicleStops/>. That is a state-wide report. The Springfield News-Leader, on May 30, 2014, revealed that local law enforcement disparity rates are well above the state disparity average.

He said her story about going to a baby shower was confusing. The only one who was confused was the officer. Her story made perfect sense. He claimed that it was unusual that she had a temporary driving permit. Yet he confirmed it was a valid driver's license. He argued that it was suspicious she paid cash for the rental car. But he provided no reasonable basis why utilizing cash – which Enterprise Rental clearly accepts – would constitute reasonable suspicion that a crime was occurring.

To be clear, the officer never really investigated the “purported reason” he pulled her over. Rather, he concocted each of these excuses, none of which hold up to scrutiny, in order to prolong the detention of the defendant so that he could investigate whether she was transporting illegal drugs.

In the end, his hunch was right. But hunches, as a matter of law, do not deprive defendants of their Fourth Amendment protections. See Terry v. Ohio, 392 U.S. 1, 30 (1968); State v. Slavin, 944 S.W.2d 314, 317-18 (Mo. App. W.D. 1997). To have legally detained her, the officer would need objective and reasonable suspicions that the defendant was involved in criminal activity based on specific articulable facts. Absent that, it is an illegal seizure. As will be established below, none of the excuses the officer came up with provide such reasonable suspicions. In fact, the officer admitted that each factor by itself was not suspicious. He claimed, however, that all together, reasonable suspicion was created.

That, of course, is nonsense. After all, zero plus zero plus zero still equals zero. None of the individual factors he testified to holds up to scrutiny. Why then would the combination of bogus claims suddenly create out of thin air legitimate suspicion? In short, it would not. This was a bad stop. The officer had no legitimate reason to continue to detain the defendant. Her

continued detention constituted an illegal seizure under the Fourth Amendment. Accordingly, all evidence obtained as a result of the illegal seizure must be suppressed.

Analysis

Before addressing the spurious suspicious activity, an examination of the pretextual nature of the initial traffic stop is in order.

I. The “Traveling Too Closely” Claim Was A Pretext To Investigate Whether The Defendant Was Transporting Drugs

The evidence seems rather clear that the defendant was pulled over because she was an African-American female driving a car with Texas tags along I-44 – a known drug corridor – traveling in the direction of St. Louis. Indeed, on cross examination, the officer conceded that he realized the driver was an African-American female driving a car with Texas plates just as soon as she passed his position. See Transcript, pp. 22-23.

Here are the other relevant facts. The officer was assigned to a K-9 unit. Id. at p. 2. He was to patrol I-44 and respond to any K-9 calls. Id. While making stops, he tries “to stay aware of situations where motorists may be transporting illegal substances.” Id. at p. 3. On cross examination, when asked whether his primary responsibility in patrolling I-44 was drug interdiction, he claimed that while he does look for stolen vehicles and fugitives from out of state, “the majority of things we come across are illegal drugs.” Id. at p. 19.

Understanding the officer’s responsibilities in a K-9 unit and the obvious mindset that goes along with such responsibilities are important considerations. Here, he attempted to legitimize the initial stop by claiming she was following too closely to a tractor trailer and another vehicle. Id. at pp. 4-5. According to the officer, she was within 1 ½ car lengths of the vehicle in front of her. Id. Acknowledging that the statute in question does not cite a specific distance between cars, he cited a general rule of thumb that the distance between vehicles should

be one car length for every ten miles per hour.² So if a vehicle is traveling at 60 mph, there should be at least 6 car lengths between it and the car ahead of it. Id. at pp. 5-6.

But as the Court will observe from the video, traveling too closely to other vehicles is an extraordinarily common occurrence on I-44. So the obvious question becomes, why did the officer choose to pull over the defendant's car, as opposed to all of the other vehicles that routinely violate this statute? We would submit, respectfully, that it had everything to do with the driver's race and origin of her vehicle.

Consider the number of times this statutory violation occurs in just the first few minutes of the video. Below is a mere summary of such violations that took place in just the first six minutes of the footage.

- At 13:58:37 of the video, we do see the defendant's car traveling about a car length behind a silver truck.
- Yet ahead of the defendant's car, it appears that a tractor trailer is less than a tractor trailer's length away from another tractor trailer.
- 13:59:04 – three cars pass, all within a car length of each other.
- 13:59:40 – in the opposite lane, a vehicle can be seen within a car's length of a tractor trailer.
- 14:00:01 – there are three tractor trailers in a row, all within a tractor trailer's length of each other.
- 14:00:59 – a vehicle is within two car lengths of a tractor trailer.
- 14:01:03 – a tractor trailer is within 1 car length of a tractor trailer.
- 14:01:46 – a white truck is within 1 car length of a tractor trailer. Additionally, a truck pulling a trailer is less than a truck's length behind the white truck.
- 14:02:02 – a white truck is less than 1 truck length behind a tractor trailer carrying a load of vehicles.

