

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA  
DAVENPORT DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ALPHONSO WADE BARNUM,

Defendant.

No. 3:07-cr-0587-JAJ

**ORDER**

This matter comes before the court pursuant to the defendant's March 16, 2008, Motion to Suppress Evidence [dkt 33]. The court held an evidentiary hearing on this motion on March 27, 2008, at which the defendant was present and represented by Jack Dusthimer. The government was represented by Assistant United States Attorney Rich Westphal. The defendant's motion is denied.

In the motion to suppress, the defendant contends that a July 23, 2007, traffic stop in Bettendorf, Iowa, of his vehicle was without reasonable suspicion or probable cause. He further challenges the voluntariness of consent given for the search of his person, the automobile he was driving and the hotel room at which he was staying. Finally, he challenges the voluntariness of statements that he gave to the police and claims that he was subjected to custodial interrogation without the benefit of Miranda warnings. The government contends that the traffic stop was legitimate, consent was freely and voluntarily given, that statements by the defendant were voluntary and that he was not subjected to custodial interrogation until after Miranda warnings were given. The court makes the following findings of fact and conclusions of law.

**FINDINGS OF FACT**

On July 23, 2007, Bettendorf police officer Jerry Hatler was on routine patrol when he observed a silver 2005 Dodge Stratus leave the parking lot of the Travelers Hotel at 14<sup>th</sup>

and Brown Streets in Bettendorf. A few hours earlier, he had determined the car was a rental vehicle, having ran the license plates pursuant to a customary practice of doing so at the Travelers Hotel.<sup>1</sup>

Officer Hatler followed the Dodge Stratus automobile for a very short period of time. Hatler activated his emergency lights and pulled over the vehicle without difficulty or incident. The defendant, Alfonso Barnum, was driving the vehicle and there was a female passenger in the front seat. After the vehicle was stopped, Hatler asked Barnum for his driver's license and registration papers. He received a valid driver's license and the rental papers from the defendant. He informed the defendant that his rear brake light was inoperable and that he intended to issue a warning ticket. Hatler then took the defendant's driver's license and other papers, together with the name of the female passenger, and went back to his patrol car to run a records check. That records check revealed that the defendant had a history of drug involvement and a conviction for being a felon in possession of a firearm. Hatler filled out the warning ticket in his car and returned to the defendant. At about this time, Officer Ward arrived to serve as a backup officer. Hatler had the defendant step out of the vehicle and stand between the front of the patrol car and the trunk of the Stratus. At that time, he asked the defendant for updated address and telephone number information. He completed the warning documents by having the defendant sign for the warning. He then gave the defendant a copy of the warning ticket. Throughout this entire encounter, the defendant was cooperative.

After giving the defendant a copy of the warning, Officer Hatler specifically informed the defendant that the business associated with the traffic stop had been completed and it was over. He told the defendant, however, about the criminal history information derived from the earlier records check. He asked the defendant if he would

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<sup>1</sup>The Travelers Hotel is notorious in Bettendorf for its drug activity, prostitution and the presence of individuals with outstanding warrants for their arrest.

be willing to speak with the officer about the defendant's past. The defendant expressed a willingness to do so and, in fact, engaged the officer in a conversation about his past, his current business and even his church. At this point, Officer Hatler asked the defendant if he had anything illegal such as weapons or drugs in the car. He then specifically asked the defendant if he could search the car. The defendant agreed that the officer could search the car.

Officer Hatler did an abbreviated pat down search of the defendant which revealed nothing. He asked the defendant if he could search his pockets and the defendant again unequivocally agreed to permit the search. In the defendant's pants pockets were a hotel key and a crack pipe. The defendant did not exhibit signs of impairment but he was placed in handcuffs and arrested for possession of drug paraphernalia. He was taken to Hatler's patrol car where a further search revealed \$305 in currency in his shoe. Upon finding the money, the defendant volunteered that the money was associated with his business. Hatler left the car.

A female officer was called to the scene so the female occupant of the car could be appropriately patted down. As the defendant was seated in the back of the patrol car, he got Officer Hatler's attention and volunteered that the police would find a gun in the automobile. Officer Ward retrieved a loaded handgun from the passenger compartment of the vehicle. Hatler then read Barnum's Miranda warnings to him, made sure he understood them and inquired about the gun. Barnum told Hatler that the gun had been given by Barnum's wife to the female passenger of the automobile. A search of the vehicle revealed items of drug paraphernalia in the passenger compartment. The trunk of the vehicle was in considerable disarray. The police are inconsistent as to whether the spare tire was dislodged or missing but nothing was seized from the trunk. They simply noticed that it was significantly torn up.

