

IN THE
SUPREME COURT OF THE UNITED STATES

Toheed Ahmed v. United States of America

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Tenth Circuit

APPENDIX A
District Court's Ruling

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TOHEED AHMED,

Defendant.

Case No. 2:16-CR-21 JNP

FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER DENYING
DEFENDANT’S MOTION TO
SUPPRESS

Judge Jill N. Parrish

INTRODUCTION

Defendant Toheed Ahmed filed an Amended Motion to Suppress on August 3, 2016. (Docket 38). The court held an evidentiary hearing on November 21, 2016. The parties then briefed the motion and the court heard oral argument on February 24, 2017. For the reasons set forth below, Mr. Ahmed’s Motion to Suppress is DENIED.

FINDINGS OF FACT

Based upon a review of the record and the evidence presented during the evidentiary hearing, the court makes the following factual findings:

A. The Stop

On August 26, 2015, at around 2:35 a.m., Officer Cody Coggle was traveling northbound on State Street near 3100 South in Salt Lake County. Tr. [Dkt. 52] 10:20-23. At that time, Officer Coggle noticed a car travelling southbound on the shoulder¹ of State Street, just north of Gregson

¹ The road is marked by a solid white line that “differentiates the shoulder of the roadway from the areas of travel.” Tr. 13:24–14: 1.

Avenue² in front of Scallywags with its right blinker on. Tr. 12:1–5, 15–18; 99:1–16. Instead of turning right at Gregson, the car drove through the Gregson intersection on the shoulder of the road and continued on the shoulder past the corner store, the next business, the hair salon, back into the lane of travel to avoid hitting a parked Jeep, and then turned right into the Temple City Motel located at 3066 South State. Tr. 12:2–5; 13:1–4; 14:15–20; 64:8–11; 65:15–25; 67:14–25; 69:5–70:4; 99:17–100:5; Ex. 11. Temple City Motel is a “high crime location,” where Officer Coggle has made dozens of arrests. Tr. 52:23–53:1.

When the car passed Officer Coggle, he was unable to see the car’s occupants because of poor lighting. Tr. 14:12–14. Unable to immediately turn around because of a divider in the median, Officer Coggle continued driving northbound until he reached Gregson Avenue, at which point he made a U-turn and followed Mr. Ahmed’s car into the parking lot of the Temple City Motel. Tr. 14:5–9; 15:9–10; 31:10–13.

As Officer Coggle was pulling into the parking lot of the Temple City Motel, he activated his overhead lights³ and stopped behind the car. Tr. 15:8–10; 93:12–15. The officer did not realize the make of the car was an Infiniti until it was coming to a stop in the Motel parking lot. Tr. 12:19–20; 15:17; 63:17–19. He had attempted to stop a similar car leaving Temple City Motel just a week prior, but it had fled from him. Tr. 15:18–25; 19:19–21. When Officer Coggle first approached the vehicle, he thought it may have been the same vehicle that had previously fled. Tr. 95:19–21.

B. Events at the Car

The stop was initiated at 2:36:03 a.m. Ex. 1-A. Officer Coggle immediately called for “an additional officer to respond.” Tr. 20:13–15. Before Officer Coggle got out of his car, he ran the

² Gregson Avenue is located at around 3040 South. Tr. 12:7-8.

³ Officer Coggle’s dash cam video was activated when he turned on his overhead lights and it saved the prior 30 seconds of video and continued to record thereafter. Tr. 16:23–17:5; 93:1–11.

vehicle's license plate number through his computer to determine whether the license plate was stolen. The license plate number came back as not stolen. Tr. 80:4–22.

