

District Court, Mesa County, Colorado Court Address: 125 N. Spruce St, Grand Junction, CO 81501	DATE FILED: December 2, 2019 1:49 PM CASE NUMBER: 2018CR2218
THE PEOPLE OF THE STATE OF COLORADO, Plaintiff v. JUAN COTTO, Defendant	▲ COURT USE ONLY ▲
	Case Number: 18 CR 2218 Division: 11 / Gurley
ORDER RE: MOTION TO SUPPRESS EVIDENCE AND FOR RETURN OF PROPERTY	

This matter came before the court for a hearing on the above-titled motion on October 1, 2019. For the reasons stated herein, the Defendant's motion to suppress evidence is granted. As for the request for return of property that request is granted provided there has not been nor is there currently any other civil action commenced regarding the currency that was confiscated.

The court was asked and did take Judicial Notice of the Affidavit for Warrantless Arrest and Exhibit 1 from the Preliminary Hearing Trooper Bullen's initial report. The parties stipulated to the admission of Exhibit A and the transcript of the preliminary hearing, Exhibit B. Trooper Christian Bollen (hereinafter Bollen) of the Colorado State Patrol is the only witness who testified at the preliminary hearing and at the hearing on the Motion to Suppress. The exhibits and the testimony at both the preliminary hearing and hearing on the Motion to Suppress that was held on October 1, 2019 revealed the following:

At the time of the traffic stop in this matter, Bollen had been employed as a trooper for the Colorado State Patrol for more than seven and one-half years. He is

POST certified as a result of having graduated from the POST academy. He has attended roughly 150 hours of training including training as a DRE and in drug interdiction since becoming POST certified.

On November 8, 2018 at approximately 2:43 p.m., Bollen observed a vehicle traveling westbound on Interstate 70 in Mesa County, Colorado at approximately mile marker 18. He observed that the license plate frame covered up the top part of the license plate and he testified that it took him several miles to determine what state the vehicle was from because of the obstruction. He traveled alongside and/or behind the vehicle for seventeen miles.

Exhibit 2 was a photograph of the rear license plate frame. He took the picture. He testified that he does not know exactly when he was able to ascertain the state the license plate was from. He ran the plate number in several different states he thought it might be from but didn't receive a confirmation on the license plate number. He needed the state of issuance to get a return on the plate.

Bollen activated his emergency lights to initiate a traffic stop on the vehicle. After pulling the vehicle over, he asked the driver out of the vehicle. He testified he typically does this on traffic stops. He either invites the person he pulls over to join him in his vehicle or he has them stay outside the passenger side of their car. He prefers they enter his car because it is more personable, and comfortable (for them).

Bollen testified that his purpose of engaging them (and the Defendant) in conversation is to ascertain their travel plans to make sure they make sense so there is no illegal activity occurring. Bollen asked the Defendant a series of questions unrelated to the purpose of the traffic stop. He asked him how his drive was going. The Defendant said his drive "sucked – it was a far drive from Chicago to Las Vegas" and he said it was super stressful. Bollen asked him why he didn't fly, and Defendant said because he "wanted to take to the road." He further explained that he was going to Las Vegas and was going to return before Thanksgiving and that he didn't really have any

plans. He said he lived with his baby's mama and that he had an 8-year-old back home. He explained that a flight would roughly cost around \$300. Bollen thought it odd that he would be going to Las Vegas to party and that he left his friends at home and that it was his cousin's car. The Defendant said he worked for his baby mama's father doing construction and he said that his last job was taking out a wall. This seemed strange to Bollen because it did not seem truthful to him, so he asked him what it (the wall) was made from.