Finally, having discovered the gun, the money, the drug paraphernalia and a hotel room key, Officer Hatler asked the defendant for permission to search the hotel room. Again, the defendant freely and voluntarily gave consent for the search of the hotel room. It took only seconds to return to the hotel room and the defendant waited in the patrol car as police performed the search.

The defendant called two witnesses at the hearing, the service manager and a service technician from Kimberly Car City, a new and used car dealership in Davenport, that also has a service center. Kimberly Car City loans vehicles to persons whose cars are being serviced. It is the practice of that car dealership to maintain records regarding service on the loaner vehicles. Records for the 2005 Dodge Stratus at issue show that it was loaned to the defendant and later serviced on August 7, 2007, at which time it received an oil change. It was the practice of the service technicians to do a comprehensive safety inspection of the car, although no records are kept of these safety inspections. Because there was no invoice for a broken taillight, the service personnel assume that they observed no such problems.

#### **CONCLUSIONS OF LAW**

The government contends that Officer Hatler had probable cause to stop the defendant's vehicle on July 23, 2007, and that Hatler's subjective intent in targeting individuals leaving the Travelers Motel is irrelevant. It is true that a traffic violation, no matter how minor, provides probable cause to stop a vehicle. United States v. Sallis, 507 F.3d 646, 649 (8<sup>th</sup> Cir. 2007). The defendant contends that Officer Hatler observed no rear taillight malfunction and that, therefore, there was no probable cause to stop the defendant's vehicle. Subsequent events demonstrate that the issues in this case do not depend in any way upon the finding of probable cause to stop the vehicle. That is, the case law makes it clear under the circumstances involved in this case that the defendant's

subsequent voluntary consent to search his vehicle, his person and his hotel room provides independent justification for these searches.

The defendant unequivocally gave consent to search his vehicle, his person and his hotel room. His consent should be considered to be voluntary if it was the product of an essentially free and unconstrained choice by its maker. Schneckloth v. Bustamonte, 412 U.S. 218 (1973). In examining the environment in which consent was given, courts should ask whether the person who consented (1) was detained and questioned for a long or short time; (2) was threatened, physically intimidated, or punished by the police; (3) relied upon promises or misrepresentations made by the police; (4) was in custody or under arrest when the consent was given; (5) was in public or in a secluded place; or (6) either objected to the search or stood by silently while the search occurred. United States v. Chaidez, 906 F.2d 377 (8<sup>th</sup> Cir. 1990). All of these factors weigh in favor of a finding of voluntariness on each of the three occasions during which the defendant consented to searches. At the time of these statements, the defendant had been detained and questioned for a short time, under thirty minutes. He was not threatened, physically intimidated or punished by the police, nor did the police make any promises or representations to the defendant. Although the defendant had just concluded a traffic stop in which he was given a warning, he was no longer in custody or under arrest at the time consent was given. The defendant was calm and cordial. Consent was given in a public place and the defendant did not object to the search. In fact, he gave three separate consents for these searches. Under these circumstances, the court concludes that consent was freely and voluntarily given.

At the time when Officer Hatler initiated questions concerning the defendant's past criminal history, it is clear that the object of the traffic stop was over. The defendant had signed and received his traffic warning, he was in possession of his driver's license and other papers earlier provided to the police, and he was specifically informed by the officer that the traffic stop was over. Recent case law shows that this event became a police-

citizen encounter and not a stop or detention. United States v. Esquivel, 507 F.3d 1154, 1159 (8<sup>th</sup> Cir. 2007). Further, it is very clear that the defendant's subsequent voluntary consent to the search of his person, vehicle and hotel room under these circumstances rendered the issue regarding the validity of the initial stop irrelevant. Esquivel, 507 F.3d at 1158.

It should also be noted that after the police recovered a crack pipe from the defendant's person and placed him under arrest for possession of drug paraphernalia, the police had the right at that time to conduct a search of the passenger compartment of his vehicle incident to arrest. United States v. Grooms, 506 F.3d 1088, 1090-91 (8<sup>th</sup> Cir. 2007). Later, the defendant volunteered to the police officer that there was a gun in the car. This statement was not the product of interrogation. Accordingly, the defendant did not have a right to have Miranda warnings administered prior to this statement. Upon learning of the presence of a firearm in the vehicle (and knowing that he was a convicted felon), the police had probable cause to search the entire vehicle and its contents. United States v. Ross, 456 U.S. 798 (1982).

Upon the foregoing,

**IT IS ORDERED**

That the defendant's Motion to Suppress Evidence [dkt 33] is denied.

**DATED** this 31st day of March, 2008.

  
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JOHN A. JARVEY  
UNITED STATES DISTRICT JUDGE  
SOUTHERN DISTRICT OF IOWA