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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA

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CLERK OF THE DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA,	*	
Plaintiff,	*	CRIMINAL NO. 00-136
v.	*	
JESUS CASTILLO-MENDEZ, et. al.	*	
Defendants.	*	ORDER

On May 24, 2000, a three-count indictment was filed, charging Defendants Jesus Castillo-Mendez, Ramon Garcia-Domingas, and Victor Andasola-Villalva with conspiracy to distribute methamphetamine and possession with intent to distribute methamphetamine, in violation of 21 U.S.C. § § 841(a)(1), 846 and 18 U.S.C. § 2. On July 26, 2000, Defendant Andasola-Villalva filed a motion to suppress evidence seized from the search of an automobile in which he was a passenger, as well as from the subsequent search of his motel room. Defendants Castillo-Mendez and Garcia-Domingas joined in the motion on July 28, 2000. A hearing was held on the motion on August 9, 2000. The matter is fully submitted.

I. BACKGROUND

On April 24, 2000, the Central Iowa Drug Task Force received information from a confidential informant that an individual named Jesus Castillo-Mendez had been selling drugs in Ames, Iowa, the previous weekend. Mr. Castillo-Mendez was alleged to be traveling with another Hispanic male in a brown Ford Taurus with Nebraska license plates. On April 28, 2000, Agent Heather Richards of the Iowa Division of Narcotics Enforcement, Officer Pete Gagne of the Iowa State University Department of Public Safety, and Deputy Rodney Bunn of the Story County Sheriff's Office were patrolling in Ames, Iowa. The officers spotted a brown Ford

Taurus with Nebraska license plate #8A5 685 at the intersection of Lincoln Way and Hyland Avenue in Ames, Iowa. Two Hispanic men were observed in the passenger compartment.

While the officers followed the vehicle, they radioed the license plate number into dispatch and received a report that Nebraska license plate #8A5 685 was registered to two different vehicles. The first vehicle was a 1992 Ford registered to Linda Duran. The second vehicle was a 1987 Chevrolet registered to Larry Suhr. Though the vehicle had committed no observable traffic violations, the officers decided to stop the vehicle based on their knowledge of the confidential informant's tip and based on the report of two different vehicles registered to license plate #8A5 685. Officer Gagne radioed Officer Atilano of the Iowa State Department of Public Safety and instructed him to pull the vehicle over. Within a few minutes of the stop, six officers were present at the scene, namely, Officer Gagne, Agent Richards, Deputy Bunn, Officer Atilano, and Officer Peterson and Lieutenant Harahap of the Iowa State Department of Public Safety.

Officer Atilano approached the driver's side of the vehicle while Officer Peterson approached the passenger side. It was immediately apparent that the driver of the vehicle, Defendant Garcia-Domingas, spoke no English. Officer Peterson spoke with the passenger, Defendant Andasola-Villalva, and requested the vehicle's registration and identification for both of the vehicle's occupants. Defendant Andasola-Villalva provided Officer Peterson with several papers, none of which were the registration for the vehicle. Officers at the scene radioed for Corporal Link of the Ames Police Department to come to the scene to translate. However, prior to Corporal Link's arrival, Officer Peterson asked Defendant Andasola-Villalva for consent to search the vehicle for the registration. Defendant Andasola-Villalva conversed briefly with Defendant Garcia-Domingas, then told Officer Peterson that he could search the vehicle.

During the search of the vehicle, officers spotted a marijuana roach in the ashtray of the vehicle. Officers proceeded to search under the hood of the vehicle, where Officer Peterson noticed a broken bracket on the air filter housing and a missing screw. A closer examination revealed four packages which field tested positive for methamphetamine. Based on the evidence discovered in the car, officers applied for and received a search warrant for the motel room of Defendant Andasola-Villalva. A search of the motel room revealed 224.75 grams of cocaine.

II. ANALYSIS

The Government contends that Defendant Andasola-Villalva cannot challenge the search of the automobile because, as a mere passenger, he had no legitimate expectation of privacy sufficient to claim a violation of his Fourth Amendment rights. The Supreme Court has held that automobile passengers may not assert Fourth Amendment protection against the search of the automobile absent some evidence of ownership of the vehicle or the evidence seized. *Rakas v. Illinois*, 439 U.S. 128, 139-40 (1978). However, Defendant Andasola-Villalva, as well as the other defendants in this case, do not challenge the search of the automobile per se. Rather, defendants challenge whether officers had reasonable suspicion for the stop of the vehicle. Defendants contend that absent reasonable suspicion for the stop, any subsequent acts of the police are invalid as fruits of the illegal stop.

