App. 1

United States Court of Appeals
For the Eighth Circuit

No. 20-3451

United States of America

Plaintiff - Appellee

v.

Aldo Daniel Gastelum

Defendant - Appellant

Appeal from United States District Court
for the Western District of Arkansas - Texarkana

Submitted: June 17, 2021
Filed: September 1, 2021

Before LOKEN, KELLY, and ERICKSON, Circuit Judges.

ERICKSON, Circuit Judge.

After stopping Aldo Daniel Gastelum's rental car for a traffic violation, Arkansas State Trooper Bernard Pettit conducted a warrantless search of the vehicle's trunk and found over 15 kilograms of a mixture or substance containing cocaine. Gastelum moved to suppress the evidence from the search, claiming Trooper

Pettit impermissibly extended the traffic stop and Gastelum did not voluntarily consent to the search of his trunk. The district court[1] denied Gastelum's motion. We affirm.

I. BACKGROUND

In the early evening hours of April 7, 2018, Trooper Pettit stopped Gastelum, who was driving on a busy interstate in Arkansas, for an unsafe lane change. Trooper Pettit approached the passenger-side window of the vehicle, informed Gastelum of the reason for the stop, told him to be more careful when changing lanes, and asked for his license and insurance information. Gastelum indicated the vehicle was rented and handed over the rental information.

Trooper Pettit asked Gastelum about his travel plans. The encounter was captured on video and was conversational and friendly. When Trooper Pettit inquired about where Gastelum was going, Gastelum said he had rented the vehicle in Houston and was on his way to Chicago. Gastelum reported that he was a veteran of both the Marine Corps and the Army and that he was visiting Army Reserve facilities to try to secure a position in the Army Reserve. Gastelum said he had left the service in 2012, and when Trooper Pettit asked him what he had been doing since, Gastelum explained he was now a college student in California and had broke his leg in a hit-and-run accident.

[1] The Honorable Susan O. Hickey, Chief Judge, United States District Court for the Western District of Arkansas.

Trooper Pettit inquired how Gastelum got to Houston, and Gastelum rather randomly discussed reserve units in Houston. Gastelum eventually explained that he was planning to fly back to California from Chicago. When Trooper Pettit asked about joining a reserve unit in California, Gastelum said he was interested in medical units in Houston and San Antonio.

Trooper Pettit returned to his patrol vehicle and confirmed Gastelum's license and identification information. Trooper Pettit also reviewed the rental agreement and noticed that it was a one-way single-day rental agreement for $734.39. Trooper Pettit found the details regarding Gasetlum's trip, such as its length, cost, and reason, peculiar.

Gastelum had been stopped for approximately 15 minutes when Trooper Pettit printed a warning for the unsafe lane change and walked back to Gastelum's vehicle. After commenting on the weather, Trooper Pettit stated, "Okay, we're about done here." The tone of the conversation remained friendly as Trooper Pettit asked Gastelum whether he had any luggage in the trunk. When Gastelum responded that he did, Trooper Pettit replied, "Quick check of that and then we'll be done. Alright, come on out for me and pop that trunk on your way out." Gastelum fumbled for the trunk release, apparently unfamiliar with the rental car. Trooper Pettit turned his body towards the back of the vehicle, whistled, and then joked that trunk releases "are kind of hard to find." Before Gastelum opened the trunk, but while he was looking for the trunk release, Trooper Pettit asked Gastelum, "You don't mind if I

look back there, do you? You don't care, huh? That's fine?" Trooper Pettit testified that he was repeating what Gastelum was saying. Shortly thereafter, Gastelum opened the trunk and exited the vehicle.

Trooper Pettit opened a duffle bag in the trunk and saw a large quantity of cocaine. He ordered Gastelum to the ground and handcuffed him. Over 15 kilograms of cocaine were eventually recovered from the trunk.

Gastelum was indicted for possessing with intent to distribute five kilograms or more of a mixture or substance containing cocaine. See 21 U.S.C. § 841(a)(1) and (b)(1)(A)(ii)(II). He moved to suppress the cocaine, arguing that Trooper Pettit violated the Fourth Amendment both when he extended the traffic stop and when he searched the trunk. An evidentiary hearing was held, and the court denied the motion.

Gastelum conditionally pled guilty to the cocaine charge. He was sentenced to 30 months' imprisonment and 3 years' supervised release. Gastelum appeals the denial of his suppression motion.

II. DISCUSSION

"In reviewing a denial of a motion to suppress, we review the district court's findings of fact for clear error, giving due weight to the inferences police drew from those facts. We review de novo the district court's legal conclusion that reasonable suspicion or probable

cause existed." United States v. Pacheco, 996 F.3d 508, 511 (8th Cir. 2021) (citations omitted).

Gastelum does not dispute that Trooper Pettit's initial decision to conduct a traffic stop was lawful. He instead argues that Trooper Pettit (1) unreasonably prolonged the stop, and (2) unlawfully searched the trunk without voluntary consent.

A. Extension of the Traffic Stop

Gastelum does not challenge any portion of the traffic stop occurring prior to Trooper Pettit issuing a warning ticket. Instead, he contends Trooper Pettit lacked reasonable suspicion to extend the stop once Trooper Pettit returned to his vehicle with a warning ticket. We disagree.

Under the Fourth Amendment, an officer may not extend a stop beyond "the time needed to handle the matter for which the stop was made" unless he develops a reasonable, articulable suspicion of criminal activity. Rodriguez v. United States, 575 U.S. 348, 350 (2015). "An officer's suspicion of criminal activity may reasonably grow over the course of a traffic stop as the circumstances unfold and more suspicious facts are uncovered." United States v. Magallon, 984 F.3d 1263, 1278 (8th Cir. 202 1) (citations omitted). Reasonable suspicion requires "a particularized and objective basis for suspecting legal wrongdoing based upon [the officer's] own experience and specialized training." Pacheco, 996 F.3d at 511 (citations omitted). While a "mere hunch" is insufficient, "the likelihood of criminal

activity need not rise to the level required for probable cause, and it falls considerably short of satisfying a preponderance of the evidence standard." United States v. Arvizu, 534 U.S. 266, 274 (2002) (cleaned up). The reasonable suspicion analysis is based on the totality of the circumstances meaning individual elements of suspicion are not to be viewed in isolation. United States v. Sanchez, 955 F.3d 669, 675 (8th Cir. 2020).