After Bollen learned all the above information he asked him if he had anything illegal in the car and the Defendant said "no." He asked him for consent to search his vehicle and he asked what that meant. Twice Defendant refused consent to a search. Bollen explained to Defendant that it was up to him if he searched his vehicle or not. is bags and the vehicle interior. Defendant told Bollen he did not want him to search told him he could bring a dog. Bollen advised Defendant there wasn't a canine on duty and Defendant said it would be fine to wait for a dog. Bollen told the Defendant he was going to walk around his vehicle. When he walked around the vehicle, he noticed a grocery bag between the front seats to the rear and he noticed objects in the cargo area that were covered up. Bollen explained that when he initially approached the Defendant's vehicle, he saw those objects in the vehicle. He also saw a Motel 6 receipt on the front passenger floorboard and what appeared to be suitcases in the vehicle.

On cross examination he explained that "it took him a couple miles to catch up to the vehicle." He never provided any testimony as to why he was trying to catch up to the vehicle nor did he testify to observing the Defendant commit any moving traffic violation. Bollen offered that he thought it "weird" that Defendant never looked over at him while he rode alongside of the Defendant's vehicle. He acknowledged that it would be prudent and cautious for a driver to keep their eyes on the road while driving. He explained that 42-4-108, C.R.S. allows emergency vehicles to ascertain violations of the traffic code. When driving alongside the Defendant he couldn't see the license plates on the front and rear of the vehicle. While driving alongside of the Defendant's vehicle

he could see the license plate had a visible and unobstructed valid registration sticker on the upper right-hand corner.

Looking at Exhibit 2, the bottom portion of the letters of the word "Illinois" at the top of the license plate is visible on the plate. Defense counsel pointed out that buildings from the Chicago skyline are visible on the plate, but the court observed that due to the coloring of the license plate the skyline was not particularly easy to make out. The license plate frame says "McGrath" on the bottom and "Chicago Westmont" across the top. These words were very easy to make out. Bollen acknowledged he was able to make out the words on the license plate frame. The court asked Trooper Bullen what state was the first state that came to mind when he saw the word "Chicago" and he said "Illinois." He testified that he was eventually able to figure out the license plate was issued by the state of Illinois by running the plate and he determined the plate was attached to the correct vehicle. However, before he pulled the vehicle over, he was able to ascertain that the vehicle's license plate was valid and attached to the correct vehicle.

Bollen testified that he inputs data in his MDC (Mobile Data Computer) while in his patrol vehicle. Exhibit C is the seven-page CAD log from the date of the traffic stop. Dispatch inputs information into the CAD log from activities relayed to them. Data on the CAD report was also generated from information Bollen inputted into the logs. Bollen testified he did not provide the CAD report to the District Attorney's Office. The information in the CAD log was contemporaneously entered into it and the actual times are recorded and entered into the computer. One of these CAD logs is created in every traffic stop. The trooper relied upon the CAD log in writing his report and he testified that it was possible that it could be seconds or a minute off.

Regarding the CAD logs, Bollen testified that Exhibit C, pg. 7 at 14:51:53 could have been when personal information was being inputted. Bollen testified he had to fill that information out on a contact form. He did not have a magnetic swipe in his vehicle, and he testified they haven't had them in years. He generally types the information in,

and dispatch runs it. The evidence established that Bollen had the Defendant sit in his patrol vehicle at approximately 2:45 p.m.

Concerning the questioning of the Defendant that occurred in his patrol vehicle, Bollen testified he was trying to determine if Defendant was up to some type of criminal activity. If he asked dispatch to run his driver it means he inputted the license information into his MDC. He learned the Defendant was clear and valid meaning he wasn't a wanted person. At that point he testified that the traffic stop was basically over. He recorded info into NICHE (?). When he was heard to say "4 Adam 12 go ahead" on the video, that was when he received information from dispatch. That was his call sign at the time. That meant dispatch was trying to communicate with him. He described the NICHE system. He testified that he inputs information such as location, date, time, vehicle information, license plate information including state of origin, make and model of vehicle, VIN, number, what patrol method resulted in the stop, the reason for stop, if a search was done and the result of that search and whether a warning or charges were placed.

