

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

FILED
CLERK, U.S. DISTRICT COURT
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DISTRICT OF UTAH
BY: _____
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UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	FINDINGS OF FACT AND
)	CONCLUSIONS OF LAW
v.)	Case No. 2:99- ^{CL} CV -541K
)	
DENISE RENNELLE TAYLOR and WILLIE)	
A. TAYLOR,)	
Defendants.)	

This matter is before the court on defendant's Motion to Suppress all evidence gathered during the search of the vehicle that defendants were driving when they were stopped by the Utah Highway Patrol on September 11, 1999. This matter came on for an evidentiary hearing on Wednesday, February 2, 2000. The United States was represented by Michael P. Kennedy. The defendants were present and were represented by Mr. Mark R. Moffat and Mr. Richard P. Mauro. Both parties submitted briefs and oral argument was heard on Monday, April 10, 2000. The court has carefully considered all pleadings, memoranda, and other materials submitted by the parties. The court has further considered the law and facts relevant to the defendants' motion. Now being fully advised the court enters the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. On September 11, 1999, at approximately 6:30 a.m., Utah Highway Patrol Trooper Mark Topham was parked facing westbound in the median near milepost 48 on I-70 when he observed a dark green Chevrolet Suburban traveling at what he believed was an excessive rate of speed.

57

2. The Trooper indicated that he believed the vehicle to be traveling between 80 and 85 MPH in a 75 MPH zone. The trooper confirmed this speed on his radar and by pacing the vehicle. He then activated his overhead lights and stopped the vehicle at milepost 50.
3. Trooper Topham approached the vehicle and the driver lowered her window. A male passenger was asleep on the rear seat of the vehicle. Upon request, the driver presented Trooper Topham with an Illinois driver's license in the name of Denise Taylor, along with a vehicle registration card indicating the Suburban was registered to an individual named Dana Deboise. The passenger, woke up and also provided identification, a Tennessee driver's license in the name of Willie A. Taylor. Mrs. Taylor informed Trooper Topham that Mr. Taylor was her husband.
4. It was later determined that the Taylors obtained the vehicle from a friend in Los Angeles named Beau Hughes. The vehicle was not stolen and it appears that the Taylors had permission to be driving the vehicle.
5. Trooper Topham indicated that he had pulled the Taylors over for speeding. Mrs. Taylor stated that this was impossible because she had the cruise control set at 74 MPH.
6. The Taylors were both heavy smokers and the vehicle smelled strongly of cigarette smoke.
7. Trooper Topham testified that at this time he smelled what he believed to be the overwhelming odor of raw marijuana emanating from the vehicle. Trooper Topham specifically stated that he did not smell burnt marijuana, but raw marijuana.
8. Trooper Topham then returned to his vehicle and requested NCIC and triple I checks on the Taylors. He did not run a driver's license check. Dispatch reported no information indicating that the Suburban was stolen and no criminal history on either of the Taylors.
9. The dispatcher told Topham that there was a warrant for a Michael Taylor, whose birth date was the same day and month but not year as Willie Taylor's with a height of 5'9" and a weight of 195 pounds, with brown eyes and black hair. Dispatch indicated that Michael Taylor had a tattoo on his left shoulder and another one on his upper left arm and mentioned no other tattoos. Michael Taylor had a pending warrant out of Baton Rouge, Louisiana.
10. Willie Taylor's driver's license indicated that he weighed 165 pounds and he has

one tattoo on his left arm, but no tattoo on his left shoulder. Further, Willie Taylor had a scar on his neck. There was no indication from dispatch that Michael Taylor had any such scar, however Trooper Topham indicated that he believed that Willie Taylor and Michael Taylor might be the same person and therefore handcuffed Mr. Taylor for Trooper Topham's safety. He did not handcuff Mrs. Taylor. Trooper Topham agreed that Taylor is a very common name.