The Eighth Circuit has clearly indicated that a mere passenger may contest the legality of a stop. *See United States v. Lyton*, 161 F.3d 1168, 1170 (8th Cir. 1998) (approving district court holding that automobile passenger may challenge the stop and argue for suppression of evidence as fruits of illegal activity); *United States v. Portwood*, 857 F.2d 1221, 1222 (8th Cir. 1988) (holding a car passenger has standing to challenge the legality of a stop and search); *United States v. Durant*, 730 F.2d 1180, 1182 (8th Cir. 1984) (finding that an automobile passenger who

was frisked had standing to contest the legality of the stop and the frisk). The Fifth Circuit has articulated the reason for differentiating between the Fourth Amendment protections as to stops and searches:

> Typically, a passenger without a possessory interest in an automobile lacks standing to complain of its search because his privacy expectation is not infringed. Whereas the search of an automobile does not implicate a passenger's fourth amendment rights, a stop results in the seizure of the passenger and the driver alike. Thus, a passenger of a stopped automobile does have standing to challenge the seizure as unconstitutional.

United States v. Roberson, 6 F.3d 1088, 1091 (5th Cir. 1993); *see also United States v. Eylicio-Montoya*, 70 F.3d 1158, 1162-63 (10th Cir. 1995) (finding the Supreme Court's decision in *Rakas*, 439 U.S. at 130, did not foreclose a passenger's Fourth Amendment challenge to the seizure of her person). In determining whether an encounter with law enforcement constitutes a seizure sufficient to implicate an individual's Fourth Amendment rights, the court must consider all the circumstances to determine whether a reasonable person in the shoes of the defendant would not feel free to decline the officer's requests or to terminate the encounter. *See Florida v. Bostick*, 501 U.S. 429 (1991). It seems clear in this case that a reasonable person, pulled over by a marked squad car and flanked by six law enforcement officers, would not feel free to terminate the encounter.

Since Defendant Andasola-Villalva contests the legality of the initial stop, and challenges the legality of the subsequent searches on the basis that they are fruits of the illegal stop, the Court concludes that Defendant Andasola-Villalva does have a Fourth Amendment interest that he may assert in this matter. The same reasoning applies to Defendant Garcia-Domingas. Defendant Castillo-Mendez may also challenge the police actions based on his possessory interest in the automobile that was searched. *See Rakas*, 439 U.S. at 148.

Having established that each of the defendants has stated a valid Fourth Amendment claim, the Court now turns to the actions of the police on the evening in question. Under *Terry v. Ohio*, police may briefly detain and question people whom they reasonably suspect are involved in criminal activity. *See Terry v. Ohio*, 392 U.S. 1, 88 (1968). The rationale of *Terry* has been extended to investigatory stops of automobiles. *See United States v. Hensley*, 469 U.S. 221, 226 (1985). The standard for reasonable suspicion is less than that for probable cause. *See Terry*, 392 U.S. at 21-22. Reasonable suspicion "requires only 'particularized, objective facts which, taken together with rational inferences from those facts, reasonably warrant suspicion that a crime is being committed.'" *United States v. Chhunn*, 11 F.3d 107, 109 (8th Cir. 1993) (quoting *United States v. Martin*, 706 F.2d 263, 265 (8th Cir. 1983)). To determine whether the police had reasonable suspicion to pull over the automobile in question, the Court must look to the totality of the circumstances and the collective knowledge of all officers involved in the stop. *See United States v. Cortez*, 449 U.S. 411, 417 (1981).

"Reasonable suspicion may be based on an informant's tip as long as it is sufficiently reliable." *United States v. Quarles*, 955 F.2d 498, 501 (8th Cir. 1992) (quoting *United States v. Thompson*, 906 F.2d 1292, 1295 (8th Cir. 1990)). A confidential informant may be proven reliable by virtue of having provided law enforcement officials with truthful information in the past. *See United States v. Wright*, 145 F.3d 972, 975 (8th Cir. 1998) (citing *United States v. Williams*, 10 F.3d 590, 593 (8th Cir. 1993). In this case, the officers were acting on a tip from a confidential informant. Officer Gagne testified at hearing that the confidential informant began providing what he believed to be truthful and reliable information in approximately January, 2000, regarding alleged drug trafficking by one Jesus Castillo-Mendez. On April 24, 2000, the confidential informant told Officer Gagne that Castillo-Mendez had delivered cocaine in the

Ames area on April 23, 2000. The confidential informant told Officer Gagne that Castillo-Mendez was traveling with another Hispanic male in a brown Ford Taurus bearing Nebraska license plates.