As he got out of his car, Officer Coggle could see two female passengers, one in the front right seat and the other in the backseat, and a male driver, the defendant, in the car. Tr. 23:14–16. Officer Coggle also noticed that “[t]he license plate was fixed high inside the . . . bracket,” making it impossible for him to see some of the information on the plate. Tr. 19:22–20:1. Neither the name of the state nor the tags for the month and year of registration were visible. Tr. 97:16–98:19. As Officer Coggle walked toward the car, the backseat passenger opened the back right door and began to stand up out of the car. Tr. 24:11–12. Officer Coggle told her to remain “inside the car until [he] was done.” Tr. 24:8, 11–12. As the officer got closer to the car, the backseat passenger again attempted to get out of the car, this time standing “all the way up out of the car.” Tr. 24:11–15. The officer considered this conduct significant because, based upon his experience, “individuals who demonstrate that flight response to a traffic stop” often have warrants or contraband. Tr. 24:16–25.

As Officer Coggle arrived at the driver's side of the car, the driver was rolling the window up rather than down. Tr. 22:24–23:6. With the window up, the defendant and the two female passengers had a brief conversation. Tr. 25:5–8. While talking with the passengers, the driver looked at Officer Coggle and then returned to his conversation. Tr. 25:8–9. Officer Coggle also noticed that the front seat passenger was not wearing a seat belt. Tr. 28:22–24. When the driver finally rolled his window down, Officer Coggle could see the back seat passenger “dousing herself in cologne” and could smell cologne. Tr. 23:20–22; 25:12–13; 74:10–75:3. Based upon Officer Coggle's training and experience, individuals use excessive amounts of cologne to hide alcohol or narcotics. Tr. 25:14–19.

Officer Coggle asked the defendant who was the owner of the car. Ex. 1-A; Tr. 26:10. The defendant responded by stating that he had just purchased the car, that he had a bill of sale, but had not yet registered the car and the plates belonged to the previous owner. Tr. 26:10–14. During this initial contact, Officer Coggle obtained the defendant’s driver’s license. Officer Coggle also inquired about the bill of sale, but did not wait for the defendant to find it before he returned to his car to run the car’s registration and defendant’s driver’s license. Tr. 27:3–9. The officer did not wait for the bill of sale because the state motor vehicle would have that information on the computer if the registration had been started. Tr. 26:21–25.

After returning to this patrol car, Officer Coggle ran the defendant’s driver’s license and found he had no outstanding warrants. Tr. 27:13–28:12. Officer Coggle also found that no new registration had been started for the defendant’s vehicle. Tr. 26:18–27:2; 28:13–16.

Officer Coggle then returned to the defendant’s vehicle to obtain the bill of sale to verify that the vehicle was not stolen. Ex. 1-A; Tr. 83:15–18; 85:22–86:3. After obtaining the bill of sale from the defendant, the officer walked directly to the passenger side of the car and contacted the front seat passenger to obtain her information because she had not been wearing her seatbelt. Ex. 1-A; Tr. 28:19–21. The officer made contact with the front seat passenger, eventually identified as Nicole Toledo, for the purpose of giving her a ticket for not wearing her seatbelt. Tr. 29:2–4. When asked for her name, Ms. Toledo gave Officer Coggle the name of Amber Salona and stated she had California identification. Tr. 29:8–16. The officer also asked the backseat passenger for her name. Ex. 1-A, 2:38:39-2:39:31 a.m. Ms. Toledo and the backseat passenger asked Office Coggle why he had pulled them over. The officer explained that their car was the same type of car that had fled when he had pulled it over days before and they had been driving illegally on the shoulder of the road. Ex. 1-A, 2:39:31-2:40:00 a.m. Officer Manzano and another officer arrived at the Motel

about three and a half minutes later as Officer Coggle's back up officers. Ex. 1-A 2:36:00–2:39:37 a.m.; Tr. 108:20–24.

Officer Coggle returned to his car to run the name of Amber Salona through computer databases for the state of Utah, state of California and the Utah state jail system. Ex. 1-A; Tr. 32:13–22. But he was not able to verify the name of Amber Salona. Tr. 29:13–21; 32:13–22. Officer Coggle asked Officer Manzano to go and verify Ms. Toledo's name because Officer Coggle believed she had given him a false name. Ex. 1-A. Officer Manzano returned to Officer Coggle's patrol car with the name of Amber Salano. Ex. 1-A.

