

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

UNITED STATES OF AMERICA)
)
v.)
)
TIMOTHY JASON KRIPNER)

No. 06-CR-538-JH

MOTION TO SUPPRESS

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now Timothy Jason Kripner ("Kripner"), Defendant herein, through his undersigned counsel, and files this Motion to Suppress and moves this Court for a hearing on same, and in support thereof shows as follows:

Procedural Background In This Case

Kripner is charged in a two-count Superseding Indictment with possession with the intent to distribute 100 kilograms and 50 kilograms and more of Marijuana. Trial is scheduled for July 18, 2006, and the motions deadline is June 22, 2006.

Factual Background

On the afternoon of February 22, 2006, a Border Patrol agent observed a Chrysler Sedan and minivan at a Diamond Shamrock and Kentucky Fried Chicken, respectively, in Lordsburg, New Mexico. The Border Patrol agent saw Kripner, the driver of the Chrysler, and co-Defendant Daniel Quaintance, the passenger in the minivan, converse. The Border Patrol agent deemed the amount of fried chicken purchased inappropriately large.

The two vehicles drove from Interstate 10 east and then proceeded south onto New Mexico Highway 113. Notwithstanding that the vehicles violated no traffic laws,

the decision was made to stop the vehicles because New Mexico Highway 113 is suspicious, and the vehicles were dusty. The stop was ostensibly for immigration purposes, but a drug dog was nevertheless brought to the scene. As a result of the stop, the agents allegedly discovered marijuana and obtained statements from Kripner.

Argument

Traffic stops are analyzed under the principles applicable to "investigative detentions" set forth by the Supreme Court in *Terry v. Ohio*, 392 U.S. 1, 20 L. Ed. 2d 889, 88 S. Ct. 1868 (1968). Under *Terry*, the validity of a stop is determined according to "whether the officer's action was justified at its inception, and whether it was reasonably related in scope to the circumstances which justified the interference in the first place." *Id.* at 20. At locations other than the actual border or its functional equivalent, border patrol officers may stop vehicles "only if they are aware of specific articulable facts, together with rational inferences from those facts, that reasonably warrant suspicion" that a crime has been committed. *United States v. Brignoni-Ponce*, 422 U.S. 873, 884, 45 L. Ed. 2d 607, 95 S. Ct. 2574 (1975); *United States v. Lopez-Martinez*, 25 F.3d 1481, 1483 (10th Cir. 1994). In an effort to guide this inquiry regarding reasonable suspicion, the Supreme Court has set out the following non-exhaustive test:

"In determining whether there is reasonable suspicion to stop a car in the border area, officers may consider any number of factors, including: (1) characteristics of the area in which the vehicle is encountered; (2) the proximity of the area to the border; (3) the usual patterns of traffic on the particular road; (4) the previous experience of the agent with alien traffic; (5) information about illegal border crossings in the area; (6) the driver's behavior, including any obvious attempts to evade officers; (7) aspects of the vehicle such as a station wagon with concealed compartments; and (8) the appearance that the vehicle is heavily loaded."

Id. at 1483-84 (quoting *United States v. Monsisvais*, 907 F.2d 987, 990 (10th Cir. 1990))

(citing *Brignoni-Ponce*, 422 U.S. at 884-85)).

In this case, two cars traveling on a public highway, dusty, and carrying an ample supply of fried chicken, does not constitute a scenario where it can be said that the stopping officers can be said to have had articulable facts that reasonably warranted a suspicion that an immigration crime had been committed.

WHEREFORE, PREMISES CONSIDERED, Kripner prays that this Court grant an evidentiary hearing, and suppress all evidence, tangible and verbal, obtained as a result of the government's violation of Kripner's 4th Amendment rights.

Respectfully submitted,

ELECTRONICALLY FILED

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CERTIFICATE OF SERVICE

I certify that the foregoing document was served on Assistant U.S. Attorney Luis Martinez, 555 S. Telshor, Ste. 300, Las Cruces, New Mexico 88001, and Mario Esparza, P.O. Box 2468, Las Cruces, New Mexico, 88004, **via facsimile**, this 23rd day of June, 2006.

ELECTRONICALLY FILED

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