The confidential informant's information appears to have been based on his first-hand observations, thus entitling "his tip to greater weight than might otherwise be the case." *Illinois v. Gates*, 462 U.S. 213, 234 (1983). However, even with a finding that the confidential informant was reliable and the tip should be accorded greater weight, the information made known to law enforcement must be adequate to provide police with an *objectively* reasonable suspicion that a crime has been or is about to be committed. *See Terry*, 392 U.S. at 30; *see also United States v. Turpin*, 920 F.2d 1377, 1384 (8th Cir. 1990). In this case, the confidential informant's tip does not pass muster as providing an objectively reasonable suspicion that criminal activity was afoot. The Court notes that Ames, Iowa, is a thriving college community with students from all over the world. At the time law enforcement pulled Defendants' vehicle over, school was in session and the stop was made in an area relatively near the college campus. In fact, several of the officers who participated in the stop were employed through the University Department of Public Safety. The tipster in this matter did not provide any time frame in which the car may be spotted, any identifying characteristics of the occupants that were alleged to be in the vehicle, or any identifying characteristics of the car such as a license plate number or even a model year. Additionally, the stop was made four days after the informant notified law enforcement about the vehicle and a full five days after the vehicle was last known to have been in the area. A finding that the confidential informant's tip in this matter provided adequate reasonable suspicion for the stop would indicate that officers could have stopped any brown Ford Taurus with Nebraska plates and Hispanic occupants in the area. Such a general, nonspecific tip

simply cannot form the basis for reasonable law enforcement suspicion.

The Government contends that reasonable suspicion in this case could also be based upon the dispatch report that two different vehicles were registered to license plate #8A5 685. Officers testified at hearing that, upon matching the car to the details of the confidential informant's tip, they radioed dispatch to run a check on the license plate. The license plates displayed on the vehicle were facially valid, however, dispatch reported two vehicles registered to the plate number. Testimony at hearing by Betty Johnson of the Nebraska Department of Motor Vehicles revealed that Nebraska reissues license plate numbers every three years. Ms. Johnson testified that when law enforcement runs a license plate check on a Nebraska plate, the Department of Motor Vehicles database will return what is known as a "candidate list." The candidate list returned on license plate #8A5 685 listed the 1999 series plate issued to a brown Ford Taurus and the 1996 series plate registered to a 1987 Chevrolet. Ms. Johnson testified that law enforcement officers could easily determine which plate was valid simply by reviewing the database report. Additionally, Ms. Johnson testified that Nebraska has used this system of reissuing license plate numbers since 1984 and that information is sent to law enforcement in Iowa regarding the plate changes every three years. Ms. Johnson testified that any dispatch request for information on license plate #8A5 685 would have returned a listing of any vehicles having held that license plate number, in addition to listing which vehicle held which series license plate.

Since an investigative stop is a "seizure" within the meaning of the Fourth Amendment, the means employed by officers "should be the least intrusive means reasonably available to verify or dispel the officer's suspicion in a short period of time." *United States v. Brown*, 51 F.3d 131, 132-33 (8th Cir. 1995) (quoting *Florida v. Royer*, 460 U.S. 491, 500 (1982)). Officers in this case testified that while the confidential informant's tip regarding a vehicle alleged to be

involved in drug trafficking is what initially drew their attention to the Ford Taurus here involved, the actual stop was made to clarify the officer's confusion about two vehicles being registered to the license plate number. Given Nebraska's close proximity to Iowa and the efforts taken by the State of Nebraska to ensure that law enforcement nationwide knows of their license plate system, it seems clear to this Court that a reasonable officer should have known, or with minimal effort could easily have discovered, that the license plate displayed on the vehicle here in question was valid and unsuspicious. Upon receiving the confusing information from dispatch, officers could have radioed back to dispatch for clarification. As Ms. Johnson testified, and as the database search printouts admitted into evidence show, it is clear that the 1987 Chevrolet held a 1996 series plate and that the Ford Taurus here involved held valid 1999 license plates. Stopping a vehicle for what is clearly an administrative issue cannot be considered the least intrusive means to dispel the officers suspicions, particularly when a simple check of the records would have dispelled any doubt as to the validity of the vehicle's registration. Finally, the license plate situation does nothing to further the officer's reasonable suspicion that criminal activity was afoot, even when coupled with the confidential informant's tip.