Officer Coggle believed that Ms. Toledo had given him a false name because she had given an incorrect middle name, she didn't know her social security number, and the physical description on the California driver's license that pulled up did not match the physical description of Ms. Toledo. Tr. 32:23–33:8. Officer Coggle decided to arrest Ms. Toledo three to four minutes after she had given him a false name and six or seven minutes after the stop. Ex. 1-A; Tr. 33:15–20.

Officer Coggle returned to the vehicle to place Ms. Toledo under arrest. Ex. 1-A, 2:45:47 a.m. He instructed her to exit the vehicle and asked her again to confirm her identity. Tr. 33:21–22. She reaffirmed that she was Amber Salona, at which point Officer Coggle told her he had probable cause to believe she was giving false personal information and was being detained. Tr. 33:22–25.

Once Ms. Toledo was in handcuffs, Officer Coggle walked her to the front of his patrol car where he continued to investigate her true identity. Tr. 34:6–11. He asked Officer Manzano to retrieve Ms. Toledo's purse from defendant's car. Tr. 114:12–17. Officer Manzano returned to the front passenger side of the car. The door was open. He found the purse on the floorboard of the front passenger seat. Tr. 118:13–14; Ex. 1-A at 2:47:34. Officer Manzano did not search anywhere

except the front passenger side of the car. Tr. 122:22–25; 135:6–9. Officer Manzano brought Ms. Toledo’s purse to Officer Coggle.

While Officer Manzano was retrieving Ms. Toledo’s purse, Officer Coggle went back and forth with Ms. Toledo about her name, its spelling, her date of birth, and her living in California. Tr. 35:4-6. He then searched her purse in an effort to learn her identity. Ex. 1-A, 2:45:58–2:51:52 a.m. Officer Coggle continued to run the name she had given to him through the various databases to determine whether she truly was Amber Salona. Tr. 35:9–10. He continued his investigation because in order to book someone in jail, officers must know who they are booking and why they are giving a false name. Tr. 34:12–18. The jail will not allow the booking of a person who has only given a false name; they must also have an outstanding warrant. Tr. 34:19–22.

Ms. Toledo told Officer Coggle that she had been to the Salt Lake County jail on more than one occasion. But Officer Coggle could not find that Amber Salona had ever been booked into the Salt Lake County Jail or that her name had never been used as an alias by anyone who had been booked into the Salt Lake County Jail. Tr. 36:8–17. Despite the officer’s efforts to this point, he was not able to establish Ms. Toledo’s true name. Tr. 36:18–19. In total, it took almost an hour and a half before he finally learned of Ms. Toledo’s true identity. Tr. 34:6–11.

C. K-9 Sniff

While still investigating Ms. Toledo’s true identity, Officer Coggle requested that Officer Manzano run his K-9, River, around the car. Tr. 110:25–111:7. At the time of the stop, Officer Manzano was assigned to the K-9 Unit. His dog, River, had been certified by the State of Utah, Department of Public Safety, as a Narcotics Detector Dog on September 18, 2014 to detect the odors of marijuana, cocaine, methamphetamine and heroin. Tr. 106:22–107:6; 112:8–11; Ex. 3. The certification was valid for one year. Tr. 107:19–20. Officer Manzano was certified as well by

the State of Utah, Department of Public Safety, as a Narcotics Detector Dog Handler, on September 18, 2014. Tr. 107:7–11; Ex. 2. This certification was valid for one year. Tr. 108:1–5.