Bollen testified that he often asks a person if they've ever been arrested before. He possibly told the Defendant his license was "OK" and he believed he would have handed all his paperwork back to him and told him he was good to go. The questioning of the Defendant occurred while both Bollen and Defendant were both still seated in the patrol car. Bollen testified that he questions everyone like he did in this case whenever he stops a vehicle. He testified that he questions everyone he stops about their travel plans even if it's a traffic stop in town, but he only has the drivers of the vehicles he stops come into his vehicle when he conducts a traffic stop on the interstate. When he questions people and what they say seems inconsistent or suspicious he questions them further. If a person's travel plans are unusual to him, he will ask them about their occupation and their work and sometimes details about their work because he seemed disingenuous about what his answers regarding his work were. He testified that sometimes people he stops will say they have a job to look more legitimate. The Defendant seemed confident when he said he did not want to consent to search.

Defendant's Exhibit A was an audio/video of the traffic stop and captured all of Trooper Bollen's interactions with and interrogation of Defendant.

After stopping Defendant's vehicle, Bollen had him to exit his vehicle and come and sit in his patrol vehicle. Once there, Bollen proceeded to question Defendant on matters totally unrelated to the purported purpose of his traffic stop. The video of the traffic stop showed that at approximately 2:45 p.m. Bollen told Defendant that he was going "to run your stuff and we'll get you on your way." Once in the patrol vehicle, Bollen asked Defendant several questions between approximately 2:45:45 p.m. and 2:52:07 when he actually got around to asking dispatch to run the Defendant's driver's license information. These questions included:

How's your day been?

How long you going to be away from home?

What brings you to Vegas?

You meeting people out there?

What do you do for work, sir?

When told he did construction he was asked – What do you do? Do you have any expertise?

Did you work yesterday?

When told he had been on the road for 3 days he was asked, "3 days from Chicago?"

Where are you staying when you get out to Vegas?

What's your cousin's name?

When is the last time you worked construction?

Where did you do your last job?

When Defendant said he broke down some stuff he was asked "what stuff?"

What did you do?

What wall (did you break down)?

Interior wall? Exterior wall?

What was it made of?

How long have been in construction?

What did you do before that?

How did you like that (security job)?

What race would you consider yourself?

That a brand-new car?

After explaining it was his cousin's care he was asked, "Your cousin let you drive it?"

Let you drive a brand-new car across country?

After explaining that the car was his baby's mama's car but in his cousin's name because she didn't have adequate credit, he is asked "what are the payments?"

What does she do?

How much do you make in a month?

After all these questions were asked Bollen finally got around to asking dispatch to run the Defendant's information at 2:52:07. While wait was for their response, he continued interrogating Defendant asking him the following questions:

Where do you guys live?

In a house? Apartment?

Live by yourself or with someone?

How much is the rent?

After explaining he lives and rents from his parents he is asked, "you live with your parents?"

You, your baby's mama and your 8-year-old live there?

How long have you had the car?

At approximately 2:54:29 dispatch responded to Bollen.

Bollen then asked Defendant if he had ever been arrested before?

Just after this Bollen tells Defendant "your license is valid and you're good to go man. The he immediately asks, "you mind if I ask you a couple questions?" The Defendant says "sure."

Bollen proceeds to ask in rapid succession the following series of questions:

Where's your baby's mama and kid at?

How much did it cost you to drive to Vegas?

How much is 'not much'?

How did you pay for gas? Cash? Credit card?

How much did it cost?

Where did you stay, in hotels?

How many hotels did you stay in (on the trip from Chicago to location of traffic stop)?

So, you spent about \$150 on hotels?

[and another] \$150 on gas? That's about \$300.

Why didn't you fly?

At about 2:57 he asks him, "let me ask you this, is there anything illegal in your vehicle?"

Is there any marijuana?

Cocaine?

Methamphetamine?

Heroin?

Large sums of cash?

After Defendant answers all of those questions in the negative he asks him at about 2:57:17, "Cool man, listen you seem really cool, so uh, ... you have the right to refuse, I'm just doing my job, can I search your car to make sure there's no drugs in there?"

The Defendant said "No. You told me I can leave and then you said you were going to ask me a few questions and now..." at which point Bollen cut him off and asked, "Can I shoot you straight dude? I think you got something in your car." The Defendant asks "like, no I don't."