The Eighth Circuit has found that the rule requiring that statements resulting from an illegal detention be held inadmissible is equally applicable to "physical evidence discovered during or as a result of an illegal detention." *United States v. Ramos*, 42 F.3d 1160, 1164 (8th Cir. 1994) (citing *Wong Sun v. United States*, 371 U.S. 471 (1963)). Under this rule, any evidence discovered after the illegal stop in this case must be excluded as fruit of the illegal stop. *See id.* As the court in *Ramos* noted, however, it is possible for the causal chain between the illegal stop and the subsequent revelation of evidence to be broken. *See id.* "Even when police officers have neither probable cause nor a warrant, they may search an area if they obtain a

voluntary consent from someone possessing adequate authority over the area." *United States v. Chaidez*, 906 F.2d 377, 380 (citing *United States v. Matlock*, 415 U.S. 164, 171 & n.7 (1974); *Schneckloth v. Bustamonte*, 412 U.S. 218, 222 (1973)). In the case of an illegal stop followed by an alleged consent search, the causal chain may be broken if the consent was "sufficiently an act of free will to purge the primary taint." *Wong Sun*, 371 U.S. at 486; *see also United States v. Kreisel*, 210 F.3d 868, 869 (8th Cir. 2000) ("Even if a consent to search is the result, in a 'but for' sense, of a fourth amendment violation, we will uphold a subsequent search if the consent was sufficiently an act of free will to purge the original taint.").

In determining whether consent is given voluntarily and as a result of free will, the Court must examine the totality of the circumstances. *See United States v. Beason*, 2000 WL 1036338, at *3 (8th Cir. 2000) (citing *United States v. Beatty*, 170 F.3d 811, 813 (8th Cir. 1999)). In evaluating the totality of the circumstances, the Court must determine whether the consent was "'the product of an essentially free and unconstrained choice by its maker' rather than 'the product of duress or coercion, express or implied.'" *Chaidez*, 906 F.2d at 380 (quoting *Schneckloth*, 412 U.S. at 225). Factors to be considered include the characteristics of the accused as well as the details of the interrogation. *Id.* (citing *Schneckloth*, 412 U.S. at 225). The burden is on the government to prove voluntariness by a preponderance of the evidence. *See Chaidez*, 906 F.2d at 381.

Relevant factors in determining whether consent is voluntarily given include personal characteristics of the defendant as well as the environment in which the consent was given. Characteristics of the person giving consent to be considered are: age; general intelligence and education; whether an individual is intoxicated or under the influence of drugs when consent is given; whether consent was given after the individual was informed of either Miranda or the

right to withhold consent; and whether, because of previous arrests, the individual was aware of the protections afforded to suspected criminals by the legal system. *See id.* at 381-82.

Relevant factors in examining the environment in which consent was given include: the length of the detention; whether there were any threats, physical intimidation or punishment by the police; whether the person consenting relied on any promises or misrepresentations made by the police; whether the consenting individual was in custody or under arrest when consent was given, the location of the consent, and whether any objection was made to the search. *Id.*

In this case, there is some confusion as to whether the alleged consent to search the vehicle came from the driver of the vehicle, Defendant Garcia-Domingas, or from the passenger of the vehicle, Defendant Andasola-Villalva. Officer Peterson, who requested consent to search the vehicle, testified that Defendant Andasola-Villalva spoke English "quite well," however, other officers at the scene testified that Defendant Andasola-Villalva spoke "broken English." There is no dispute in the record that Defendant Garcia-Domingas spoke no English whatsoever. Officer Peterson testified that he requested consent to search the vehicle from Defendant Andasola-Villalva who then "interpreted for me to the driver of the vehicle." Defendant Andasola-Villalva then told Officer Peterson that he could search the vehicle. Officer Peterson further testified that his purpose in searching the vehicle was to uncover the registration and proper identification as to the owner of the vehicle. Officer Peterson stated that he believed that he had gained the driver's consent to search the vehicle. No written consent to search form was used, though officers had consent to search forms in English with them at the time of the stop.