The procedure Officer Manzano follows when he deploys his dog to perform a dog sniff is that he walks his dog to the front driver tire of a car, then walks the dog back around the back side of the car and around the car, directing his dog's nose to openings like seams where odor may escape from the car. Tr. 109:19–110:2. Each time he deploys his dog, Officer Manzano removes all occupants from the car to keep them from distracting the dog. Officer Manzano also looks inside for any pets or hazardous or sharp objects to protect his dog from getting hurt in the event the dog is deployed inside the car. Tr. 110:3–16.

River indicates for the odor of narcotics when his sniffing becomes more focused and rapid, he begins to wag his tail more, gets more excited, doesn't want to leave the area, and pinpoints where the odor is coming from. Tr. 111:16–112:2. The final indication River gives is to sit where he has found the odor of narcotics; he is a dog that passively indicates. Tr. 112: 2–7.

After removing the defendant and the back seat passenger from defendant's car, Officer Manzano deployed River at 2:50:15 a.m. to conduct a dog sniff around the perimeter. The officer started River at the front driver side tire of the car and walked him toward the back of the car, pointing him to the openings and seams in the car. Tr. 112:12–113:2. At 2:50:32 a.m., River alerted as soon as his nose hit the seam between the front driver's door and the rear driver's door. He would not leave the area, his sniffing changed, he jumped up on the car, putting his paws on car, and sniffed up and down the seam. Tr. 113:3–18; 115:20–116:18. After putting his paws on the car, River sat in front of the seam between the driver's door and the rear driver's side door. Tr. 132:9–12; 134:7–24. Thereafter, Officer Manzano informed Officer Coggle that River had

indicated positive for the odor of narcotics coming from the defendant's car. Tr. 37:15–21; 116:7–18

D. Vehicle Search

Based upon the information Officer Manzano provided to Officer Coggle about the results of the dog sniff, Officer Coggle began to search the interior of defendant's car, starting with the driver's side and then proceeding to search the passenger side and rear passenger areas of the car. Tr. 28:8–29:3. Officer Coggle found some cash in the driver's door panel. In the center console, he found some cash and a piece of drug paraphernalia, a hollowed pen tube known as a tooter, used to consume pills or heroin. Tr. 38:11–18; Ex. 4. On the rear driver's side floor, the officer found backpack, a watch in its box sitting on top of the backpack, and a Nordstrom shopping bag containing a cardboard box. Tr. 39:17–42:3; Exs. 5, 6, 7, 8. In the front pocket of the backpack, the officer found a number of syringes. Tr. 39:17–24; Ex. 5. Inside the backpack, the officer found, among other things, two brick-like objects wrapped in Saran Wrap containing a white crystal substance, a sandwich bag containing a white powdered substance and some cash. Tr. 40:8–16; Ex. 6. The white crystal substance field-tested positive for methamphetamine and the white powder field-tested positive for cocaine. Tr. 40: 21–25. The officer also located a bottle of cologne on the floor directly in front of the right rear passenger seat. Officer Coggle did not search the contents of the trunk while the car was located at the Motel. Tr. 42:7–25; Ex. 9. Instead, the car was towed to the South Salt Lake Police Department and a search warrant was obtained to further search the areas of the car that had not been searched. Tr. 4:19–22; Ex. 12. Officer Coggle searched the trunk of the car pursuant to the warrant and found a 7-Eleven cooler containing approximately 2,000 grams of methamphetamine. Tr. 44:18–23.

CONCLUSIONS OF LAW

The Fourth Amendment protects the “right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” U.S. Const. amend. IV. The protections of this right extend to routine traffic stops. *United States v. Botero-Ospina*, 71 F.3d 783, 786 (10th Cir. 1995) (“A traffic stop is a seizure within the meaning of the Fourth Amendment . . .”). “[T]he underlying command of the Fourth Amendment is always that searches and seizures be reasonable.” *Wilson v. Arkansas*, 514 U.S. 927, 931 (1995) (quoting *New Jersey v. T.L.O.*, 469 U.S. 325, 337 (1985)).