Bollen then again asks "can I search it real quick make sure there's nothing in there so you can get out of here? Defendant sought clarification meaning what an "search my bags and search my stuff? Bollen said "I'd like to search your bag to make sure you don't have like tons of drugs in there." Defendant said "No. I really don't. I don't have no drugs" and he finally follows that up with "You can search with a dog or whatever..."

After this Bollen tells him he'll call in for a dog to come out.

He then says to the Defendant "let me tell you this too. If you have a large sum of cash in there, you're not going to be in trouble with me."

You don't have cash in there? How much do you have in there?

After a dog was brought out officers searched the car and located several thousand dollars in cash. Defendant maintained the cash was his personal cash.

ANALYSIS AND CONCLUSIONS OF LAW

The People argue that the stop of the vehicle was permissible because there was a violation of 42-3-202(2)(a)(II)(C). That statute provides in pertinent part: "Except when authorized by this article or rule of the department, each license plate must be: ... Maintained free from foreign materials and [be] clearly legible."

Although the statute does not define what is meant by "foreign material," here, Defendant's license tag was framed in a standard automobile dealer license frame. The license plate frame had the dealer name "McGrath" on the bottom border and "Chicago Westmont" on the top border. The frame extended downward from the top slightly so that the tops of the letters in "ILLINOIS" that were at the top of the license plate were partially obscured. However, when close enough to the vehicle it was easily ascertainable that it was an Illinois license plate. Further, the registration sticker was clearly visible on the upper right-hand side of the license plate and it was not expired. The court finds that the testimony of Trooper Bollen on the issue of his inability to read the plate was not credible. He was following the vehicle in broad daylight and for a distance of seventeen miles – to mile marker 1 just before the vehicle was going to travel into the state of Utah. Furthermore, the license plate dealer frame indicated it was a Chicago dealer and Bollen testified that the first state that came to mind when he saw the city of Chicago was Illinois. His testimony that he ran the license plate number for states other than Illinois further undermined his credibility.

Reasonable suspicion is required to prolong a traffic stop after the purpose for which the investigatory stop was instituted has been accomplished. Here, the proffered purpose for the traffic stop was alleviated when Bollen was able to ascertain the state if

issuance of the license plate and that the vehicle had a valid vehicle registration sticker – before he even stopped the vehicle. “When the purpose for which [an] investigatory stop was instituted has been accomplished and no other reasonable suspicion exists to support further investigation, there is no justification for continued detention and interrogation of citizens.” *People v. Redinger*, 906 P.2d 81, 85–86 (Colo.1995). Thus, *Redinger* suggests the vehicle shouldn’t have been stopped at all since there was no traffic violation. The statute offered to justify the stop requires some foreign material obscuring the license plate and that the plate be clearly legible. Here, the plate was framed by a dealer frame - there was no foreign material obscuring the plate and when the Trooper got close enough to Defendant’s vehicle, it was clearly legible. Any reasonable person would have been able to ascertain that the license plate was an Illinois plate and indeed Bollen testified that he ascertained it was an Illinois plate prior to initiating the traffic stop.

This case is eerily similar to the facts in *United States v. Flores*, 798 F.3d 645 (7th Cir. 2015). In that case, Defendant was stopped based on a statute like C.R.S. 42-3-202 because a license plate frame partially obscured the words “Baja California” at the top of the plate. The officer stopped the vehicle because the frame made “it hard to ascertain what state it originated from.” *Id.* at 646. The officer stopped the vehicle even though he was able to determine the plate originated from Mexico. The federal court held that the frame did not impede a reasonable officer from reading the plate and it was unreasonable to believe the plate’s information was not clearly visible and legible. *Id.* Here, Bollen was able to ascertain it was a plate originating from Illinois

Assuming *arguendo* that Bollen was justified in stopping Defendant’s vehicle, the detention was unreasonably prolonged beyond its purpose, and, therefore, the motion to suppress is alternatively granted on that basis. An officer must have more than a hunch to continue to investigate a stopped motorist after the purpose for the traffic stop has ended. *People v. Haley*, 41 P.3d 666, 674 (2001). Once a driver produces a valid license and proof that he or she is entitled to operate the vehicle, the driver “must be allowed to proceed on his way, without being subject to further delay by police for

additional questioning." *United States v. Mendez*, 118 F.3d 1426, 1429 (10th Cir.1997); *People v. Rodriguez*, 945 P.2d 1351, 1360 (Colo.1997).