11. Trooper Topham then told the Taylors that he smelled marijuana and that he was going to conduct a search of the vehicle. The Taylors did not consent to a search of the vehicle.
12. Trooper Topham did a brief search of the front of the car for weapons, frisked the Taylors and began searching for the source of the raw marijuana smell. Trooper Topham did not find any illegal narcotics in the interior of the vehicle.
13. Trooper Topham then searched the back of the vehicle. There were two suitcases in the back of the car. The Taylors informed the Trooper that the suitcases did not belong to them. Trooper Topham searched the two suitcases which were empty except for some food wrappers, garbage and some marijuana residue.
14. The amount of marijuana residue in the suitcases was approximately enough for one joint or less than one gram. Trooper Topham took photographs of the inside of the suitcases, but the marijuana was not taken into evidence nor was a nik test ever performed. The Trooper also testified that he observed marijuana residue on the carpet, yet there is no photo depicting this. Trooper Topham then placed the Taylors under arrest.
15. Trooper Topham then conducted a more thorough search of the vehicle. In addition to the two suitcases in the back Topham found Ms. Taylor's luggage and a big speaker box.
16. At about this time Trooper Roberts arrived on the scene to assist Trooper Topham. Trooper Roberts testified that he did not smell marijuana. The Troopers first searched and removed a large speaker box at which time they observed that the recessed screws to the panel concealing the heater duct assembly and seatbelt assembly on the right interior of the vehicle were worn, indicating prior removal and a possible hidden compartment for contraband. Trooper Topham then requested the assistance of a canine unit. Trooper Roberts and Topham then accessed the heater duct and discovered four packages of what later was confirmed to be cocaine.
17. At about this time the canine unit arrived. The unit's canine, named Uno, was

deployed both on the exterior and the interior of the Suburban. Uno indicated the presence of narcotics but had difficulty focusing on a particular area, but was eventually able to focus on the back of the rear left-side bench seat. At this location, the officers located six packages secreted in the seatback which were later confirmed to contain cocaine. The two officers from the canine unit indicated that while in the vehicle they could smell marijuana although no marijuana was found other than the residue in the suitcases.

18. Trooper Topham testified that he could smell an overwhelming smell of marijuana as soon as Mrs. Taylor rolled down the window to the vehicle. Trooper Topham could not have smelled less than one gram of marijuana that was located in the back of the Suburban approximately nine feet away and closed inside a suitcase, particularly given the strong odor of cigarettes that was in the vehicle.
19. Trooper Topham video recorded the search with his unit video camera, however, there is no audio recording because the audio portion was broken. Trooper Topham testified that it had been broken for approximately three years. Trooper Topham testified that in 1993 after being accused of using heavy handed tactics during the course of a stop, his supervisor told him he should always video and audio record his stops for his own protection. Trooper Topham was still unwilling to have his recorder repaired because he did not want to go without it for the period of time it would take to have it repaired.
20. After the search of the Suburban was completed, the Taylors were transported to the county jail in Richfield for processing. The total length of the stop, investigation and search of the vehicle was approximately three hours.

CONCLUSIONS OF LAW

1. The stop of the Taylor's vehicle was a legal stop. The stop was based on an observed traffic violation and Trooper Topham had reason to believe that the Taylors were traveling at an excessive speed.
2. The Taylors provided a valid registration and driver's license. There was no reason at this time to suspect the Taylors of any illegal activity. The Trooper did not smell marijuana in the vehicle. At this time the purpose of the stop was completed. A speeding citation should have been issued and the Taylors should have been allowed to leave.
3. Trooper Topham did not cite to any specific and articulable facts to support a finding of reasonable suspicion that the Taylors were engaged in illegal activity.
4. The ongoing detention of the Taylors and search of their vehicle after they had

produced a valid license and registration was in violation of their Fourth Amendment rights.

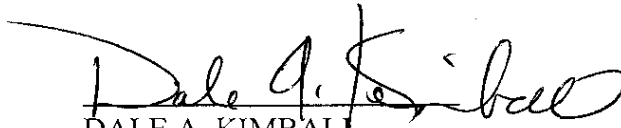
5. At no time did the Taylors give consent to the search of the vehicle.
6. All of the evidence before this court supports the contention that the Taylors had permission to be driving the vehicle, and therefore they have standing to challenge the search. Further, the Taylors have indirect standing because the search flowed from an illegal detention.
7. The Taylors were illegally detained and the search of the vehicle was in violation of their Fourth Amendment rights.

Based upon the above findings of fact and conclusions of law it is hereby

ORDERED that Willie A. Taylor's Motion to Suppress evidence is GRANTED. It is further

ORDERED that Denise Rennelle Taylor's Motion to Suppress evidence is GRANTED.

DATED this 13th day of April, 2000.


DALE A. KIMBALL
United States District Judge

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United States District Court
for the
District of Utah
April 17, 2000

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:99-cr-00541

True and correct copies of the attached were either mailed or faxed by the clerk to the following:

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