Traffic stops are “analyze[d]...under the principles pertaining to investigative detentions set forth in *Terry v. Ohio*.” *Botero-Ospina*, 71 F.3d at 786 (internal citations omitted). In *Terry v. Ohio*, the Supreme Court established a two-part test to determine the reasonableness of a stop. 392 U.S. 1, 20 (1968). Under *Terry*, courts must determine whether the stop was “justified at its inception” and “whether [the officer’s actions were] reasonably related in scope to the circumstances which justified [the stop] in the first place.” *Id.*

A. Officer Coggle’s Stop of Defendant’s Car was Justified at its Inception

For a traffic stop to be justified at its inception, it must be “based on an observed traffic violation” or an officer’s “reasonable articulable suspicion that a traffic or equipment violation has occurred or is occurring.” *Botero-Ospina*, 71 F.3d at 787. Indeed, “[o]ur sole inquiry is whether this particular officer had reasonable suspicion that this particular motorist violated any one of the multitude of applicable traffic and equipment regulations of the jurisdiction.” *Id.* (internal quotations omitted) (quoting *Delaware v. Prouse*, 440 U.S. 648, 661 (1979)). Other subjective motivations of an officer in making a stop are irrelevant. *Id.*

Mr. Ahmed argues that no traffic violations occurred and that the officer’s sole purpose in making the stop was to determine whether the defendant’s car was the same car that had fled from

him days before. Defendant then reasons that the scope of the stop was limited to determining that fact. But Defendant's argument ignores the fact that Officer Coggle observed traffic violations by the defendant.

The first traffic violation Officer Coggle observed was the defendant's car driving in the shoulder area of the road along State Street. Utah Code § 41-6a-102(60)(b) defines the shoulder area as the area to be used for "accommodation of stopped vehicles, for emergency use, and for lateral support." Drivers are required to "keep the vehicle as nearly as practical entirely within a single lane." Utah Code § 41-6a-710(1)(a)(i). *See also United States v. Parker*, 72 F.3d 1444, 1449 (10th Cir. 1995) (holding that a Utah police officer had probable cause to stop a vehicle when he observed the vehicle travel in the "emergency lane for approximately 200 hundred feet").

Here, the defendant drove in the shoulder area for a considerable time, remaining there even as he drove through an intersection. At approximately 3160 South State Street, Officer Coggle noticed a vehicle traveling on the shoulder of the road with its right blinker on. The vehicle was located north of Gregson Avenue in front of the Scallywags bar. Instead of turning right at Gregson, the car drove through the Gregson intersection on the shoulder of the road and continued on the shoulder past the corner store, the next business, the hair salon, back into the lane of travel to avoid hitting a parked Jeep, and then turned right into the Temple City Motel located at 3066 South State Street.

Officer Coggle observed a second traffic violation when the defendant directed his car from the shoulder to the right-hand lane without using his left-hand blinker. Utah Code § 41-6a-804(1)(a)(ii) requires drivers to indicate with "an appropriate signal" before changing lanes. These two violations constituted sufficient violations of the Utah traffic code to warrant Officer Coggle's initial stop of the defendant's car.

B. Officer Coggle's Actions Were Reasonably Related to the Circumstances Justifying the Stop

Determining the reasonableness of a stop under *Terry* also requires that an officer's actions be "reasonably related in scope to the circumstances which justified the interference in the first place." *Terry*, 392 U.S. at 20. That scope goes "[b]eyond determining whether to issue a traffic ticket," and includes "ordinary inquiries" incident to the traffic stop. *Rodriguez v. United States*, 135 S. Ct. 1609, 1611 (2015) (citation omitted). Typically, such inquiries involve "checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance." *Id.* at 1615. Additionally, when there is a lawful traffic stop, a police officer effectively seizes "everyone in the vehicle," the driver and all passengers for the duration of a traffic stop. *Brendlin v. California*, 127 S. Ct. 2400, 2406 (2007). "The temporary seizure of driver and passengers ordinarily continues, and remains reasonable, for the duration of the stop. Normally, the stop ends when the police have no further need to control the scene, and inform the driver and passengers they are free to leave." *Arizona v. Johnson*, 129 S. Ct. 781, 783 (2009).

