

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NO. CR-06-538 JH

JOSPEH ALLEN BUTTS,

Defendant.

MOTION TO SUPPRESS
PHYSICAL EVIDENCE AND STATEMENTS

COMES NOW, the Defendant Joseph Allen Butts, by and through his attorney, Bernadette Sedillo, pursuant to Amendment IV of the United States Constitution and Fed. R. Crim. P. 12(b), and respectfully moves the Court to suppress all physical evidence and statements obtained pursuant to an unlawful stop and detention. As grounds, counsel states as follows:

1. The disclosure provided by the government including a video tape recording of the stop indicates that on February 13, 2006, Missouri State Highway Patrol Officer, Corporal G.C. Swartz, stopped a single occupant truck for allegedly following too closely and swerving on to the right shoulder. The truck pulled over immediately and without incident. The driver of the pickup was identified as Joseph Butts.

2. Corporal Swartz approached the passenger side of the truck. Corporal Swartz alleges that he saw a small duffel bag laying on the front passenger seat and some "Yahoo Driving Directions" lying next to the center console. Corporal Swartz told Mr. Butts he had stopped him because he had crossed the white line and asked Mr. Butts for his driver's license and

registration. Mr. Butts gave him his California driver's license and registration for the vehicle. Corporal Swartz alleges that Mr. Butts was very nervous but the video fails to depict Mr. Butts as nervous.

3. Corporal Swartz took Mr. Butts' license and registration and ordered Mr. Butts to follow him back to his patrol car by stating "Okay, can you come back here with me for a minute" but pursuant to the video the statement was not made as a question, it was a demand. Corporal Swartz opened the door to his police unit and stated "Go ahead and have a seat there for me." After putting Mr. Butts in the patrol unit, Corporal Swartz walked around and got into the patrol unit also. At this point Mr. Butts was not free to leave.

4. Corporal Swartz immediately started asking Mr. Butts numerous questions, such as: Where were you headed? What kind of work do you do? Are you living in Arizona or California? Where are you going to look for work at? Who did you say the vehicle belonged to? How long were you going to stay up there? What's your sister-in-laws name? She owns it? How long ago did she buy it? Where does she live? Is she married? What's her husband's name? They don't have any work in Arizona? Mr. Butts answered all questions of Corporal Swartz appropriately.

5. During this whole time period, Corporal Swartz still had Mr. Butts' license and registration and never returned them to Mr. Butts. Corporal Swartz requested a criminal history check on Mr. Butts by radio. A few minutes later Corporal Swartz was notified that Mr. Butts had a criminal history. Corporal Swartz then asked Mr. Butts if he had any objection to him searching his vehicle to which Mr. Butts said he did object. Then Corporal Swartz told Mr. Butts that he was going to call another officer over there and he was going to run a dog around the truck.

6. While they were waiting for the officer to arrive, Corporal Swartz still continued to question Mr. Butts regarding his work. At one point Mr. Butts asked permission to get out of the vehicle and Corporal Swartz ordered him to stay right where he was.

7. After the K-9 officer arrived he conducted a search of the truck. It took quite a while and several walks around the truck for the dog to allegedly alert and then the officers searched the truck finding marijuana in the bed of the truck. Mr. Butts is alleged to have subsequently made statement claiming that the marijuana was for his church.

THE FOURTH AMENDMENT PROHIBITS UNREASONABLE SEIZURES

The Fourth Amendment protects "[t]he right of the people to be secure ... against unreasonable searches and seizures." U.S. Const. amend. IV. The purpose of this amendment is "to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials." Camara v. Municipal Court, 387 U.S. 523, 528 (1967). The Fourth Amendment applies to seizures of persons, including brief investigatory stops of vehicles. United States v. Cortez, 449 U.S. 411, 417 (1981). A traffic stop is a "seizure" within the meaning of the Fourth Amendment, "even though the purpose of the stop is limited and the resulting detention quite brief." Delaware v. Prouse, 440 U.S. 648, 653 (1979). A routine traffic stop is more analogous to an investigative detention than a custodial arrest. United States v. Hunnicutt, 135 F.3d 1345, 1348 (10th Cir. 1998). Such stops are therefore analyzed under the principles developed for investigative detentions set forth in Terry v. Ohio, 392 U.S. 1 (1968). See id. To determine the reasonableness of an investigative detention, a dual inquiry is made, asking first "whether the officer's action was justified at its inception," and second "whether it was reasonably related in scope to the circumstances which justified the interference in the first place." Terry, 392 U.S. at 20.