Considering the totality of the circumstances in this case, Trooper Pettit had reasonable suspicion to extend the stop. Trooper Pettit, a law enforcement officer with over 25 years of experience, has attended numerous drug-interdiction trainings each year since 2008 and has participated in as many as 100 traffic stops resulting in criminal seizures. Numerous facts alerted this experienced officer that criminal activity was afoot.

First, Trooper Pettit recognized that the rental was for too short of a time to accomplish Gastelum's stated goal of visiting reserve centers to inquire about positions in medical units. With a one-day rental and a 12–15 hour drive from Houston to Chicago, there was very little time to visit reserve units. In addition, Trooper Pettit stopped Gastelum about six hours from Houston. Gastelum rented the car in Houston about six hours before the stop, rendering it unlikely that Gastelum was telling the truth about visiting medical units in Houston and San Antonio.

Trooper Pettit also discerned that the cost of the car rental far exceeded the cost of flying. Based on his training and experience, Trooper Pettit was aware that drug smugglers often transport narcotics in rental vehicles (rather than planes) regardless of the cost. We have previously found the existence of reasonable suspicion based on both "the incongruity between [a defendant's] short rental period and his described travel plans" and "the 'outwardly puzzling decision to rent a car for a one-way trip at substantial expense.'" Pacheco, 996 F.3d at 512 (quoting United States v. McCarty, 612 F.3d 1020, 1025 (8th Cir. 2010)); see also United States v. Murillo-Salgado, 854 F.3d 407, 416 (8th Cir. 2017) (rental period).

Second, Gastelum's explanation for the purpose of his trip did not make sense. Trooper Pettit could not discern why a disabled college student would spend the time and expense to travel from California to Houston and then Chicago to visit reserve units, rather than just visit reserve units in California. And, although Trooper Pettit admitted he had never worked as a military recruiter, he served in the Air Force Reserves and knew that individuals do not just drive up to reserve units seeking a billet. We have found that "odd answers" and strange travel plans can support a finding of reasonable suspicion. Pacheco, 996 F.3d at 512; see also Sanchez, 955 F.3d at 675 (finding reasonable suspicion based, in part, on the strangeness of an out-of-state vehicle traveling at night with babies purportedly to do a paint job).

Third, Trooper Pettit's suspicion was heightened by the emphasis Gastelum repeatedly placed on his military background during their conversation. For example, when Trooper Pettit tried to determine how Gastelum arrived in Houston, Gastelum evaded the question by further discussing his military background and aspirations. Gastelum also had materials with military insignia in his passenger seat, which Trooper Pettit suspected were displayed as a "prop to deflect [his] attention." While the display of military insignia, alone, is not a basis for reasonable suspicion, Gastelum's deflection of Trooper Pettit's questioning with a non-responsive discussion about his military experience is a permissible consideration, just as any other evasive answer would be. See United States v. Williams, 929 F.3d 539, 545 (8th Cir. 2019).

We find no clear error in the district court's findings or its conclusion that Trooper Pettit had reasonable suspicion. Although Gastelum contends none of the individual facts noted above are, by themselves, incriminating or support reasonable suspicion, the Supreme Court has repeatedly recognized that even facts consistent with "innocent travel" can, when taken together, amount to reasonable suspicion. United States v. Sokolow, 490 U.S. 1, 9 (1989); see also Arvizu, 534 U.S. at 277–78. Here, Gastelum's evasive answers and dubious travel plans, combined with the inconsistencies between his travel plans and the rental agreement,

were sufficient for Trooper Pettit to suspect criminal activity was afoot and extend the traffic stop.[2]

B. Voluntary Consent

Gastelum next argues that the evidence from the traffic stop must be suppressed as the product of an illegal search of his trunk because the district court clearly erred in finding he voluntarily consented to the search rather than acquiesced to Trooper Pettit's command. See United States v. Steinmetz, 900 F.3d 595, 598 (8th Cir. 2018) ("Whether a person voluntarily consented to a search is a factual determination that we review for clear error."). We disagree.

A warrantless search is valid under the Fourth Amendment if it is "conducted pursuant to the knowing and voluntary consent of the person subject to a search." United States v. Sanders, 424 F.3d 768, 773 (8th Cir. 2005) (citations omitted). The government bears the burden to demonstrate that Gastelum knowingly and voluntarily consented to the search. See Magallon, 984 F.3d at 1280. That "issue turns not on the defendant's subjective state of mind, but on whether the officer reasonably believed the defendant consented." Id. (citations omitted). That is, the question

---

[2] Gastelum's reliance on United States v. Beck, 140 F.3d 1129 (8th Cir. 1998), is unavailing as we have repeatedly distinguished that case "so much so that Beck may be essentially limited to its facts at this point." Pacheco, 996 F.3d at 513 n.3 (collecting cases). Because, for example, the driver in Beck did not describe travel plans which plainly contradicted his rental agreement, we find Beck distinguishable here as well.

is "whether it was reasonable for the officer to believe that the suspect gave him permission to search the requested item." Id.

As with most Fourth Amendment analyses, we consider the totality of the circumstances to evaluate whether consent was voluntary, including

> (1) the individual's age and mental ability; (2) whether the individual was intoxicated or under the influence of drugs; (3) whether the individual was informed of [his] *Miranda* rights; and (4) whether the individual was aware, through prior experience, of the protections that the legal system provides for suspected criminals. It is also important to consider the environment in which an individual's consent is obtained, including (1) the length of the detention; (2) whether the police used threats, physical intimidation, or punishment to extract consent; (3) whether the police made promises or misrepresentations; (4) whether the individual was in custody or under arrest when consent was given; (5) whether the consent was given in public or in a secluded location; and (6) whether the individual stood by silently or objected to the search.

United States v. Carr, 895 F.3d 1083, 1089 (8th Cir. 2018) (citations omitted). While the dissent suggests that these factors are irrelevant because they do not inform whether consent was given, Gastelum consented when he affirmatively responded to Trooper Pettit's three follow-up questions and, therefore, the dispositive issue is whether the consent was voluntary.