In the course of the traffic stop at issue here, Officer Coggle found three additional traffic violations. Just after he stopped behind the defendant's car, Officer Coggle noticed that the license plate was pushed up into its license plate holder. The officer could neither see the name of the state nor the tags for the month and year of registration on the plate. This placement of the license plate violated Utah Code § 41-1a-404, which requires that a license plate be "clearly visible," *id.* § 404(3)(a)(iii), maintained "free from foreign materials," such as the bracket of a car, and "in a condition to be clearly legible." *Id.* § 404(3)(b)(i)–(ii).

After initially speaking with the defendant, Officer Coggle also learned that the defendant had failed to register the car in his name after he had purchased it. The officer's computer check of

the registration confirmed this fact. Utah Code § 41-1a-703 requires a car's new owner to register the car with the Utah Department of Motor Vehicles. The defendant claims the transfer was incomplete and the car was still validly registered under the previous owner's name because the defendant only had the bill of sale. But section 41-1a-701 states: "If the owner of a registered vehicle transfers his title or interest to the vehicle the registration of the vehicle expires." The bill of sale the defendant provided to Officer Coggle represented the transfer of the previous owner's interest in the car and the expiration of the previous owner's registration. Defendant's failure to register the car after he purchased it and drove it on the highway violated Utah Code § 41-1a-703.

As he was speaking to the defendant, Officer Coggle noticed that the right front passenger, Ms. Toledo, was not wearing her seatbelt. Utah Code § 41-6a-1803(2) requires that "[a] person 16 years of age or older who is a passenger in a motor vehicle operated on a highway shall wear properly adjusted and fastened safety belt." It is well established that officers are allowed to cite passengers who are also found to be in violation of traffic laws. *United States v. Hill*, 60 F.3d 672, 682 (10th Cir.1995), *cert. denied*, 516 U.S. 970 (1995); *United States v. Kissell*, No. 2:07-CR-00164, 2007 WL 2713910, at *8 (D. Utah Sept. 13, 2007) (unpublished) ("[W]here a passenger is also guilty of a traffic infraction, a vehicle may be detained long enough to investigate the passenger and issue a citation."). Furthermore, even absent a passenger's traffic violation, "an officer may ask for identification from passengers and run background checks on them as well." *United States v. Rice*, 483 F.3d 1079, 1084 (10th Cir. 2007).

Defendant claims that because his car had stopped in the parking lot of the Motel, Ms. Toledo was no longer required to wear her seatbelt and the officer unlawfully extended the scope of the stop by attempting to give her a ticket for a seatbelt violation. But the evidence does not suggest that Officer Coggle was attempting to cite Ms. Toledo for failure to wear her seatbelt in the

parking lot, but rather for not wearing her seatbelt while the defendant drove his car along State Street. The facts surrounding the stop support Officer Coggle's reasonable suspicion that Ms. Toledo was not wearing her seat belt when the defendant's car was on the road. Shortly after he saw the defendant driving on the shoulder, the officer pulled behind the car. The officer immediately got out of his car and walked up to the driver's side of the car where he could see that Ms. Toledo was not wearing her seatbelt. Thus, Officer Coggle's actions in seeking Ms. Toledo's name to give her a ticket for not wearing a seatbelt were reasonably related in scope to the circumstances that justified the original stop.