In this case, Corporal Swartz contends that he stopped the truck because Mr. Butts was

following too closely and because he crossed over the right shoulder one time. If those facts are established, then the defense will concede that Corporal Swartz was justified in making the initial stop.

The second step in determining the reasonableness of an investigative detention consists of determining whether the officers' actions are "reasonably related in scope to the circumstances which justified the interference in the first place." Terry, 392 U.S. at 20. The officer's detention of Mr. Butts in his patrol unit and the persistent questioning of Mr. Butts were not reasonably related in scope to the traffic stop for following too closely or going off the right shoulder. Ordering Mr. Butts to get into the patrol unit in the first place was beyond the scope of a minor traffic stop. Requesting to search Mr. Butts vehicle only after the officer found out that Mr. Butts had a criminal history and then holding him against his will until he summonsed an officer with a K-9 unit was also beyond the scope of a minor traffic stop.

THE DEFENDANT WAS UNLAWFULLY DETAINED

After the purpose of the traffic stop is completed, further detention for purposes of questioning unrelated to the initial traffic stop is impermissible unless: after the purpose of the traffic stop is completed, further detention for purposes of questioning unrelated to the initial traffic stop is impermissible unless: (1) the officer has an objectively reasonable and articulable suspicion that illegal activity has occurred or is occurring, or (2) the initial detention has become a consensual encounter. See United States v. Cervine, 347 F.3d 865, 868-69 (10th Cir. 2003).

When determining whether reasonable suspicion exists, we look to the "totality of the circumstances" to see whether the officer had a "particularized and objective basis for suspecting legal wrongdoing." United States v. Arvizu, 534 U.S. 266, 273 (2000) (further quotation omitted). Corporal Swartz contends that Mr. Butts: had driving directions in his vehicle, was

nervous, and had given an inconsistent statement by stating that he had just recently moved to Arizona from California and then subsequently commenting that if he found any good antiques he would take them back to California. Corporal Swartz contends that this statement was inconsistent because Mr. Butts had stated he now lives in Arizona. The Tenth Circuit has emphasized that nervousness and its signs should not be overcounted in the analysis of whether reasonable suspicion exists. See United States v. Wald, 216 F.3d 1222, 1227 (10th Cir. 2000) (holding nervousness is "of limited significance" in determining whether reasonable suspicion exists). The Tenth Circuit has also held that there is nothing suspicious about carrying an atlas or road map while driving on an interstate highway. United States v. Ledesma, 447 F.3d 1307 (10th Cir. 2006). The statement that Corporal Swartz contends is inconsistent is not inconsistent at all. Mr. Butts had told Corporal Swartz that he had just recently moved to Arizona from California where he had an antique business.

Additionally, it is certain that Mr. Butts' encounter with Corporal Swartz was definitely not consensual. The purpose of the traffic stop was completed. Corporal Swartz had verified that Mr. Butts had a license and the vehicle was registered, and had run a computer check. Yet, Corporal Swartz continued to hold Mr. Butts. Mr. Butts complained about how long he was being held, asked how long it was going to take and at one point asked to get out of the vehicle to which Corporal Swartz ordered Mr. Butts to stay where he was.

Corporal Swartz did not have an objectively reasonable and articulable suspicion that illegal activity was occurring and this stop was certainly not a consensual encounter. Corporal Swartz simply had a hunch. The detention made in this instance is exactly the type of unlawful detention that is prohibited by the Fourth Amendment.

ALL EVIDENCE AND STATEMENTS STEMMING FROM AN ILLEGAL
DETENTION SHOULD BE SUPPRESSED UNDER THE FRUITS
OF THE POISONOUS TREE DOCTRINE

The discovery of the marijuana in the truck and post-arrest statements were obtained as a result of the unlawful stop and detention. If Defendants' detention was illegal, any evidence obtained as a result of their detention must be excluded as fruit of the poisonous tree. Wong Sun v. U.S., 371 U.S. 471, 487-88 (1963); See United States v. Villa-Chaparro, 115 F.3d 797, 800 n.1 (10th Cir. 1997).

8. AUSA Luis Martinez opposes this motion.
9. Defendant requests an evidentiary hearing on this motion.

WHEREFORE, Defendant respectfully asks this Court for an evidentiary hearing on his motion to suppress all physical evidence seized and all statements stemming from the above-cited stop.

Respectfully submitted,

Filed electronically 7/18/06
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion was delivered by regular U.S. mail to the following persons on the 19th day of July 2006:

AUSA Luis Martinez
United State's Attorneys Office
555 S. Telshor, Ste. 300
Las Cruces, NM 88011

Filed electronically 7/18/06
BERNADETTE SEDILLO