Gastelum contends Trooper Pettit issued him an unlawful command to open his trunk when he requested to check the luggage in the trunk and then said: "come on out" "and pop that trunk on your way out." The district court found that, even if Trooper Pettit's initial statement was impermissible, Trooper Pettit "quickly retracted that directive and instead asked for permission, which [Gastelum] was free to refuse." Considering the totality of the circumstances, this finding is not clearly erroneous.

An important consideration when assessing the voluntariness of consent is the environment in which Gastelum consented. Carr, 895 F.3d at 1089. The video shows a friendly and relaxed environment and a cordial discussion between Trooper Pettit and Gastelum for the entirety of the stop. The encounter was demonstrably free of "threats, physical intimidation, [and] punishment." Id. (citations omitted). The video shows that Trooper Pettit was understated, unauthoritative, and polite.

While we agree that Trooper Pettit's initial comment about the trunk is problematic, we do not view that comment in isolation. Both while he made his initial statement about popping the trunk and after, the conversation's tone remained relaxed. After Trooper Pettit said to pop the trunk, he turned away and whistled for a moment, and then joked about how hard trunk releases are to find. Then, before Gastelum opened the trunk, Trooper Pettit expressly sought Gastelum's consent by asking three times whether he could search the trunk—"You don't mind if I look back

there, do you? You don't care, huh? That's fine?" Gastelum gave affirmative responses to each question.

Gastelum is an intelligent adult with a college education and military experience. While the dissent argues that these factors weigh against voluntariness, we have held that an educated, experienced adult is more likely to be informed and exercise his right to refuse a search. See, e.g., United States v. Barnum, 564 F.3d 964, 970–71 (8th Cir. 2009); United States v. Comstock, 531 F.3d 667, 677 (8th Cir. 2008); United States v. Lee, 356 F.3d 831, 834–35 (8th Cir. 2003). Additionally, Gastelum was still seated in the driver's seat of his vehicle and not under arrest when he gave consent. Gastelum was only stopped for about 15 minutes when Trooper Pettit asked about luggage. And the stop took place on a busy interstate in broad daylight, not a secluded location. Trooper Pettit, who was the only officer on the scene, did not remove Gastelum from the vehicle until after Gastelum consented, and Trooper Pettit did not handcuff Gastelum until after the drugs were discovered. Finally, Gastelum never "objected to the search," but rather "stood by silently" after opening the trunk. Id. (citations omitted). Nothing about this encounter shows that Gastelum's will was so "overborne and his capacity for self-determination [so] critically impaired" that "his consent to search must have been involuntary." United States v. Johnson, 956 F.3d 510, 516 (8th Cir. 2020) (citations omitted).

Given the friendly atmosphere, rapport, and conversation that had developed between Trooper Pettit and Gastelum coupled with Gastelum's characteristics,

demeanor, and responses throughout the encounter, the district court did not clearly err in finding Gastelum voluntarily consented to the search. Under the totality of these circumstances, which were recorded on video, a reasonable officer would have believed that Gastelum's consent to search the trunk was "the product of an essentially free and unconstrained choice that [he] was making." United States v. Welch, 951 F.3d 901, 906 (8th Cir. 2020) (citations omitted).

The Supreme Court has cautioned against creating *per se* rules in the Fourth Amendment context when the proper inquiry is consideration of the totality of the circumstances and has also held that an officer is not required to advise suspects of their right to refuse consent to a search. United States v. Drayton, 536 U.S. 194, 201, 206–07 (2002). We, therefore, decline Gastelum's invitation to create a bright-line rule requiring an officer to specifically advise a defendant of his right to refuse a search where an initial comment was made that might be interpreted as a command.

In light of the totality of the circumstances in this case, which included a friendly encounter and three affirmative responses from Gastelum to Trooper Pettit's three follow-up questions seeking permission to search, we need not reach the question of whether there should be a rule requiring or recommending an admonition from a law enforcement officer of the right to refuse a search.

III. CONCLUSION

For the foregoing reasons, we affirm the denial of the suppression motion.

KELLY, Circuit Judge, dissenting.

I agree that Trooper Pettit did not unreasonably prolong Gastelum's traffic stop, but in my view he unlawfully searched the trunk of Gastelum's car without his voluntary consent. I would therefore reverse the district court's denial of Gastelum's motion to suppress evidence.

"Under the fourth and fourteenth amendments, searches conducted without a warrant issued upon probable cause are presumptively unreasonable, subject to a few specifically established exceptions." United States v. Escobar, 389 F.3d 781, 784 (8th Cir. 2004) (quoting United States v. Cedano-Medina, 366 F.3d 682, 684 (8th Cir. 2004)). Consent is one of those exceptions. Id. ("[A] warrantless search is valid if conducted pursuant to the knowing and voluntary consent of the person subject to a search."). And it is the government's burden to establish both that the search was consensual and that the consent given was voluntary. See United States v. Magallon, 984 F.3d 1263, 1280 (8th Cir. 2021); see also United States v. Jones, 701 F.3d 1300, 1317 (10th Cir. 2012) ("Voluntary consent consists of two parts: (1) the law enforcement officers must receive either express or implied consent, and (2) that

consent must be freely and voluntarily given." (cleaned up)).

First, "[t]o show that a person *consented* to a search, the Government must demonstrate by a preponderance of the evidence that consent was the product of an essentially free and unconstrained choice." United States v. Garcia-Garcia, 957 F.3d 887, 895 (8th Cir. 2020) (emphasis added) (cleaned up). "[M]ere submission to a claim of lawful authority" does not suffice. Id. (cleaned up). And although consent may be inferred from a "subject's words, gestures, and other conduct," it "cannot be presumed from the absence of proof that a person resisted police authority or proof that the person merely acquiesced." Magallon, 984 F.3d at 1280 (cleaned up). "The ultimate question is not whether [Gastelum] subjectively consented to the search, but rather, whether a reasonable officer would believe consent was given." United States v. Garcia, 888 F.3d 1004, 1009 (8th Cir. 2018) (cleaned up). Accordingly, the central question in this case is whether it was reasonable for Trooper Pettit to believe that Gastelum gave him permission to search the trunk of his rental car. See Magallon, 984 F.3d at 1280.