Even if Ms. Toledo had been wearing a seatbelt while the vehicle was being operated, Officer Coggle could have asked for her identification to discover her identity and run a warrants check without running afoul of the Fourth Amendment. "[P]assengers present a risk to officer safety equal to the risk presented by the driver." *Rice*, 483 F.3d at 1084. Because of this, the Tenth Circuit in *Rice* held that an "officer may ask for identification from passengers and run background checks on them as well." *Id.* In *Rice*, a police officer was patrolling a "high crime area" early in the morning. *Id.* at 1081. The officer observed a car driving by multiple houses, braking, and then slowing and accelerating. *Id.* This caused the officer to believe that those in the car "might be preparing for a burglary or drive-by shooting." *Id.* He contacted two other officers on patrol that night, and the three initiated a traffic stop. *Id.* The first thing that one of the officers did was ask for the identification of everyone in the car. *Id.*

Here, unlike the officer in *Rice*, who waited for backup before initiating the stop, Officer Coggle initiated the stop and made contact with the three occupants. Concerns for officer safety justified the officer's request that the passengers provide identifying information. Both the stop in *Rice* and the stop of the defendant's car occurred in the early morning hours in high crime areas.

The location, the time, and the fact that Officer Coggle was initially outnumbered three to one made this a potentially dangerous stop. In fact, Officer Coggle drew his gun from his holster out of fear when the defendant rolled up his window as the officer approached. Because the defendant, Ms. Toledo, and the backseat passenger also posed potential officer safety risks, Officer Coggle's request for Ms. Toledo's and the backseat passenger's names was reasonably related to the scope of the circumstances justifying the original stop.

C. Officer Coggle Legally Extended the Stop's Duration because of a Reasonable Suspicion of Additional Criminal Conduct

While an officer cannot extend a stop beyond the time reasonably required to effectuate its purpose, the duration may be extended if "the officer develops a 'reasonable suspicion' that the detained person is engaged in criminal activity." *United States v. Pettit*, 785 F.3d 1374, 1379 (10th Cir. 2015) (quoting *United States v. Bradford*, 423 F.3d 1149, 1156–57 (10th Cir. 2005)). An officer has reasonable suspicion that those in the car are committing criminal activity when, based on a "totality of the circumstances," he or she has a "particularized and objective basis for suspecting" criminal activity. *Id.* (quoting *United States v. Cortez*, 449 U.S. 411, 417-18 (1981)); see also *United States v. De La Cruz*, 703 F.3d 1193, 1198 (10th Cir. 2013) (internal punctuation omitted) (quoting *United States v. Soto-Cervantes*, 138 F.3d 1319, 1322 (10th Cir. 1998)) ("An investigative seizure can continue, even after the initial suspicion has dissipated, if 'the additional detention is supported by new reasonable suspicion of criminal activity.'").

Reasonable suspicion of criminal activity does not have to come from the actions of the vehicle's driver. Rather, it can be supported by the actions of the passengers of the vehicle as well. In *United States v. Hill*, the Tenth Circuit affirmed the conviction of a vehicle's passenger where the passenger was found to have cocaine and a firearm. 60 F.3d at 674. The officer initiated the stop after he saw a traffic violation. *Id.* Both a gun and cocaine were discovered after the officer

had ordered the passenger out of the car for the purpose of citing him for failing to wear a seatbelt. *Id.* The Tenth Circuit held “when a passenger has committed a traffic infraction as well—in this case, by failing to wear a safety belt—the incremental burden imposed by requiring the passenger to exit the vehicle to investigate and issue the citation is similarly ‘*de minimis*.’” *Id.* at 682. It reasoned that if “[*Pennsylvania v. Mimms* allow[ed] an officer to order a driver out of a vehicle after stopping the driver for failing to wear a seatbelt, it should logically apply to a passenger who has committed an identical violation.” *Id.* (citing *Pennsylvania v. Mimms*, 434 U.S. 106, 109–11 (1977)).

If requiring a passenger to get out of a car is a *de minimis* extension of a traffic stop, Officer Coggle’s request for Ms. Toledo’s name is even less so. Based upon the steps the officer undertook to verify Ms. Toledo’s identity, he had reasonable suspicion to believe that Ms. Toledo was engaged in additional criminal conduct beyond the seatbelt violation. Although the extension of the stop was not attributable to the defendant, it was attributable to the actions of Ms. Toledo. Whether the police have lawfully extended the duration of a stop is determined by whether they diligently pursued their investigation. *See United States v. Place*, 462 U.S. 696, 709–10 (1983). Because Ms. Toledo gave Officer Coggle a false name, he was justified in extending the duration of the stop to cite her for providing him with a false name and to determine her true identity for purposes of booking her into jail.