While Bollen's subjective intent is not relevant to whether he had reasonable suspicion to stop Defendant's vehicle, he testified at the preliminary hearing that due to the fact that Defendant was driving alone across country and had an out-of-state license plate, he believed Defendant may have been trafficking drugs. Further, when he asked him to get out of his vehicle, he appeared nervous and when he shook Defendant's hand it was sweaty. Of course, all these observations can have perfectly innocent explanations. Many people travel on out interstate highways alone. Further, it is not at all surprising that a motorist stopped by an officer might be nervous or that he/she may have sweaty hands. Another suspicious factor noted by Bollen was that the Defendant kept his hands at the "10 and 2" position on the steering wheel and that he would not look over at Bollen when he pulled beside him. Of course, keeping one's hands at the "10 and 2" position has been taught in driver's education classes for years and keeping one's eyes forward on the road is a prudent thing for a driver to do especially when traveling at interstate speed limits. Here, Trooper Bollen had no more than a hunch that Defendant was engaged in criminal activity or that he might be transporting evidence of a crime.

Listening to the testimony at both the preliminary hearing and the motion to suppress the court could not help but conjure up the image of the clumsy Clark Griswold, traveling cross country from the Chicago area with his family on his quest to reach the formidable theme park, Wally World and how this traffic stop could have morphed into another misadventure for the erstwhile protagonist.¹ No motorist should be subjected to a traffic stop when their license plate is readable and their registration sticker is unobstructed, current and valid absent any other violation of law. It is abhorrent to think that a vacationer should expect to be stopped as they amble down the highway perhaps on vacation just because they are traveling alone and in a vehicle with out-of-state license plates, for interstate highways are for travel interstate and

¹ *National Lampoon's Vacation*, Warner Bros. 1983. And, the court notes Griswold travelled with his family and not alone.

literally thousands of people from outside of Colorado must travel on its interstate highways on a daily basis.

As reflected above, Bollen interrogated Defendant unnecessarily on several matters including where he lived, where he was traveling to and for what purpose, what type of work he did, what the last job was that he performed, what type of material the wall he was working on/taking down was made of and similar areas of inquiry unrelated to the purpose of the traffic stop. Largely because of his responses, Bollen became suspicious of some of Defendant's answers. It is also worth noting that many of the questions were asked before Bollen ever requested dispatch run the Defendant's information according to the CAD notes. After Bollen was notified Defendant was "clear and valid" he continued to question Defendant further and again, unrelated to the purported purpose of the traffic stop.

Seven minutes went by between when Bollen had Defendant enter his vehicle and when Bollen asked his dispatcher to run Defendant's license. Two minutes later he was told Defendant's license was valid. Assuming Defendant was legally pulled over in the first place, he should have been allowed to get back into his car and be on his way – as Bollen initially promised. Instead, after asking Defendant if he could ask him a couple of questions to which the Defendant acquiesced, he hit him with a barrage of approximately sixteen questions many of which were accusatory in nature as to whether he was transporting drugs. The timeline picks up in the "consent to search" discussion below with some overlap.

In reaching its conclusions in this case, the court considered the four factors outlined in *People v. Rodriguez*, 945 P.2d 1351, 1362 (Colo. 1997) in assessing the reasonableness of an investigatory stop. Those factors are: (1) the length of the detention; (2) whether the officer diligently pursued the basis for the initial stop; (3) whether the suspect was required to move from one location to another; and (4) whether there were alternative, less intrusive means available.