Based on my review of the record, I do not agree that a reasonable officer would have believed that Gastelum consented to a request—as opposed to submitted to Trooper Pettit's commands—to search his trunk. See United States v. Robertson, 736 F.3d 677, 680–81 (4th Cir. 2013) (concluding that the defendant did not consent to a request—"he merely surrendered to a police officer's command"); cf. Bumper v. North

Carolina, 391 U.S. 543, 550 (1968) ("When a law enforcement officer claims authority to search a home under a warrant, he announces in effect that the occupant has no right to resist the search. The situation is instinct with coercion—albeit colorably lawful coercion. Where there is coercion there cannot be consent.").

Consider the facts of the traffic stop. Nearly 15 minutes into the stop, after briefly speaking with Gastelum about his travel plans and checking his license, insurance, and rental information, Trooper Pettit returned to the passenger side of Gastelum's car to issue him a warning. Noting they were "about done here," he asked whether Gastelum had any luggage in the trunk. Gastelum said he had only a duffel bag, and Trooper Pettit replied: "Alright, quick check of that and then we'll be done. Alright, come on out for me and pop that trunk on your way out." Gastelum began to comply, struggling a bit to locate the trunk release in an unfamiliar rental car. Approximately 20 seconds after instructing Gastelum to exit the vehicle and pop the trunk—and critically, while Gastelum continued to comply by searching for the release—Trooper Pettit asked: "You don't mind if I look back there do you? You don't care, huh? That's fine?" According to Trooper Pettit, Gastelum verbally agreed, popped the trunk, and exited the vehicle.

Whereas the court is content simply to note that Trooper Pettit's initial statement was "problematic," I would recognize this initial statement for what it was—a command—and afford it the significance it warrants. In my view, the instruction to "come on out

for me and pop that trunk on your way out" conveyed to Gastelum that he could not refuse to open his trunk. See United States v. Vera, 457 F.3d 831, 835 (8th Cir. 2006) (distinguishing an "authoritative order or command" from a "request—with its implication that the request may be refused" (cleaned up)). In both language and effect, Trooper Pettit's first statement told Gastelum that the traffic stop would not be completed until Gastelum opened the trunk and "c[a]me on out" of the vehicle and Trooper Pettit searched the trunk. That Gastelum responded by immediately searching for the trunk release further indicates that he considered the statement to be an unambiguous command. The district court recognized as much and found that Trooper Pettit's initial statements "appear[ed] to be a command."

The court nevertheless concludes that Trooper Pettit's subsequent statements effectively retracted the prior, impermissible command and clarified that Gastelum was free to refuse. I am not so convinced. It is true that, as a general matter, "[t]here is no *per se* requirement that an officer inform a citizen of his right to refuse consent." Id. But in my view, once an officer has issued a command, it is unreasonable to believe that a person can consent to a follow-up request if the officer has not clearly communicated in some manner that the issued command is no longer in effect. Otherwise, the person will simply continue to acquiesce, compelled to submit to the officer's initial claim of lawful authority. And that is exactly what happened here. Trooper Pettit's leading questions followed closely on

the heels of his command, and they did little more than confirm that Gastelum was continuing to do as he was told: "You don't mind if I look back there do you? You don't care, huh? That's fine?" These questions did nothing to reverse course and correct Gastelum's understanding that he must comply. And again, Gastelum was actively complying with the prior command to pop the trunk when Trooper Pettit asked these follow-up requests. Without any clear indication from Trooper Pettit that he could do anything but continue to comply, Gastelum continued to submit to Trooper Pettit's claim of lawful authority to search the vehicle *without* consent. See Garcia-Garcia, 957 F.3d at 895; Bumper, 391 U.S. at 550. Under these circumstances no reasonable officer would believe that Gastelum made the "essentially free and unconstrained choice" to consent to a search of his trunk. Garcia-Garcia, 957 F.3d at 895.

As for the court's emphasis on the friendliness of the encounter and Gastelum's age and experience, these considerations inform the question of whether the obtained consent was voluntary, not whether consent existed in the first place. See Magallon, 984 F.3d at 1281 (noting we have generally focused on three categories of factors to determine *voluntariness:* "(1) the nature of the interaction between police and the defendant, (2) the personal characteristics and behavior of the defendant, and (3) the environment surrounding the defendant at the time he gave his consent" (quoting Garcia-Garcia, 957 F.3d at 897)); see also id. at 1280 ("Consent is voluntary if the consenting individual had a reasonable appreciation of the nature and

significance of his actions." (cleaned up)). In this case, they reveal nothing about whether a reasonable officer would believe that Gastelum understood Trooper Pettit's initial statement as a command. In any event, even if such considerations were relevant, they cannot overcome the simple fact that Trooper Pettit gained access to the car trunk by ordering Gastelum to open it. For one, Gastelum's age, intelligence, education, and military service all indicate that he would recognize a command from law enforcement when he heard one and obey it. And however cordial Trooper Pettit's tone was, his follow-up questions simply did not clarify (either explicitly or implicitly) that Gastelum could refuse consent to the search of his car trunk *after* he had already been ordered to open it.

This case may seem more challenging than it is because of the apparent bonhomie of the encounter, but the Supreme Court has admonished:

> [T]he Fourth and Fourteenth Amendments require that a consent not be coerced, by explicit or implicit means, by implied threat or covert force. For no matter how subtly the coercion was applied, the resulting 'consent' would be no more than a pretext for the unjustified police intrusion against which the Fourth Amendment is directed.

Schneckloth v. Bustamonte, 412 U.S. 218, 228 (1973). The court imagines that Gastelum, who was already complying with the order to "come on out . . . and pop that trunk," could and should have answered "no" when presented with Trooper Pettit's follow-up

questions. If Trooper Pettit had been clear that he was in fact retracting his command, perhaps a person in Gastelum's shoes would have felt comfortable doing as the court suggests. But with a command having been issued just 20 seconds prior, a typical person would not have risked escalating a police encounter by assuming that a follow-up question—such as, "You don't mind?" or "You don't care?"—meant they could suddenly disobey what a law enforcement officer had seconds before directly ordered. Like the court, I do not necessarily recommend a *per se* rule. But in this particular situation, after considering the totality of circumstances, I believe the government failed to establish that Gastelum voluntarily consented to the search of his car trunk as opposed to lawfully complied with the trooper's command to allow the search.

I respectfully dissent.