It seems clear to this Court, based on the record before it, that Defendant Garcia-Domingas could not have given a knowing and voluntary consent to search the vehicle. As to the personal characteristics of both Defendants Garcia-Domingas and Defendant Andasola-Villalva,

outlined in *Chaidez*, no evidence was presented regarding age, intellect, or prior criminal history. Additionally, no testimony adduced at hearing indicated that either occupant of the vehicle was under the influence of any intoxicants at the time of the stop. The record is, however, clear on the fact that the occupants of the vehicle were not given Miranda rights, nor were they informed of their right to withhold consent to search. Failure to inform a person that they may withhold consent to search is an important factor to be considered by the court in determining voluntariness of consent, however, it is not fully determinative. *See United States v. Leichtling*, 684 F.2d 553, 557 (8th Cir. 1982).

In addition to the personal characteristics of the individual giving consent, the Court notes the environment in which consent was given. First, a significant amount of time elapsed from the time of the initial stop to the time the detention ended. Second, while there is no indication of physical threats or intimidation by law enforcement officers, the Court notes that six officers on the scene to conduct a purported "registration check" is excessive and may well be considered intimidating to a reasonable person. Third, it is clear to the Court that Defendants were in custody, though in a relatively public place, at the time consent was given; a reasonable person stopped and subsequently surrounded by six officers would be unlikely to feel free to leave. Finally, Officer Peterson testified that when he began to search the backseat of the vehicle for registration papers, Defendant Andasola-Villalva initially assisted him.

While the factors outlined above weight heavily in this Court's decision, the Court's conclusion that Defendant Garcia-Domingas's consent was involuntary hinges primarily on the apparent lack of effective communication between officers on the scene and the occupants of the car. Officer Peterson testified that he believed that Defendant Andasola-Villalva could understand him and was translating to Defendant Garcia-Domingas. However, based on other

testimony adduced at hearing, the Court finds this belief to have been unreasonable in light of the totality of the circumstances. *See United States v. Sanchez*, 32 F.3d 1330, 1334 (8th Cir. 1994) (citing *Illinois v. Rodriguez*, 497 U.S. 177, 182 (1991) (finding that an officer's reasonable and good faith belief that he had consent to search will validate the search even when actual consent was not obtained)). First, upon asking Mr. Andasola-Villalva for the driver's identification, Defendant Andasola-Villalva told the officer his birth date. Upon asking the vehicles' occupants for the vehicle's registration, Defendant Andasola-Villalva provided the officer with immigration papers. Additionally, officers on the scene were aware that an interpreter was being dispatched to the scene. Rather than wait for the interpreter to arrive, the officers went ahead and elicited "consent" to search without taking any steps to ensure that Defendant Andasola-Villalva understood the request to search or that he was capable of accurately conveying the request to Defendant Garcia-Domingas. Based on the totality of the circumstances in this case, the Court concludes that no reasonable officer could have believed that a knowing and voluntary consent was given. This analysis applies with equal force if consent was alleged to have been given by Defendant Andasola-Villalva himself. Even assuming that Defendant Andasola-Villalva had apparent authority to consent to a search of the vehicle, *see Illinois v. Rodriguez*, 497 U.S. 177, 188 (1990) (a search is valid if the officers reasonably believed that the person giving consent had the actual authority to grant that consent), the language barrier discussed above would still cause this Court to find his consent not knowing or voluntary.

Having found that law enforcement was without reasonable suspicion to stop the vehicle in this matter, and having further found that any alleged consent was involuntary and thus, insufficient to purge the taint of the illegal stop, any evidence found as a result of the unlawful search must be suppressed under the fruit of the poisonous tree doctrine. *See Wong Sun*, 371

U.S. at 484 (evidence seized as a direct product of a Fourth Amendment violation must be suppressed). All evidence found in the vehicle was a direct result of the illegal stop. Additionally, support for the subsequent search warrant for Defendant Andasola-Villalva's motel room was based on evidence found in the vehicle and on statements made after the illegal stop by Defendant Andasola-Villalva that he was staying in a local motel room. Without these byproducts of the illegal stop, there is no independent probable cause to support the issuance of the search warrant for the motel room. Consequently, all evidence found in the vehicle and subsequently found in the motel room must be suppressed as fruit of the illegal stop.

Accordingly, it is the ORDER of the Court, that the Motion to Suppress made by Defendants Andasola-Villalva, Garcia-Domingas, and Castillo-Mendez, is hereby GRANTED.

IT IS SO ORDERED.

Dated this 25th day of August, 2000.

ROBERT W. PRATT
U.S. DISTRICT JUDGE