² Presumably, the officer was referring to Mo. Rev. Stat. § 304.17.1.

- 14:02:16 – a car is less than 1 length behind a truck.
- 14:02:43 – a truck is less than 1 car length behind a tractor trailer.
- 14:03:14 – a car is less than 2 car lengths behind a tractor trailer.
- 14:03:58 – in the opposite lane, a car is about 1 length behind a tractor trailer.
- 14:04:26 – one tractor trailer is less than a car length behind another tractor trailer.
- 14:04:30 – a car is less than 1 car length behind a tractor trailer, and an SUV is only 1 car length behind that car.

What this video demonstrates, more than anything else, is that if this K-9 unit officer was truly concerned with the perils of cars traveling too closely to each other on I-44, then such stops would be all he could accomplish in any given work day. That is how common of an occurrence this traffic violation is -- which demonstrates that this was never intended to be a “traveling too closely” traffic stop only.

No, the officer clearly selected this defendant out of all the other violators because of her ethnicity and out of state tags. And while that may be a bitter pill to swallow, candid truth telling should always be paramount when a citizen’s Fourth Amendment protections are at stake. Even more disturbing are the excuses the officer created to justify his continued illegal detention of the defendant. All of that is addressed below.

II. The Officer Clearly Lacked Objective And Reasonable Suspicion That The Defendant Was Engaged In Further Criminal Activity

During the suppression hearing, the officer identified the following 5 factors that made him suspicious: (1) she was nervous; (2) she had a temporary driving license; (3) her story about the baby shower was confusing; (4) she paid cash for the rental car; and (5) Houston is a known city for drug producing and St. Louis is a known destination for drugs. See Transcript, pp. 33-

34. Each of these “factors” will be addressed in turn. But first, an examination of the legal framework by which to analyze the officer’s actions is in order.

A. Warrantless Searches And The Fourth Amendment

“The Fourth Amendment to the United States Constitution guarantees the right of all citizens to be free from unreasonable searches and seizures.” State v. Barks, 128 S.W.3d 513, 516 (Mo. 2004). “Enforced pursuant to the exclusionary rule, the protections of the Fourth Amendment have been extended via the Fourteenth Amendment to defendants in state court prosecutions.” State v. Stoebe, 406 S.W.3d 509, 515 (Mo. App. W.D. 2013). “Warrantless searches or seizures are per se unreasonable unless there are special circumstances which excuse compliance with federal and state warrant requirements.” State v. Kempa, 235 S.W.3d 54, 60 (Mo. App. S.D. 2007). The burden of placing the search within an exception to the warrant requirement falls exclusively on the state. State v. Milliorn, 794 S.W.2d 181, 184 (Mo. 1990).

As explained by the court in in State v. Vogler, “[t]his case, like many other arising from traffic stops, involves the inevitable tension between the efforts of law enforcement officers to enforce drug laws and a citizen’s right under the Fourth Amendment of the United States Constitution to be free from unreasonable searches and seizures.” 297 S.W.3d 116, 120 (Mo. App. S.D. 2009). That tension, in this case, resulted in an unquestionable violation of the defendant’s Fourth Amendment protections.

B. The Prolonged Detention Of The Defendant Was Illegal

The Fourth Amendment proscribes an officer’s continued seizure of a citizen absent reasonable and objective suspicions that he or she is engaged in other criminal activity.

A routine traffic stop based on the violation of state traffic laws is a justifiable seizure under the Fourth Amendment. Such a seizure, however, ***may only last for the time necessary for the officer to conduct a reasonable investigation of the traffic violation.*** Once the investigation of a traffic stop is concluded, the

detainee must be allowed to proceed unless specific, articulable facts create an objectively reasonable suspicion that the individual is involved in criminal activity.

Stoebe, 406 S.W.3d at 516-17; citing Kempa, 235 S.W.3d at 60-61 (emphasis in original).

A reasonable investigation of a traffic violation encompasses: “(1) asking for the subject’s driver’s license and registration, (2) requesting that the subject sit in the patrol car, and (3) asking the driver about his or destination and purpose.” State v. Woolfolk, 3 S.W.3d 823, 828 (Mo. App. W.D. 1999); State v. Barks, 128 S.W.3d 513, 517 (Mo. 2004).

Once these steps have been completed and the officer has checked the driver’s record, the officer must allow the driver to proceed without further questioning unless “specific, articulable facts create an objectively reasonable suspicion that the individual is involved in criminal activity.”

Id. (citations omitted). “Moreover, the basis for the reasonable suspicion must arise within the parameters of the traffic stop itself; suspicions based upon answers to questions after the stop is completed are irrelevant . . .” Id.