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
TEXARKANA DIVISION

UNITED STATES OF AMERICA PLAINTIFF

v. Case No. 4:18-cr-40020

ALDO DANIEL GASTELUM DEFENDANT

ORDER

(Filed Jun. 19, 2019)

Before the Court is Defendant's Motion to Suppress Evidence. ECF No. 24. The Government has filed a response. ECF No. 38. Defendant has filed a reply. ECF No. 42. The Court held a hearing on this matter on April 18, 2019. Defendant and the Government have filed post-hearing briefs. ECF Nos. 65, 66. The Court finds this matter ripe for consideration.

BACKGROUND

On April 7, 2018, Defendant flew to Houston, Texas from his home in California. In Houston, Defendant rented a car and began a trip to Chicago, Illinois "with the aim of visiting as many Army Reserves facilities as he could, in hopes of securing a placement."[1] ECF No. 25, p. 3. Defendant was subsequently

[1] Defendant asserts that he is a veteran, having served in both the United States Army and the United States Marine Corps and that he has also served in the reserves. Defendant states that he has served multiple overseas combat tours and suffered various combat-related injuries. Defendant contends that he is

stopped later that day while traveling through Arkansas on Interstate 30 by Arkansas State Trooper Bernard Pettit ("Trooper Pettit").

Upon pulling Defendant over, Trooper Pettit approached the front passenger's side of the vehicle, introduced himself, and informed Defendant that he had stopped him due to an unsafe lane change.[2] ECF No. 25-2, 1:52[3]. Trooper Pettit thereafter asked for Defendant's license and insurance. ECF No. 25-2, 2:08.

"currently listed as 80% disabled, and has been told he will soon be reclassified as 100% disabled." ECF No. 25, p. 2. Defendant states that he wishes to continue his service with the reserves, but that due to his injuries, "placement options are limited." ECF No. 25, p. 2. Defendant states that he made numerous attempts to "secure a suitable placement . . . through phone, mail, and electronic contacts" but that his efforts were unsuccessful. ECF No. 25, p. 2. After his attempts proved unsuccessful, Defendant asserts that he conferred with acquaintances in reserves recruiting and was advised that in order to rejoin, he needed to physically visit any reserve unit he was interested in and "sit there until [he] got face to face with the right person." ECF No. 25, p. 2.

[2] The parties disagree as to one thing Trooper Pettit said when he first made contact with Defendant. Defendant contends that Trooper Pettit said "I didn't mean to stop you," whereas the Government asserts that he said "the reason that I stopped you." ECF No. 25, p. 3; ECF No. 38, p. 2 n.2. The dashcam video from Trooper Pettit's patrol vehicle was included as an exhibit to Defendant's motion and the Court has reviewed that video. *See* ECF No. 25-2. Upon review, the Court finds that Trooper Pettit said "the reason that I stopped you," not "I didn't mean to stop you." This finding is further supported by the fact that Trooper Pettit indeed did stop Defendant, showing that he intended to do so.

[3] ECF No. 25-2 is a video recording from the dashcam in Trooper Pettit's patrol vehicle. Accordingly, the "1:52" in the instant citation and all similar future citations are in reference to the time of the events as depicted in the recording.

Defendant informed Trooper Pettit that the vehicle was a rental and provided him with the rental agreement. ECF No. 25-2, 2:13; *see* Transcript of Suppression Hearing (hereinafter "Transcript"), p. 32. Trooper Pettit then asked Defendant where he was going and Defendant stated that he was going to Chicago. ECF No. 25-2, 2:16. Trooper Pettit then asked Defendant if he rented the vehicle in Houston, to which Defendant stated that he did and further volunteered the alleged reason for his trip—to visit reserve units. ECF No. 25-2, 2:31. Trooper Pettit asked various follow-up questions regarding how long Defendant has been out of active duty to which Defendant responded and further volunteered information regarding his service with the reserves. ECF No. 25-2, 2:45. Trooper Pettit continued to ask Defendant questions regarding what he had done since leaving military service and Defendant stated that he had been in college. ECF No. 25-2, 2:58. Trooper Pettit asked Defendant where he attended college and Defendant provided the name of the college he attended. ECF No. 25-2, 3:02. Trooper Pettit continued questioning Defendant, asking him, for instance, how he got to Houston. ECF No. 25-2, 3:24. Defendant did not explain how he got to Houston, but again stated that there were reserve units in Texas he wanted to visit and others in Chicago. ECF No. 25-2, 3:25. Trooper Pettit followed up by asking if any of the units "look[ed] any good." ECF No. 25-2, 3:36. Defendant's response was inaudible, but Trooper Pettit continued to ask Defendant questions regarding how he got to Houston and his travel plans to get back to California. Defendant's responses were inaudible. Trooper Pettit

then asked Defendant if the reserve recruiters in California had been able to help him. ECF No. 25-2, 4:22. Defendant's response is only partially audible, but he states that the units he is interested in are medical units, and the biggest such facilities are in Houston and San Antonio, Texas. ECF No. 25-2, 4:30. After listening to Defendant, Trooper Pettit then returned to his patrol vehicle to run Defendant's information through dispatch. ECF No. 25-2, 5:01.

Dispatch subsequently informed Trooper Pettit that Defendant's credentials were valid and that he had various prior misdemeanors. ECF No. 25-2, 12:28. Trooper Pettit thereafter returned to the front passenger window of Defendant's vehicle and stated that they were "about done." ECF No. 25-2, 15:17. Trooper Pettit stated that he noticed Defendant had luggage in the vehicle and asked if he had anything in the trunk, to which Defendant stated that he did. ECF No. 25-2, 15:20. Trooper Pettit then stated "quick check of that and we'll be done."[4] ECF No. 25-2, 15:26. Trooper Pettit then directed Defendant to "come on out for me and pop that trunk on your way out." ECF No. 25-2, 15:29. Trooper Pettit then turned his body as if to walk to the rear of the vehicle, whistled for a moment, and then joked with Defendant about how difficult trunk releases can be to find. Trooper Pettit then asked Defendant, "you don't mind if I look back there do you? You don't care, huh? That's fine?" ECF No. 25-2, 15:50.

[4] Trooper Pettit may have actually said "we'll be going" as opposed to "we'll be done." The audio is not completely clear, but any difference is immaterial.

Defendant's response was inaudible, but the trunk opened shortly thereafter. ECF No. 25-2, 15:58. Defendant then exited the vehicle and moved to the shoulder of the Interstate in front of the vehicle. ECF No. 25-2, 16:14.