Here, Defendant was detained for several minutes before even having his driver's license run by dispatch. The officer initially diligently pursued the basis for the

stop. In fact, he told Defendant as soon as he walked up to Defendant's vehicle why he stopped him and that he wasn't giving him a citation at all. Then, he had Defendant move from the comfort of his own vehicle to have a seat inside the patrol vehicle. There certainly were alternative, less intrusive means available – the trooper could have had Defendant remain in his vehicle and he could have gone back to his vehicle and had dispatch run his driver's license. The evidence established that this could have been accomplished in two minutes as that is all the time it took from the time Bollen had dispatch run the information until dispatch reported the license was valid and clear. Instead, Bollen didn't even request dispatch run Defendant's license for seven minutes after he had Defendant enter his patrol vehicle and after he interrogated him on matters entirely unrelated to the reason for the stop. While an officer can run a computer check on a suspect, they can only do this if doing so doesn't unreasonably prolong the duration of the temporary detention of the motorist. *Id.* at 1360. This case can be distinguished from *People v. Chavez-Barragan*, 379 P.3d 330 (Colo.2016) because the officer in that case proceeded with reasonable diligence explaining the reason for the stop – there was a valid stop and consent to search defendant's vehicle was obtained in three minutes. *Id.*

The Consent to Search

Bollen returned Defendant's driver's license and related documents to him at 2:55 p.m. He had already told him he wasn't going to issue him a citation and that he was free to go. Then, as Defendant argued, Bollen seamlessly asked Defendant more questions including questions about his family, his travel plans, the cost of gas for the trip and why he drove versus flying to take his trip. Then he asked him if he had anything illegal, including drugs in his vehicle. Defendant answered in the negative and was then asked if he would consent to a search of his vehicle which he refused. Defendant told Bollen that he had previously told him he was free to leave and Bollen then told him he believed there were drugs in the car which Defendant again denied. Bollen persisted with Defendant and was refused consent to search twice before Defendant relented and told Bollen he could call a dog if he wanted.

Defendant's consent to having a dog brought out and a search conducted was involuntary based upon a consideration of the totality of the circumstances. The initial stop of Defendant's vehicle was an investigatory detention and it never turned to a consensual encounter even after Bollen returned Defendant's driver's license and attendant documents to him² because he had an objective reason to believe that he was not free to end his conversation with Bollen, exit his patrol vehicle, and proceed on his way since Bollen continued to request permission to search the vehicle. No reasonable person in Defendant's position would have felt he could just exit the patrol vehicle in the middle of this type of interrogation.

Defendant's consent to have a dog come out to the scene was tainted by his unreasonable detention. Here, Bollen followed the Defendant on the interstate for seventeen miles. He then conducted a traffic stop and had Defendant come with him into his patrol vehicle. Once inside, Bollen interrogated Defendant for several minutes before requesting dispatch run his driver's license. While dispatch was running his license Bollen interrogated Defendant some more. Once Bollen told Defendant his license was valid, and he was good to go he immediately asked if he could ask him a couple questions. Defendant initially agreed. Then Bollen asked Defendant not a couple of questions but peppered him in rapid succession with at least sixteen questions in a period of two minutes ending up by asking him if he minded if he searched his vehicle. Defendant told him "no." Defendant then said "You told me I can leave and then you said you were going to ask me a few questions and now ..." at which time Bollen quickly interrupted him and in an accusatory fashion asked "Can I shoot you straight dude? I think you got something in your car." The Defendant responded by stating "like, no I don't." It is in this context where Defendant is being accused by the trooper inside of his car that Defendant gives in by telling Bollen "you can search with a dog or whatever." No person given the rapid exchange inside of a police vehicle would have thought the officer was going to let the request for a search

² It is unclear if Bollen actually handed Defendant his documents back to him after telling him he was "good to go" as that evidence was not developed further at the hearing and Bollen and Defendant cannot be seen in the video while they are seated in the patrol vehicle.

go after telling him twice he would not give consent to a search and being accused of carrying drugs.

For the foregoing reasons, the Motion to Suppress is GRANTED.

DONE AND ORDERED this 2nd day of December 2019.

BY THE COURT:

District Court Judge