In State v. Barks and other decisions, the continued detention occurs after an actual traffic citation is given to the defendant. While there was no traffic citation given to this defendant for traveling too closely, there is a clear demarcation between the officer’s investigation of the traffic stop and his investigation of other suspected illegal activity.

On direct examination, the officer testified that after his initial contact with the defendant, he returned to his vehicle to run her information. See Transcript, pp. 12-13. When he returned to her car, the focus of his investigation had changed to something other than the initial traffic stop. Id. at p. 13. He elaborated on this issue further on cross examination.

Q: I think you said on direct that at some point you changed your focus to the suspicious nature of the travel?

A: Correct.

Q: So at that point, whenever [it] occurred, you were no longer investigating the traffic incident of traveling too close to the motor vehicle?

A: Yeah, I guess you could say that.

Q: Is that correct?

A: Yes.

Id. at p. 30.

So, there can be no doubt that when the officer returned to question the defendant the second time, he was no longer detaining her because of the initial traffic violation. There are a number of decisions which have addressed this issue.

In Stoebe, the officer conducted a traffic stop based upon the defendant's poorly illuminated and dirty license plate. Id. at 511. According to the officer, the defendant was more nervous than she should have been. Id. at 512. The officer then began to ask whether she had anything illegal in her car and asked for consent to search her purse and the car. Id. The officer claimed that she gave consent to search her purse, at which point he found Oxycodone that did not belong to her. Id. She was arrested and charged with possession of a controlled substance. Id. at 511.

In suppressing the evidence, the trial court determined that the investigation of the dirty license plate had concluded, and that the continued questioning of the defendant – which led to the consent to search – was an illegal seizure in violation of her Fourth Amendment rights. Id. at 514. The appellate court agreed. There was no evidence that the consent to search her purse was given during the investigation of the dirty license plate traffic stop. Id. at 519-20. The trial court's decision to suppress the evidence was therefore upheld. Id. at 522.

In Vogler, the defendant was pulled over for turning without activating his turn signal. 297 S.W.3d at 117. After the officer returned from running the defendant's information, he

proceeded to question the defendant about the presence of anything illegal in his car. Id. at 117-18. Although the defendant denied it, he did give the officer permission to search his vehicle, at which point the officer found drugs and drug paraphernalia. Id. While there was no clear demarcation between the end of the traffic stop and the new investigation conducted by the officer, the Southern District nevertheless found the continued detention of the defendant a violation of his Fourth Amendment rights and suppressed the illegally obtained evidence. Id. at 118-20.

In like fashion, the officer in State v. Weddle quickly determined that the driver was not intoxicated as originally suspected. 18 S.W.3d 389, 392 (Mo. App. E.D. 2000). Yet the officer continued to detain the defendant and requested his consent to search the van. Id. Consent was given and contraband was found. Id. at 392-93. While the state argued that even if the extended detention was illegal, the subsequent search was consensual. Id. at 395. The court soundly rejected that argument, holding that the driver merely submitted to a claim of lawful authority as no reasonable person would have been in a position to feel free to leave. Id. at 396. As such, the evidence was suppressed. Id.

So too should the evidence in this case be suppressed. As addressed below, the officer had no objective and reasonable basis in fact to continue to detain the defendant.

C. The Officer's "Articulable Facts" Were Not Objective Or Reasonable

During cross examination, the officer identified the five "facts" he considered to be suspicious. Each is considered in turn.

1. The Defendant Was Not Nervous

At the suppression hearing, the officer testified that the defendant's voice was shaky and therefore she was nervous. See Transcript at p. 21. A review of the video reveals quite clearly,

however, that her voice was not shaky or nervous in tone. See Video, beginning at 13:59:42.

The officer also claimed that she was physically quivering. Id. at 21. But given the fact that his testimony regarding her voice was inaccurate, how can we then rely on his “observations” regarding her shaking? Moreover, when she is placed in his patrol car, there are absolutely no signs of the quivering that he alluded to. See Video, beginning at 14:14:04. But even if she was nervous, which is not reflected in the video, nervousness is not a suspicious activity that justifies a continued detention of a defendant. See Barks, 128 S.W.3d at 517.

2. There Was Nothing Suspicious About Her Driver’s License

The officer claimed to be suspicious of the fact that the defendant had recently received a temporary driver’s license. During the stop, the defendant handed him the temporary permit and the hard card as well. See Transcript, pp. 23-24. She told the officer she updated her driver’s license with a new address. Id. at p. 24. During cross examination the officer examined both the temporary permit and the hard copy – the only difference between the two was the address change. Id. at pp. 25-26. While in his vehicle, the officer contacted his supervisor and determined that the temporary permit was indeed a valid driver’s license – in other words, her story panned out.