Trooper Pettit then went to the trunk to conduct the search. ECF No. 25-2, 16:25. Shortly thereafter, Trooper Pettit placed his hand on his weapon and ordered Defendant to the ground. ECF No. 25-2, 16:39. Trooper Pettit then secured Defendant in handcuffs. Trooper Pettit located twenty wrapped bundles which he estimated to be twenty kilograms of substance. The Government represents that the twenty bundles were submitted to the Arkansas State Crime Laboratory and that sixteen of the bundles were actually tested and determined to be 15.899 kilograms of cocaine. ECF No. 25-2, p. 4. The Government also states that Trooper Pettit located two cell phones during the search of the vehicle. ECF No. 38, p. 4.

On September 12, 2018, a one count Indictment was filed charging Defendant with possession of cocaine with intent to distribute in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(A)(ii)(II). ECF No. 1. Defendant now moves to suppress the seized evidence.

DISCUSSION

Defendant first argues that Trooper Pettit unlawfully prolonged the traffic stop beyond the time necessary to address the traffic violation that led to the stop. Defendant next argues that the search itself was

unconstitutional.[5] Accordingly, Defendant contends that suppression is required.[6]

The Court will address each argument in turn.

I. Whether Trooper Pettit Unlawfully Prolonged the Traffic Stop

The Court first turns to the issue of whether Trooper Pettit unlawfully prolonged the traffic stop.

Generally, a traffic stop may not last longer than reasonably necessary to attend to the underlying traffic violation. *Rodriguez v. United States*, 135 S. Ct. 1609, 1614 (2015) ("Because addressing the infraction is the purpose of the stop, it may last no longer than is necessary to effectuate that purpose."). In attending to the traffic violation, an officer may take the time to determine whether to issue a traffic ticket, check the driver's license, check for warrants for the driver, inspect the vehicle's registration and insurance, and even ask the occupants of the vehicle to exit the vehicle. *Id*. Likewise, an officer may also inquire "about the

---

[5] Defendant asserts that Trooper Pettit had no probable cause or consent to complete the search of the trunk. The Government does not contend that Trooper Pettit had probable cause to conduct the search in question, but instead argues that Defendant voluntarily consented to the search. Accordingly, the Court will not address the issue of whether Trooper Pettit had probable cause to conduct the search as it does not appear to be a point of contention between the Government and Defendant.

[6] Defendant does not appear to dispute the propriety of the stop. Accordingly, the Court will not discuss this issue further but finds that the stop itself was lawful.

occupants' destination, route, and purpose." *United States v. Bowman*, 660 F.3d 338, 343 (8th Cir. 2011) (quoting *United States v. Sanchez*, 417 F.3d 971, 975 (8th Cir. 2005)). However, the seizure will only remain lawful so long as the stop is not measurably extended by unrelated inquiries. *Rodriguez*, 135 S. Ct. at 1614.

That being said, an officer "may extend a traffic stop beyond its normal completion if the encounter has become consensual" and when "a motorist gives consent to search his vehicle, he necessarily consents to an extension of the traffic stop while the search is conducted." *United States v. Rivera*, 570 F.3d 1009, 1014 (8th Cir. 2009). An officer may, likewise, lawfully expand the scope of a traffic stop where he "develops reasonable suspicion that other criminal activity is afoot" in order to address that suspicion. *United States v. Peralez*, 526 F.3d 1115, 1120 (8th Cir. 2008). The Eighth Circuit has discussed the reasonable suspicion standard as follows:

> Only when an officer develops a reasonable, articulable suspicion that criminal activity is afoot does he have justification for a greater intrusion unrelated to the traffic offense. This requires that the officer's suspicion be based upon particularized, objective facts which, taken together with rational inferences from those facts, reasonably warrant suspicion that a crime is being committed. In evaluating whether a set of facts would give rise to reasonable suspicion, this court must look at the totality of the circumstances and not just each independent fact standing alone.

> Furthermore, the court may consider any added meaning that certain conduct might suggest to experienced officers in the field, trained in the observation of criminal activity.

United States v. Riley, 684 F.3d 758, 763 (8th Cir. 2012) (quoting *United States v. Jones*, 269 F.3d 919, 927 (8th Cir. 2001)). Moreover, "[w]hile 'reasonable suspicion' must be more than an inchoate 'hunch,' the Fourth Amendment only requires that police articulate some minimal, objective justification for an investigatory stop." *Id*. (quoting *United States v. Fuse*, 391 F.3d 924, 929 (8th Cir. 2004)). In the case at bar, Defendant asserts that Trooper Pettit could not have developed reasonable suspicion during the course of the traffic-related portion of the stop. The Government, in contrast, asserts that Trooper Pettit did develop such reasonable suspicion during the traffic-related portion of the stop.

Upon review of the dashcam footage and Trooper Pettit's testimony, the Court finds that Trooper Pettit did not unlawfully extend the stop past its traffic-related purpose.[7] The record clearly shows that the

---

[7] The Court notes Defendant's assertion that "[i]n this case the legitimate purpose of the stop (the observed lane change) was completed in ten seconds." ECF No. 25, p. 7. In accordance with this claim, Defendant contends that the prolongation of the stop past this point was unlawful. Defendant rests this argument on the assertion that Trooper Pettit stated that he did not mean to stop him and that, therefore, the purpose of the traffic stop was addressed and resolved when Trooper Pettit advised Defendant to leave more room when he changed lanes. The Court finds this argument unpersuasive. As noted above, the Court has reviewed the dashcam footage of the stop and Trooper Pettit did not say

initial contact between Trooper Pettit and Defendant centered around the requests and inquiries law enforcement officers are permitted to make—such as looking over a driver's license and insurance documents, and asking questions about the driver's itinerary and the purpose of his travel—when making a traffic stop.[8] Likewise, after Trooper Pettit returned to his patrol vehicle, he ran Defendant's information through dispatch and reviewed the documents he had been given, including Defendant's rental receipt for the vehicle. The record establishes that dispatch took some time to get back to Trooper Pettit. Once dispatch

---

that he didn't mean to stop Defendant. Indeed, there is no basis to conclude that Trooper Petti did not mean to stop Defendant, as the footage clearly shows Trooper Pettit pull in behind Defendant while driving down the Interstate and thereafter pull him over. Accordingly, Defendant's contentions otherwise are without merit and his conclusion that the traffic-related portion of the stop was over in ten seconds is erroneous.