D. The Dog Sniff Occurred During the Course of the Traffic Stop

The dog sniff around the perimeter of the defendant’s car took place when Officer Coggle was diligently attempting to determine Ms. Toledo’s true identity. Once Ms. Toledo and Officer Coggle were standing in front of his patrol car, he continued to investigate her true identity. He went back and forth with Ms. Toledo about her name, its spelling, her date of birth, and her living

in California. He searched her purse in an effort to learn her identity. Officer Coggle continued to run her name through the state's database to determine whether the name she had given him belonged to her or not. He continued his investigation because in order to book someone in jail, officers need to know who they are booking and why they have given a false name.

It was during this investigation that the dog sniff occurred. The sniff did not extend the stop. "A dog sniff conducted during a . . . lawful traffic stop that reveals no information other than the location of a substance that no individual has any right to possess does not violate the Fourth Amendment." *Illinois v. Caballes*, 543 U.S. 405, 410 (2005). While a dog sniff conducted after the completion of "the matter for which the stop was made violates the Constitution's shield against unreasonable seizures," *Rodriguez*, 135 S. Ct. at 1612, if the stop has been extended for other reasons, such as those present here, the sniff is wholly justified. *Id.* at 1615 (holding that an officer cannot extend a stop for a dog sniff "absent the reasonable suspicion ordinarily demanded to justify detaining an individual").

At around 2:50 a.m., while Officer Coggle was still investigating Ms. Toledo's true identity, Officer Manzano deployed his certified K-9 around the defendant's car. Within seconds, K-9 River indicated for the presence of the odor of narcotics emanating from the defendant's car. This positive indication gave the officers probable cause to search the defendant's car. They found narcotics inside the car initially and eventually found narcotics in the trunk of the car as well.

Even if Ms. Toledo had given her true name, Officer Coggle had sufficient reasonable suspicion, under the totality of the circumstances, that the defendant, Ms. Toledo, and the backseat passenger were engaged in criminal conduct to justify extending the duration of the stop to run a dog around the defendant's car. When Officer Coggle got out of his car, the backseat passenger twice attempted to get out of the car despite the officer's instructions to stay in the car. For Officer


Coggle, this kind of behavior is indicative of people who have warrants or contraband. Next, the defendant rolled his window up rather than down as Officer Coggle approached and the defendant then had a conversation with Ms. Toledo and the backseat passenger. When the defendant finally did roll down his window, Officer Coggle could see the backseat passenger dowsing herself with cologne and could smell the strong odor of that cologne. Based on his experience, Officer Coggle knew that individuals who use excessive amounts of cologne are often attempting to hide the smell of alcohol or narcotics.

CONCLUSION

Officer Coggle's stop of Mr. Ahmed's vehicle was justified based on observed traffic violations. The stop was reasonably extended as Officer Coggle investigated who owned the vehicle and whether a new registration had been started. The license plate and seatbelt violations provided additional and independent reasons for extending the stop. Officer Coggle was diligent in pursuing his investigation of these matters. And when passenger Toledo gave Officer Coggle a false name the duration of the stop was again extended as Officer Coggle investigated Ms. Toledo's true identity. The dog sniff of the perimeter of the defendant's vehicle was performed during the course of this investigation and did not extend the stop. Accordingly, for the reasons stated herein, the court DENIES Mr. Ahmed's Amended Motion to Suppress (Docket 38). IT IS SO ORDERED.

DATED this 22nd day of March, 2017.

BY THE COURT:



Judge Jill N. Parrish
United States District Court Judge