Q: So her story panned out in terms of this being an actual – a legitimate driver’s license, the permit?

A: Yes, after some discussion with the supervisor and – running the subject through the system.

Q: Okay. I believe you went back to your vehicle and actually ran, I guess, her name and determined that she did actually have a valid driver’s license in Texas?

A: Yes.

Q: Okay. And so this permit would have been further proof of that being a valid driver’s license?

A: Yes, after all the investigation on the – on the driver’s license was conducted, it was valid.

Id. at pp. 26-27. The officer then tried to claim that some people try to get their licenses in order before going on a trip that includes illegal activity. But again, during cross examination, he was forced to admit that the hard copy was still a valid driver’s license. Id. at pp. 28-29. In other words, there was nothing wrong with her hard copy that needed correction – other than the fact that her address had changed.

Thus, by the officer’s own admission, there was nothing suspicious about the fact that the defendant had acquired a temporary permit in order to update her address. Accordingly, this “fact” does not constitute reasonable suspicion that the defendant was engaged in illegal activity.

3. The Story About The Baby Shower Was Not Suspicious

During the stop, the defendant explained that she was on her way to a baby shower in St. Louis that was being held that day. She also stated that she was supposed to be up in St. Louis the week before. See Video, 14:00:15 – 14:00:55. It is not entirely clear why the officer found this to be suspicious. But he did admit on both direct and cross examination that she knew what she was talking about – only he was confused. See Transcript, pp. 9-10 & 31-32.

A review of the video does not reflect confusion on the part of the defendant in explaining where she was traveling and for what purpose. Moreover, the officer ultimately conceded that it was he that was confused, not the defendant. Accordingly, the story about the baby shower is not objective or reasonable evidence that the defendant was engaged in criminal activity.

4. Paying For The Rental Car Consistent With The Rental Car Company's Policy Is Not Suspicious Behavior

In what may be one his most absurd “reasons” for suspecting illegal activity, the officer actually testified that paying for the rental car in a manner that was clearly authorized by the company was suspicious. So, when a company allows its customers to pay for an item with cash or a check, and the customer does so, a law enforcement officer is then allowed to suspect illegal activity? That is ludicrous.

First, the officer never explained how paying with cash or a check for a rental car was suspicious. One would assume that some cash transactions allow a person wanting to engage in a criminal activity a certain sense of anonymity – as he could more easily conceal his identity. But that would not be the case with a rental car, because a contract is entered into and there is full documentation as to who is in fact renting the vehicle.

Moreover, the officer attempted to claim that he has pulled over a number of criminals that had paid for their rental car with cash. See Transcript, pp. 33-34. Of course he did not provide any details or numbers to support his allegation, but in the end, he was forced to admit that he has pulled over people that have rented their cars with cash that were not engaged in criminal activity. Id. at 34. And the converse was true – he has arrested people engaged in criminal activity that paid for the rental car with a credit card. Id.

This is such a nebulous factor that no reasonable or objective weight can be given to this officer's peculiar notion that paying for a rental car, consistent with that car company's policies, is suspicious. As with all of the other factors, this too fails to comply with the legal standard that the articulable facts be objective and reasonable indicators of suspicious criminal activity.

5. Where She Was Coming From And Where She Was Going Was Not Suspicious

Finally, the officer claimed that he was suspicious because she was traveling from Houston to St. Louis. According to the officer, Houston was a source area for illegal drugs and St. Louis was a destination for illegal drugs. Id. at p. 33.

This should be afforded almost no weight. Just about any small to mid-sized city is both a source of illegal drugs and a destination for illegal drugs. If we were to give credence to this notion, then law enforcement personnel could then continually detain almost any driver that is traveling on the interstate. Simply put, driving from one city to another is not an objective or reasonable fact supporting the continued detention and seizure of a citizen in violation of his or her Fourth Amendment rights.

CONCLUSION

This incident began with the officer pulling over an African-American female with Texas license plates for driving too closely to another vehicle. The stop was pretextual. But regardless, the investigation for the traffic stop ended quickly, yet the defendant continued to be detained by the officer. The officer wanted to know whether she was transporting anything illegal and ultimately obtained her consent to search the car's trunk, where the drugs were ultimately found. This was a bad stop, and constituted an illegal seizure, because the officer did not have the requisite objective and reasonable suspicions to support the continued detention of the defendant.

Because her Fourth Amendment rights were violated, all evidence including any statements made by the defendant must be suppressed.

Respectfully submitted,

/s/ Steven E. Kellogg

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Certificate of Service

I certify that a true copy of the above and foregoing was filed electronically and served on the Greene County Prosecuting Attorney's Office, this 7th day of July, 2014.

/s/ Steven E. Kellogg

Steven Kellogg