[8] To the extent Defendant asserts that Trooper Pettit's questions regarding Defendant's military service and the purpose for his trip were drug interdiction questions, such argument is unpersuasive. Although Trooper Pettit may have had suspicions concerning drug trafficking, his questions were not drug interdiction questions as they did not concern drug possession or use or other indices of drug trafficking such as large amounts of cash. *See United States v. Peralez*, 526 F.3d 1115, 1117-18 (8th Cir. 2008) (where officer used a "blended process" of conducting a drug interdiction investigation during the course of a traffic-stop by inquiring about whether the vehicle contained drugs or "large amounts of cash"). In fact, Trooper Pettit's questions regarding Defendant's military service and the reason for his trip clearly concern the purpose and itinerary for his trip—a permissible line of inquiry. Furthermore, Trooper Pettit only posed the questions at issue after Defendant—without prompting—volunteered the stated reason for his trip.

informed Trooper Pettit that Defendant's license was valid and reported back on his criminal history, Trooper Pettit shortly thereafter returned to Defendant's vehicle. All of the events and inquiries to this point—from the time of the initial stop to the moment Trooper Pettit returned to Defendant's car—were directly related to the traffic stop and permissible. Accordingly, to this point, the stop had not been extended in any way.

Now, the issue of whether the stop was unlawfully extended truly arises about fifteen minutes into the dashcam footage when Trooper Pettit, standing at the front passenger side window of Defendant's vehicle, asks Defendant if he has anything in the trunk. *See* ECF No. 25-2, 15:20. At this point, Trooper Pettit had run Defendant's credentials through dispatch, received a response, and reviewed the documents Defendant provided to him upon their initial contact. With this information, Trooper Pettit could have completed the traffic-related portion of the stop by giving Defendant the written warning he later issued. However, Trooper Pettit testified at the hearing on the instant motion that by this time, he was suspicious that criminal activity was afoot. Trooper Pettit stated that, taken together, numerous factors gave rise to this belief based on his experience and training concerning drug trafficking.

Specifically, Trooper Pettit testified that he noticed a bag on the front seat of the vehicle bearing military insignia and an American flag, along with a clearly displayed hat with a logo representative of the United

States Marine Corps. Trooper Pettit testified that drug traffickers sometimes use this tactic—prominently displaying patriotic and military service items—as a means of deflecting attention and avoiding detection by law enforcement officers. *See* Transcript, p. 109. Trooper Pettit, likewise, testified that he thought Defendant's story was strange as Defendant had told him that he had seen recruiters in California, but that they said he was ineligible to rejoin. Trooper Pettit stated that, with that in mind, it made little sense to him that Defendant would incur the costs of flying to Houston, renting a car, driving to Chicago, and flying back to California when such a trip would be fruitless in regard to Defendant's stated purpose because, Trooper Pettit believed, if one recruiter had told Defendant he was ineligible to rejoin the service, another recruiter would come to the same conclusion. *See* Transcript, pp. 40, 41, 100.

Furthermore, Trooper Pettit testified he was aware that Houston, Texas and Chicago, Illinois are source cities[9] for narcotics and that drug traffickers

[9] Although the Court notes that Trooper Pettit stated that Chicago and Houston are narcotics trafficking "source cities," this issue was not given undue weight in the Court's final determination on the larger issue of whether Trooper Pettit had the requisite reasonable suspicion. Indeed, it seems a reasonable presumption that significant amounts of narcotics likely pass between these two large cities, but it seems equally reasonable to presume that the majority of travelers passing between these two cities are not involved in the drug trade. Accordingly, the Court acknowledges the fact that both Houston and Chicago may experience significant amounts of drug trafficking activities and that narcotics may pass between Houston and Chicago, but the Court

sometimes use rental vehicles in transporting drugs. Trooper Pettit further testified that, while in his patrol vehicle just after dispatch responded to his request for information, he reviewed the rental agreement Defendant provided for the rental car. *See* Transcript, pp. 104-05. The rental agreement reflected that the vehicle was rented on April 7, 2018, at 12:12 p.m. in Houston. *See* Transcript, p. 106. Trooper Pettit testified that the stop at issue occurred between 5:20 and 5:40 of that same day, and that he believed it was about a six-hour trip from Houston to the point of the stop. *Id*. The rental agreement further specified that the vehicle was to be returned in Chicago at O'Hare International Airport on April 8, 2018 at 7:00 p.m.—the next day. *Id*. at 106-07. Trooper Pettit stated that the duration of the trip was one factor which indicated criminal activity. *Id*. at 108-09. Accordingly, Trooper Pettit testified that based on the totality of these factors, he developed reasonable suspicion that criminal activity was afoot.

Upon consideration, the Court finds that Trooper Pettit had the requisite reasonable suspicion to extend the stop and continue questioning Defendant. At the hearing, Trooper Pettit clearly stated the facts and factors giving rise to his suspicion and asserted that his suspicion was informed by his training and experience as a law enforcement officer of some twenty-five[10]

---

does not give undue weight to these facts in reaching the present conclusion.

[10] Trooper Pettit testified that he had been with the Arkansas State Police for thirteen years and that, prior to that, he was

years. The Court believes that the rational inferences that may be drawn from the facts discussed and cited by Trooper Pettit reasonably warrant suspicion that a crime was being committed.

Therefore, the Court finds that the stop was not unlawfully extended and suppression is not warranted on this basis.

II. Whether Defendant Consented to the Search

The Court now turns to the issue of whether Defendant consented to the search of his vehicle's trunk.

The Eighth Circuit recently discussed this issue in *United States v. Sallis*, 920 F.3d 577, 581-82 (8th Cir. 2019), stating as follows:

> While the Fourth Amendment requires the police to obtain a warrant before a search, one established exception to the warrant requirement is a search that is conducted pursuant to consent. *United States v. Wolff*, 830 F.3d 755, 758 (8th Cir. 2016). A defendant's consent is voluntary if "it was the product of an essentially free and unconstrained choice, rather than the product of duress or coercion, express or implied." *United States v. Morreno*, 373 F.3d 905, 910 (8th Cir. 2004). "The government bears the burden to prove by a preponderance of the evidence that consent to search was

---

employed with the Arkansas Department of Correction for twelve years.

> freely given." *United States v. Aguilar*, 743 F.3d 1144, 1147 (8th Cir. 2014) (quoting *United States v. Arciniega*, 569 F.3d 394, 398 (8th Cir. 2009)). Courts consider a variety of factors in determining whether consent was voluntary, including: "a defendant's age, intelligence, and education; whether he cooperates with police; his knowledge of his right to refuse consent; and his familiarity with arrests and the legal system." *United States v. Bearden*, 780 F.3d 887, 895 (8th Cir. 2015). Courts also consider "environmental" factors in determining the voluntariness of consent, including: "whether [law enforcement] threatened, intimidated, punished, or falsely promised something to the defendant; whether the defendant was in custody or under arrest when consent was given and, if so, how long he had been detained; and whether consent occurred in a public or secluded area."

Id. Other factors to consider include whether the suspect "stood by silently as the search occurred" and whether the suspect's "contemporaneous reaction to the search was consistent with consent." *United States v. Escobar*, 389 F.3d 781, 785 (8th Cir. 2004). "Further, while *Miranda* warnings 'are not required for consent to a search to be voluntary . . . they can lessen the probability that a defendant was subtly coerced.'" *Id*. at 786 (quoting *United States v. Lee*, 356 F.3d 831, 834 (8th Cir. 2003)). Although law enforcement may request consent to search, they may not "convey a message that compliance with [the] request is required." *Id*. (citing *Florida v. Bostick*, 501 U.S. 429, 435 (1991)). The

Government's burden to show that consent was voluntary cannot be discharged "by showing mere acquiescence to a claim of lawful authority," and the Government must establish that a reasonable person would believe that the subject of a search gave consent that was the result of a free, unrestrained choice and that the subject of the search comprehended the choice that he was making. *Id.* at 785. Whether consent was voluntary is determined in light of the totality of the circumstances. *Id*. at 784-85.

In the present case, Defendant contends that any putative consent was illusory and was mere acquiescence to Trooper Pettit's authority and conditioned on Trooper Pettit's directive that Defendant would not be permitted to leave until he submitted to the search. In support of this argument, Defendant asserts that Trooper Pettit issued a command by saying that the stop would be complete after a search of the trunk and directing Defendant to pop the trunk and exit the vehicle. Defendant likewise asserts that Trooper Pettit's subsequent request for permission to search did not cure any prior violation. Defendant asserts that when Trooper Pettit requested consent, he was already in the act of complying with Trooper Pettit's previous directive.

In contrast, the Government asserts that Defendant voluntarily consented to the search. The Government contends that "[c]ontrary to [Defendant's] claims, he was not ordered to get out of the car or commanded to open the trunk" and that Defendant merely consented to Trooper Pettit's request.

Upon consideration, the Court finds that Defendant consented to the search. To begin, the Court recognizes that Trooper Pettit initially stated that the stop would be over after a "quick check of the trunk" and thereafter directed Defendant to "come on out for me and pop that trunk on your way out." ECF No. 25-2, 15:26; ECF No. 25-2, 15:29. Although these statements, taken in isolation, appear to be a command, Trooper Pettit shortly thereafter—before Defendant had actually popped the trunk or exited the vehicle—explicitly asked Defendant if he could search the trunk. ECF No. 25-2, 15:50 ("You don't mind if I look back there do you? You don't care, huh? That's fine?"). Although Defendant's response is inaudible, Trooper Pettit testified that Defendant stated that he did not mind if he looked in the trunk. *See* Transcript p. 133 ("When I asked him, you don't mind if I look back there, do you? And he said, I don't care. And I repeated, oh, you don't care? And then he said, that's fine. And I repeated back, that's fine?"). Moreover, it was only after Trooper Pettit explicitly asked for permission to search that Defendant actually popped the trunk and exited the vehicle. These actions, taking place after Trooper Pettit asked for permission, clearly appear to show that Defendant consented to the search voluntarily. Even if Trooper Pettit had impermissibly directed Defendant to consent to a search, he quickly retracted that directive and instead asked for permission, which Defendant was free to refuse.

Furthermore, Defendant testified that at the time of the stop, he had been in college for just under three

years. *See* Transcript, p. 142. Likewise, Defendant is not a minor, and has served in the military. All of these facts taken together clearly show that Defendant is an intelligent adult and, therefore, make his actions indicating consent that much more convincing. Moreover, there is no indication that Trooper Pettit threatened or intimidated Defendant into consenting and although Defendant had been pulled over, the stop was not overly lengthy at that point. As to the issue of whether the consent occurred in a public or secluded area, the Court notes that the shoulder of the Interstate is certainly public. That being said, no other individuals were nearby in such a way as to closely observe the interaction between Defendant and Trooper Pettit or the events at issue due to the fact that those passing were in quickly moving vehicles. Accordingly, upon consideration, the Court finds that this factor is neutral. The Court also notes that until the point where the substance at issue was found by Trooper Pettit, the interaction between Trooper Pettit and Defendant had been friendly. Finally, the Court observes that Defendant's conduct and "contemporaneous reaction" to the search was consistent with consent as he stood patiently on the side of the road while Trooper Pettit conducted the search and did not otherwise protest or hesitate in allowing Trooper Pettit to conduct the search.

Accordingly, upon review of the situation and relevant factors, the Court finds that, under the totality of the circumstances, the Government has adequately established that a reasonable person would believe that Defendant gave consent that was the result of a

free, unrestrained choice and that Defendant comprehended the choice that he was making. Therefore, the Court finds that Defendant consented to the search and suppression on this basis is not warranted.

CONCLUSION

For the foregoing reasons, the Court finds that Defendant's Motion to Suppress Evidence (ECF No. 24) should be and hereby is **DENIED**.

IT IS SO ORDERED, this 19th day of June, 2019.

/s/ Susan O. Hickey
Susan O. Hickey
Chief United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 20-3451

United States of America

Appellee

v.

Aldo Daniel Gastelum

Appellant

Appeal from U.S. District Court for the
Western District of Arkansas - Texarkana
(4:18-cr-40020-SOH-1)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

Judge Shepherd did not participate in the consideration or decision of this matter.

October 05, 2021

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans