

United States Court of Appeals
For The Eighth Circuit
Thomas F. Eagleton U.S. Courthouse
111 South 10th Street, Room 24.329
St. Louis, Missouri 63102

Michael E. Gans
Clerk of Court

VOICE (314) 244-2400
FAX (314) 244-2780
www.ca8.uscourts.gov

May 04, 2023

Mr. Justin Adam Quinn
QUINN LAW
Suite 540
209 S.19th Street
Omaha, NE 68102

RE: 22-2704 United States v. Katherine Woitaszewski

Dear Counsel:

The court has issued an opinion in this case. Judgment has been entered in accordance with the opinion.

Please review Federal Rules of Appellate Procedure and the Eighth Circuit Rules on post-submission procedure to ensure that any contemplated filing is timely and in compliance with the rules. Note particularly that petitions for rehearing and petitions for rehearing en banc must be received in the clerk's office within 14 days of the date of the entry of judgment. Counsel-filed petitions must be filed electronically in CM/ECF. Paper copies are not required. Except as provided by Rule 25(a)(2)(iii) of the Federal Rules of Appellate Procedure, no grace period for mailing is allowed. Any petition for rehearing or petition for rehearing en banc which is not received within the 14 day period for filing permitted by FRAP 40 may be denied as untimely.

Michael E. Gans
Clerk of Court

CRJ

Enclosure(s)

cc: Ms. Denise M. Lucks
Mr. Sean Lynch
Mr. Jody Mullis
Ms. Katherine L. Woitaszewski

District Court/Agency Case Number(s): 8:20-cr-00308-RFR-1

United States Court of Appeals
For the Eighth Circuit

No. 22-2704

United States of America

Plaintiff - Appellee

v.

Katherine L. Woitaszewski

Defendant - Appellant

Appeal from United States District Court
for the District of Nebraska

Submitted: January 10, 2023

Filed: May 4, 2023

[Unpublished]

Before GRASZ, MELLOY, and KOBES, Circuit Judges.

PER CURIAM.

Katherine Woitaszewski entered a conditional plea of guilty to being a felon in possession of a firearm and possessing a stolen firearm. On appeal, Woitaszewski

argues the district court¹ erred by denying her motion to suppress incriminating statements and evidence because law enforcement should have provided warnings under *Miranda v. Arizona*, 384 U.S. 436 (1966). We affirm.

I. Background

Based on information from a confidential informant, United States Deputy Marshal Daniel Potter believed Woitaszewski, a former inmate with outstanding arrest warrants, was planning to assist a prison break. Deputy Potter sought assistance from the Omaha Police Department. He told the Omaha Police Department that Woitaszewski and the confidential informant would be in a black Ford F-350 near the airport in Omaha, Nebraska. Two City of Omaha police officers pulled over a truck that matched the description. Deputy Potter later identified Woitaszewski, at which point she was removed from the truck and placed in handcuffs. While Woitaszewski was exiting the truck, Deputy Potter asked whether she had a weapon. It is unclear what, if anything, Woitaszewski said in response.

Woitaszewski was eventually placed in the back of a patrol car. In total, approximately eighteen minutes elapsed between the truck stop and when Woitaszewski was placed in handcuffs. Sometime after Woitaszewski was placed in the patrol car, she asked to speak with Deputy Potter. When Deputy Potter walked up to Woitaszewski, she told him there was a gun in a backpack in the truck. An officer searched the backpack and found a gun, ammunition, and drugs. Notably, Woitaszewski received no *Miranda* warnings before she was asked if she had a weapon or before she said there was a gun in the backpack.

Following her arrest, Woitaszewski was indicted for being a felon in possession of a firearm and possessing a stolen firearm. *See* 18 U.S.C. §§ 922(g)(1),

¹The Honorable Robert F. Rossiter, Jr., Chief Judge, United States District Court for the District of Nebraska, adopting the report and recommendation of the Honorable Susan M. Bazis, United States Magistrate Judge for the District of Nebraska.

(j), and 924(a)(2). Woitaszewski later filed a motion to suppress incriminating statements and evidence obtained during the traffic stop. After an evidentiary hearing, the magistrate judge recommended the district court deny the motion. *See* 28 U.S.C. § 636(b)(1); Fed. R. Crim. P. 59(b). The district court overruled Woitaszewski's objection, adopted the recommendation, and denied the motion to suppress.

Woitaszewski later pled guilty but preserved the right to appeal the district court's denial of her motion to suppress. *See* Fed. R. Crim. P. 11(a)(2). After the district court sentenced Woitaszewski to 54 months of imprisonment, Woitaszewski timely appealed.

II. Analysis

Woitaszewski raises a single issue on appeal: whether the district court erred by denying her motion to suppress because law enforcement should have provided her *Miranda* warnings before she volunteered incriminating information. Under *Miranda*, "a law enforcement officer, prior to conducting custodial interrogation, must advise the suspect of his [or her] right to be free from compulsory self-incrimination and to the assistance of counsel." *United States v. Pelayo-Ruelas*, 345 F.3d 589, 591 (8th Cir. 2003). A district court's denial of a motion to suppress based on *Miranda* is subject to a mixed standard of review: we review legal conclusions de novo and factual findings for clear error. *United States v. Sanchez*, 676 F.3d 627, 630 (8th Cir. 2012).

Woitaszewski argues she was subject to custodial interrogation under *Miranda* when Deputy Potter asked if she had a weapon while Woitaszewski was exiting the truck. It is unclear whether Woitaszewski responded to the question, but a number of events followed: Woitaszewski was placed in handcuffs, a female officer was called to conduct a pat-down search, the female officer arrived and completed the pat-down search, Woitaszewski said goodbye to her dog, and law enforcement placed her in the back of a patrol car. Woitaszewski later asked one of

the police officers, multiple times, if she could speak with Deputy Potter. When Deputy Potter finally approached Woitaszewski, he told her that he would talk to her later. Woitaszewski nonetheless volunteered to him that there was a gun in a backpack in the truck.

We need not decide whether Woitaszewski was subjected to custodial interrogation when she was asked if she had a weapon. Even assuming Deputy Potter subjected Woitaszewski to custodial interrogation under *Miranda*, any questioning by Deputy Potter unambiguously ended before Woitaszewski re-initiated the conversation and volunteered incriminating information. “An unwarned statement is admissible if it is made voluntarily after police questioning has ended.” *United States v. Bailey*, 831 F.3d 1035, 1038 (8th Cir. 2016) (citing *United States v. Briones*, 390 F.3d 610, 612–13 (8th Cir. 2004)); *see also United States v. Harris*, 64 F.4th 999, 1002 (8th Cir. 2023). Accordingly, the district court did not err by denying the motion to suppress. *See Bailey*, 831 F.3d at 1038; *Briones*, 390 F.3d at 612–13.

III. Conclusion

We affirm the judgment of the district court.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

v.

KATHERINE L. WOITASZEWSKI,

Defendant.

8:20CR308

ORDER

This matter is before the Court on defendant Katherine L. Woitaszewski's ("Woitaszewski") Motion to Suppress (Filing No. 42) "all evidence obtained, seized, and otherwise confiscated as a result of a traffic stop that occurred on or about October 28th, 2020 near the cross streets of Abbott and Locust on a section of Abbott Dr. that appears to be in the State of Iowa." Woitaszewski contends the officers who arrested her acted outside their jurisdiction, unlawfully prolonged the stop to try to identify her, and improperly obtained incriminating statements from her before apprising her of her rights under *Miranda v. Arizona*, 384 U.S. 436 (1966).

Following an evidentiary hearing on November 8, 2021, the magistrate judge¹ issued a Findings and Recommendation (Filing No. 77) recommending Woitaszewski's motion to suppress be denied. *See* 28 U.S.C. § 636(b)(1); Fed. R. Crim. P. 59(b). Based on the evidence presented at the hearing, the magistrate judge concluded the stop took place in Nebraska and was supported by probable cause. The magistrate judge further decided that the officers had reasonable suspicion to detain Woitaszewski and that her custodial statements were entirely voluntary—not the result of interrogation.

¹The Honorable Susan M. Bazis, United States Magistrate Judge for the District of Nebraska.

Appendix B

Woitaszewski objects (Filing No. 78) to the magistrate judge's "finding" that she "was in custody after she was removed from the truck." Woitaszewski asserts she was in "custody the moment the traffic stop started." In her view, the officers violated her rights by immediately asking her incriminating questions without first *Mirandizing* her. She argues her statements "that led to the discovery of a firearm" and "the evidence obtained as a result of the statements should be suppressed."

In response (Filing No. 80), the government contends "Woitaszewski never establishes why it is constitutionally significant if she was in custody at the inception of the traffic stop or once she was formally placed under arrest." The government maintains Woitaszewski has not identified any questions that constitute unlawful interrogation. According to the government, Woitaszewski's objection "incorrectly frames" the relevant timeline and fails to properly account for the public-safety exception described in *United States v. Liddell*, 517 F.3d 1007, 1009 (8th Cir. 2008), and other binding precedent.

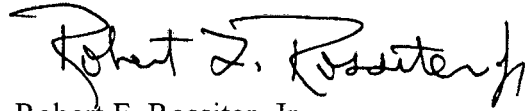
Upon careful de novo review of Woitaszewski's objection, *see* 28 U.S.C. § 636(b)(1); Fed. R. Crim. P. 59(b)(3), the Court concludes she has not stated sufficient grounds to warrant granting her motion to suppress. In short, Woitaszewski has not persuaded the Court that her statements were obtained in violation of her *Miranda* rights. Accordingly,

IT IS ORDERED:

1. Defendant Katherine L. Woitaszewski's objection (Filing No. 78) is overruled.
2. The magistrate judge's Findings and Recommendation (Filing No. 77) is accepted.
3. Woitaszewski's Motion to Suppress (Filing No. 42) is denied.

Dated this 14th day of February 2022.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Robert F. Rossiter, Jr.", with a stylized flourish at the end.

Robert F. Rossiter, Jr.
Chief United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

KATHERINE L. WOITASZEWSKI,

Defendant.

8:20CR308

FINDINGS AND RECOMMENDATION

This matter is before the Court on Defendant Katherine Woitaszewski's Motion to Suppress. (Filing No. 42.) An evidentiary hearing was held on November 8, 2021. A transcript has been filed and this matter is now ripe for disposition. For the reasons explained below, the undersigned will recommend that the motion be denied.

FACTS

On October 28, 2020, U.S. Deputy Marshal Daniel Potter ("Deputy Marshal Potter") became involved in an investigation involving Defendant. (TR. 88.) Deputy Marshal Potter has been a U.S. Marshal for eighteen and a half years and is assigned as the enforcement coordinator for the Marshals' fugitive task force. (TR. 88.) Deputy Marshal Potter received a phone call from a confidential informant ("CI") who provided information regarding a wanted fugitive and a potential escape plot. (TR. 88.) Deputy Marshal Potter testified that the CI told him there was a female named "Kate," whose last name was unknown but started with a "W" and was hard to pronounce, and that this individual had multiple warrants and was attempting to help someone escape from a camp in Leavenworth. (TR. 88.) Based on the information he received from the CI, Deputy Marshal Potter believed there was an active attempt to break someone out of federal custody in Leavenworth, Kansas. (TR. 90.)

Appendix C

Deputy Marshal Potter then began the process of trying to identify “Kate.” (TR. 88.) He contacted the U.S. Marshals out of Southern Iowa and the Pottawattamie County jail and was able to locate an individual named Katherine Woitaszewski—the defendant in this case. (TR. 89.) Deputy Marshal Potter got a picture of Defendant and showed it to the CI who confirmed Defendant was “Kate.” (TR. 89.) Deputy Marshal Potter learned Defendant had four active warrants for her arrest, one of them being from Southern Iowa. (TR. 89; Exs. 12-15.)

Throughout the day on October 28th, Deputy Marshal Potter was continually in contact with the CI receiving updates, and it was his impression that the CI was with Defendant. (TR. 90.) The CI told Deputy Marshal Potter that Defendant was trying to obtain a rental vehicle to drive to Leavenworth the next morning to help Henry Poteet (“Poteet”) escape from a USP Leavenworth camp. (TR. 90-91.) Deputy Marshal Potter was able to audio-record a call Defendant made to Poteet. (TR. 92; Exs. 5 and 6.) Deputy Marshal Potter testified that based on what the CI was telling him, it was his understanding that Defendant was having trouble finding a vehicle to drive to Kansas. (TR. 92.) Deputy Marshal Potter testified that Defendant wanted to use the CI’s vehicle, which was not going to happen, and then she was trying to involve another individual to get a car, and that attempt also failed. (TR. 92.) Around dinnertime on October 28th, Deputy Marshal Potter was able to speak to Defendant. (TR. 92.) He attempted to play a ruse on her where he posed as a friend of the CI who could potentially get her a vehicle. (TR. 92.)

When Defendant unsuccessfully attempted to have another individual rent a vehicle, Deputy Marshal Potter contacted the Omaha Police Department dispatch, who put him in touch with Omaha Police Officer Michael J. Meyer (“Office Meyer”) and his partner, Officer Korth.¹ (TR. 56; TR. 94.) Deputy Marshal Potter testified he contacted dispatch so officers could conduct a traffic stop and protect the identity of the CI. (TR. 94.) The CI had told Deputy Marshal Potter that Defendant would be a passenger in a black, Ford F-350 pickup with the CI in Omaha, Nebraska near the airport. (TR. 91.) Deputy Marshal Potter testified he wanted the truck stopped because Defendant had active felony warrants and he wanted to foil the escape plot. (TR. 91.)

¹ Officer Meyer testified that he has worked as a uniform patrol officer for the City of Omaha for approximately thirty years. (TR. 56-57.) Officer Meyer testified he has conducted hundreds of traffic stops over his career. (TR. 58.) Officer Meyer testified that traffic stops for vehicles that do not have license plates generally take ten to fifteen minutes. (TR. 58.)

Officer Meyer testified he received a radio call to meet Deputy Marshal Potter on October 28th. (TR. 88.) Officer Meyer stated Deputy Marshal Potter wanted Officer Meyer to conduct a traffic stop on a wanted party. (TR. 59.) Officer Meyer testified he and Officer Korth met Deputy Marshal Potter in a parking lot located across from the parking lot at Eppley Airfield. (TR. 59.) There, Deputy Marshal Potter provided the officers a briefing of his investigation. (TR. 94.) Officer Meyer testified that Deputy Marshal Potter told him that he was in communication with a CI who said there was a wanted person named "Katherine" inside a vehicle at the airport. (TR. 59; TR. 61-62.) Officer Meyer testified the CI had indicated to Deputy Marshal Potter that Defendant could be trying to get a rental car. (TR. 59; TR. 61-62.) Deputy Marshal Potter told Officer Meyer that Defendant had active warrants and needed to be taken into custody and Deputy Marshal Potter was trying to foil an escape plot.² (TR. 59, TR. 94.) Deputy Marshal Potter told Officer Meyer that Defendant was in a big, black truck and would be with a CI. (TR. 60.) Officer Meyer testified that Deputy Marshal Potter briefly showed him a photograph of Defendant. (TR. 60.) Officer Meyer testified he had never met Defendant before and did not have any ability to identify her on his own. (TR. 60.)

Deputy Marshal Potter testified that the officers devised a plan that once the truck left the airport area, they would conduct a traffic stop because the truck did not have a license plate on the rear bumper. (TR. 94.) Officer Meyer testified that after meeting with Deputy Marshal Potter, Officer Meyer and Officer Korth (who were riding in the same vehicle), waited in the parking lot. (TR. 59, TR. 60.) Deputy Marshal Potter went to a different location. (TR. 61.) After approximately ten to fifteen minutes, Officers Meyer and Korth saw a truck that matched the description provided by Deputy Marshal Potter traveling south on Abbott Drive. (TR. 61-62.) Officer Meyer testified he then pulled out onto Abbott Drive and conducted a traffic stop of the truck just north of Locust Street along Abbott Drive. (TR. 61-62.) This area is within the Northeast Precinct that Officer Meyer routinely patrols. (TR. 63.) Officer Meyer testified the probable cause for the traffic stop was that the truck did not have license plates. (TR. 75.) Officer Meyer acknowledged that the truck was also pulled over because they believed Defendant was in the truck. (TR. 75.) Officer Meyer stated he did not know for certain if Defendant was in the truck.

² Officer Meyer testified Deputy Marshal Potter told him Katherine's last name, but at the hearing, Officer Meyer could only recall that the individual's last name started with a "W." (TR. 59-60.)

(TR. 76.) Officer Meyer was wearing a body camera at the time which captured the traffic stop.

(TR. 63.) Officer Korth was also wearing an operational body camera. (TR. 63.)

Once the truck was stopped, Officer Meyer approached the male driver and asked for his license, registration, and insurance. (TR. 64.) Officer Meyer testified he observed a female passenger but did not speak to her at that time. (TR. 64.) Officer Meyer testified he believed the female was Defendant and that the male driver was the CI. (TR. 64.) Officer Meyer stated the passenger looked like the individual in the photograph that Deputy Marshal Potter had shown him. (TR. 78.)

The officers then returned to their patrol car and discussed how they should go about identifying Defendant. (TR. 65.) Officer Meyer testified that one of the primary objectives of the traffic stop was to identify Defendant and he and Officer Korth were trying to come up with investigative strategies to do so. (TR. 66-67.) Officer Meyer testified it was difficult to identify her. (TR. 84.) Officer Meyer stated he did not want to disclose his suspicion that Defendant was wanted on a warrant because he did not know much about Deputy Marshal Potter's investigation and did not want to jeopardize it. (TR. 65.) Officer Meyer testified he did not believe he had a reason to ask Defendant her name at that time because Officer Korth told him Defendant was wearing her seat belt and was just looking at her phone. (TR. 66.) Officer Meyer also stated that the fact that the driver was a CI was a consideration, so he was trying to use the means available to positively identify Defendant and try to save the CI. (TR. 72, TR. 79.)

Officer Meyer testified that Officer Korth ran the driver's license through the computer, but the computer was slow. (TR. 68-69.) The officers did not run it over the radio. (TR. 69.) The officers discussed telling the driver that he had a suspended license so they could get the passenger's identification. (TR. 68.) The officers also discussed telling the driver he had a warrant for his arrest. (TR. 70.) Officer Meyer testified that to his knowledge, the driver did not have a warrant. (TR. 70.)

Following their conversation in the patrol car, the officers returned to the truck and told the driver that his license was suspended. (TR. 71.) Officer Meyer then asked Defendant if she had a license and asked her for her first name. (TR. 69.) Officer Meyer told Defendant she looked familiar and asked whether she worked at Subway. (TR. 82.) Defendant told Officer Meyer her

name was Cassie. (TR. 69.) Defendant indicted she did not have a driver's license. (TR. 75.) Officer Meyer did not ask Defendant her last name or date of birth. (TR. 69.)

The officers then returned to the patrol car again and Officer Meyer called Deputy Marshal Potter and explained the dilemma in identifying Defendant. (TR. 66-67.) Deputy Marshal Potter testified he was in communication with Officers Meyer and Korth by phone during the traffic stop. (TR. 95.) When Officer Meyer called him on this occasion, Deputy Marshal Potter told him that he was right behind him. (TR. 66.) Deputy Marshal Potter testified he went to the scene of the stop to positively identify Defendant. (TR. 95.) The officers, including Deputy Marshal Potter, then approached the truck together. (TR. 66.) Officer Korth went to the passenger side and Deputy Marshal Potter and Officer Meyer went to the driver's side. (TR. 66.) At that time, Deputy Marshal Potter peeked inside the truck and identified "Cassie" as Defendant. (TR. 66.) Deputy Marshal Potter went around to the passenger side of the truck, removed Defendant from the truck, and placed her in handcuffs. (TR. 66; Ex. 1.) Deputy Marshal Potter testified a female officer was called to the scene to conduct a pat-down search and Defendant was placed in the back of Officer Meyer's patrol car. (TR. 72, TR. 97; Ex. 1.) Officer Meyer testified that approximately ten to fifteen minutes passed between the time of the stop and Deputy Marshal Potter's arrival on the scene. (TR. 79.) The cruiser camera footage shows that the stop, measured from when the truck is stopped to the point Defendant was placed in handcuffs, lasted approximately eighteen minutes.

Officer Meyer testified that neither he nor Officer Korth provided Defendant with a *Miranda* advisement. (TR. 78.) Deputy Marshal Potter testified he did not provide Defendant with a *Miranda* warning because he was not asking her any questions. (TR. 96.) Deputy Marshal Potter testified he did not have any intention to interview Defendant on the side of the road and had previously had conversations with the DEA about an interview. (TR. 96-97.) Deputy Marshal Potter testified the DEA had an active investigation involving a drug cartel member and the DEA knew Defendant was an associate of the cartel member. (TR. 96-97.) The DEA planned to conduct a *Mirandized* interview with Defendant at the jail, which it did. (TR. 96-97.) Deputy Marshal Potter testified he did not have a reason to interview Defendant at the scene of the traffic stop because his goal was to foil the escape plot and take Defendant into custody on her warrants. (TR. 97.) Deputy Marshal Potter acknowledged that he did ask her when she came out of the truck if

she had any weapons or something that was going to stick or poke him for officer safety, which Deputy Marshal Potter said are routine questions. (TR. 96.)

Deputy Marshal Potter testified that after Defendant was placed in the patrol car, another officer told him that Defendant wanted to speak to him. (TR. 97.) Deputy Marshal Potter told the officer he did not need to speak to Defendant, but at some point, he went to see what she wanted and encouraged her to just talk at the jail. (TR. 97-98.) Deputy Marshal Potter testified that it was his perception that Defendant wanted to speak immediately, and Defendant told him she had a pistol in the truck in a purple Eddie Bauer backpack. (TR. 98.) She also told Deputy Marshal Potter that she did not want the CI, who was a convicted felon, to get in trouble for possessing a weapon. (TR. 98.) Deputy Marshal Potter testified his conversation with Defendant did not last more than a minute. (TR. 99.) Deputy Marshal Potter said he did not threaten Defendant or make her any promises. (TR. 99.) Deputy Marshal Potter testified he did not induce Defendant to tell him these things and that Defendant did it on her own. (TR. 99.)

Deputy Marshal Potter then returned to the truck observed a backpack on the floorboard. (TR. 98.) Deputy Marshal Potter testified Defendant said the backpack belonged to her, so the officers looked in the backpack as a search incident to arrest. (TR. 98-99.) The officers found a firearm, ammunition, drugs, and drug paraphernalia in the backpack. (TR. 99.) Defendant was then transported to the Douglas County jail by Omaha police officers and Deputy Marshal Potter followed. (TR. 99.)

DISCUSSION

Defendant argues the evidence obtained from the traffic stop should be suppressed because the stop was unconstitutionally prolonged so other officers could get to the scene of the traffic stop to identify her. The undersigned finds the evidence should not be suppressed.³

1. Probable Cause for Traffic Stop

Officers had a constitutionally permissible basis to stop the truck for several reasons.

³ Defendant also argued the traffic stop did not occur in Nebraska but actually occurred in Iowa. Officer Meyer testified at the evidentiary hearing that he routinely patrols this area and the stop occurred in Nebraska. (TR. 62-63; Exs. 7-11.) After Officer Meyer's testimony, Defendant did not argue this point further. Based on Officer Meyer's testimony, and the other evidence of record, the undersigned finds the stop occurred in Nebraska.

It is well-established that a “police officer may stop a vehicle when he or she has probable cause to believe that the driver has committed a traffic violation.” United States v. Andrews, 454 F.3d 919, 921 (8th Cir. 2006). “Probable cause exists when a reasonable officer, confronted with the facts known to the officer at the time of the stop, could have believed that there was a fair probability that a violation of law had occurred.” Id. “Any traffic violation, however minor, provides probable cause for a traffic stop.” United States v. Gadson, 670 F. App’x 907, 908 (8th Cir. 2016) (quotation omitted). “Courts are not to consider the motive for a stop as long as the reason for the stop is valid.” United States v. Jones, 275 F.3d 673, 680 (8th Cir. 2001). Here, there were no license plates on the truck, which is a traffic violation and therefore provided probable cause for the stop. See Neb. Rev. Stat. § 60-399. The fact that officers were investigating an escape plot and that the traffic stop was in furtherance of that investigation makes no difference in this analysis because the reason for the stop was valid.

Moreover, there was reasonable suspicion for the stop because Officers Meyer and Korth had reliable information Defendant was involved in an escape plot and had warrants out for her arrest. Under Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968), an investigative stop of a vehicle “does not violate the Fourth Amendment if the police have reasonable suspicion that the vehicle or its occupants are involved in criminal activity.” United States v. Bell, 183 F.3d 746, 749 (8th Cir. 1999). “There is no requirement that there be a traffic violation.” United States v. Jacobsen, 391 F.3d 904, 905 (8th Cir. 2004). “[I]f there are articulable facts supporting a reasonable suspicion that a person has committed a criminal offense, that person may be stopped in order to identify him, to question him briefly, or to detain him briefly while attempting to obtain additional information.” Hayes v. Florida, 470 U.S. 811, 816 (1985) (citing United States v. Hensley, 469 U.S. 221, 229 (1985)).

Reasonable suspicion exists if an officer is aware of “particularized, objective facts which, taken together with rational inferences from those facts, reasonably warrant suspicion that a crime is being committed.” United States v. Beck, 140 F.3d 1129, 1136 (8th Cir. 1998) (quotation omitted). “Whether the particular facts known to the officer amount to an objective and particularized basis for a reasonable suspicion of criminal activity is determined in light of the totality of the circumstances.” United States v. Garcia, 23 F.3d 1331, 1334 (8th Cir. 1994).

In justifying an investigative detention, “an officer may rely on information provided by other officers and all the information known to a team of officers involved in the investigation.” United States v. Ortiz–Monroy, 332 F.3d 525, 529 (8th Cir. 2003). See also United States v. Edwards, 891 F.3d 708, 711–12 (8th Cir. 2018) (“[P]robable cause may be based on the collective knowledge of all law enforcement officers involved in an investigation and need not be based solely upon the information within the knowledge of the officer on the scene if there is some degree of communication”). An officer may become a member of an investigation team when he is instructed to conduct a traffic stop even if he does not possess “all the relevant collective knowledge of the team.” United States v. Robinson, 664 F.3d 701, 704 (8th Cir. 2011).

Deputy Marshal Potter had detailed, reliable information that Defendant had warrants out for her arrest and was involved in a plot to help Poteet escape from a federal facility in Leavenworth, Kansas. The CI told Deputy Marshal Potter that Defendant was trying to obtain a rental vehicle to drive to Leavenworth the next morning to help Poteet escape. The CI, who was continually in contact with Deputy Marshal Potter on October 28th, told Deputy Marshal Potter that Defendant would be a passenger in a black, Ford F-350 pickup with the CI that evening in Omaha, Nebraska near the airport. Deputy Marshal Potter spoke to Officers Meyer and Korth and provided them a briefing of the situation and asked them to perform a traffic stop. Deputy Marshal Potter told Officers Meyer and Korth he was in communication with a CI who said there was a wanted person named “Katherine” inside a vehicle at the airport. Deputy Marshal Potter told them that Defendant had active warrants and needed to be taken into custody and Deputy Marshal Potter was trying to foil an escape plot. Deputy Marshal Potter provided them with a description of the truck and told them Defendant would be with a CI. Deputy Marshal Potter also briefly showed them a photograph of Defendant. This information provided officers reasonable suspicion to stop the vehicle.

2. Duration of the Stop

“An officer may detain the occupants of a vehicle while completing routine tasks related to the traffic violation, such as asking for license and registration or inquiring about the occupants’ destination, route, and purpose.” United States v. Chartier, 772 F.3d 539, 543 (8th Cir. 2014). However, once the purpose of an initial traffic stop is complete, an officer cannot further detain the vehicle or its occupants unless something occurs during the traffic stop that generates the

necessary reasonable suspicion to justify a further detention. See United States v. Beck, 140 F.3d 1129 (8th Cir. 1998). “A delay that prolongs—*i.e.*, adds time to—the stop . . . to conduct investigatory actions unrelated to the purposes of the stop is impermissible unless it is supported by reasonable suspicion.” United States v. Sanchez, 955 F.3d 669, 674 (8th Cir. 2020) (internal quotation and citation omitted).

An investigative *Terry* stop must also be limited in scope and duration. See Hiibel v. Sixth Judicial Dist. Court of Nev., 542 U.S. 177, 185 (2004). “The officer’s action must be justified at its inception, and . . . reasonably related in scope to the circumstances which justified the interference in the first place.” *Id.* (quotation omitted). “[T]he seizure cannot continue for an excessive period of time or resemble a traditional arrest.” *Id.* at 185-86. In determining whether an investigatory detention is reasonable, courts consider “the law enforcement purposes to be served by the stop as well as the time reasonably needed to effectuate those purposes.” United States v. Sharpe, 470 U.S. 675, 685 (1985). The question is “whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly.” *Id.* at 686.

Here, the totality of the circumstances shows officers had reasonable suspicion to detain Defendant. The stop was limited in scope and the duration of the stop was reasonable because the officers diligently pursued a means of investigation to identify Defendant. Deputy Marshal Potter had information from a CI that Defendant was involved in a plot to help Poteet escape from Leavenworth. Defendant also had active arrest warrants. This information was communicated to Officers Meyer and Korth and they were directed to conduct a traffic stop to identify Defendant. Once the traffic stop was initiated, Officer Meyer and Officer Korth engaged in conversation in the patrol car to devise investigative strategies to identify Defendant. The officers were not attempting to prolong the investigation but were instead trying to figure out the best way to identify Defendant without compromising the CI. Officer Meyer also stated he did not want to disclose his suspicion that Defendant was wanted on a warrant because he did not know much about Deputy Marshal Potter’s investigation and did not want to jeopardize it. Following some discussion with Officer Korth, Officer Meyer asked Defendant if she had a license and asked her for her first name. Defendant told Officer Meyer her name was Cassie and indicated she did not have a driver’s license. Thus, the officers’ ability to identify Defendant was hindered and delayed by Defendant’s own actions. Once Deputy Marshal Potter arrived on the scene approximately two minutes later, he

was able to positively identify Defendant and take her into custody. The stop, which in its totality lasted eighteen minutes until Defendant was arrested, was not unreasonably prolonged.

3. Statements and Consent to Search

Defendant argues the roadside questioning during the traffic stop violated her *Miranda* rights. Under *Miranda v. Arizona*, 384 U.S. 436, 484 (1966), certain warnings must be given when a suspect is in custody and subject to interrogation by law enforcement officials. *United States v. Elzahabi*, 557 F.3d 879, 883 (8th Cir. 2009). Interrogation occurs when an officer's interaction with the suspect is "likely to elicit an incriminating response." *Rhode Island v. Innis*, 446 U.S. 291, 301 (1980). "Interrogation includes not only express questioning by an officer, but also any words or actions that police should know are reasonably likely to elicit an incriminating response from the suspect." *United States v. Ochoa-Gonzalez*, 598 F.3d 1033, 1038 (8th Cir. 2010).

"Voluntary statements unprompted by interrogation are admissible with or without *Miranda* warnings." *United States v. Bailey*, 831 F.3d 1035, 1038 (8th Cir. 2016). "In most cases where an officer responds to a defendant's question, his response does not amount to an interrogation." *United States v. Smialek*, 970 F.3d 1070, 1073 (8th Cir. 2020). Further, "statements made in response to a law enforcement officer's attempt to seek clarification of a defendant's remarks, during an interview requested by the defendant, are not the products of interrogation." *United States v. Koontz*, 143 F.3d 408, 411 (8th Cir. 1998).

Here, there is no dispute that Defendant was in custody after she was removed from the truck and she was not advised of her *Miranda* rights. The issue is whether Defendant was interrogated by officers. The evidence shows she was not. Defendant's statements regarding a gun, ammunition, scale, bong, and marijuana stem being in the truck were not the product of interrogation and were entirely voluntary.

When Defendant was removed from the truck, she was asked whether she had anything on her that could hurt the officers, which is a routine question and not meant to elicit an incriminating response.⁴ After that, she was placed in the patrol car and the officers did not ask her additional

⁴ An officer need not advise a suspect of his *Miranda* rights before asking limited questions to determine whether officers are likely to encounter items that might pose a danger to themselves or others. See *United States v. Liddell*, 517 F.3d 1007, 1010 (8th Cir. 2008).

questions other than her name and date of birth to run a data check. Defendant later initiated conversations with the officers by asking several times to speak to Deputy Marshal Potter. (Ex. 1-4.) Deputy Marshal Potter initially declined to speak to Defendant, but when Defendant was being placed back in the patrol car after being searched by a female officer, she asked Deputy Marshal Potter if she could talk to him. (Ex. 1.) Defendant told Deputy Marshal Potter that she had a problem and he told her they could talk at the jail, but Defendant told Deputy Marshal Potter that she needed to talk to him now. (Ex. 1.)

Deputy Marshal Potter asked why she needed to talk to him now and Defendant told Deputy Marshal Potter that there was “stuff” in the truck that did not belong to the driver. (Ex. 1.) Deputy Marshal Potter and Defendant engaged in a conversation regarding what was in the truck. Defendant indicated there was ammunition in the truck. (Ex. 1.) She said she did not want the driver to get in trouble for the gun and ammunition because he was a convicted felon. (Ex. 1.) Defendant further told Deputy Marshal Potter that there was a bong, marijuana stem, and a scale in the truck. (Ex. 1.) Defendant went on to tell Deputy Marshal Potter that the pistol was in her purple Eddie Bauer backpack in the truck. (Ex. 1.) When the officers looked in the backpack, they found the gun and some methamphetamine, but they did not find any ammunition. Officers clarified with Defendant where the ammunition was, and Defendant told the officers that the ammunition was in a black leather case behind the toolbox in the bed of the truck. (Ex. 1.)

Later, an officer standing at Officer Meyer’s driver’s door started filling Officer Meyer in on what the officers had found and that there may be additional charges based on additional drugs being found. (Ex. 1.) Having overheard this conversation, Defendant started asking questions as to where the drugs were found. (Ex. 1.) The officer that was talking to Officer Meyer went over and opened Defendant’s door to ask her what she was asking because he could not hear her. (Ex. 1.) Defendant asked the officer where the drugs were found, and the officer told her. (Ex. 1.) At that point, Defendant made additional voluntary statements in response to what the officer told her. (Ex. 1.)

At the evidentiary hearing, Deputy Marshal Potter credibly testified he did not have any intention or reason to interview Defendant on the side of the road because his goal was to arrest Defendant on her warrants and stop an escape attempt. Deputy Marshal Potter said he knew the DEA planned to conduct a *Mirandized* interview with Defendant at the jail.

Having considered all the evidence submitted in connection with this matter, including the testimony at the evidentiary hearing, the undersigned finds the record shows Defendant was not interrogated at the scene of the traffic stop. The officers' comments to Defendant were simply attempts to clarify Defendant's statement that there was "stuff" in the truck. Defendant's statements regarding a gun, ammunition, scale, bong and marijuana stem being in the truck occurred during a conversation that she requested on several occasions and were not the product of interrogation. Rather, Defendant's conversations with officers about items in the truck occurred because the conversations were initiated by Defendant or were to clarify information voluntarily provided by Defendant. The officers were not attempting to elicit incriminating responses. Deputy Marshal Potter credibly testified he did not have any reason to do so because he was aware Defendant was going to have a *Mirandized* interview with the DEA. Further, Deputy Marshal Potter tried to get Defendant to not talk to him at the scene but wait until they got down to the jail. The record before the Court shows Defendant's *Miranda* rights were not violated.

Further, there is also no indication that Defendant's statements were involuntary. "The appropriate test for determining the voluntariness of a confession is whether the confession was extracted by threats, violence, or direct or implied promises, such that the defendant's will was overborne and his capacity for self-determination critically impaired." United States v. Kilgore, 58 F.3d 350, 353 (8th Cir. 1995) (internal quotation omitted). In assessing voluntariness, courts look at the totality of the circumstances, including not only the conduct of the police, but also the defendant's ability to resist police pressure. United States v. Pierce, 152 F.3d 808, 812 (8th Cir.1998). In evaluating the totality of the circumstances, courts also consider the defendant's maturity level, education, physical condition, and mental condition. United States v. Sanchez, 614 F.3d 876, 883 (8th Cir. 2010).

The officers did not threaten Defendant or make any promises. Deputy Marshal Potter did not induce Defendant to speak to him or other officers. Defendant initiated the conversation with

Deputy Marshal Potter seemingly because she wanted to prevent the CI from getting in trouble for the firearm and ammunition that was hers. Also, Deputy Marshal Potter's conversation with Defendant was very brief. It only lasted approximately two and-a-half minutes. Defendant's statements to the other officers were likewise voluntary and not the result of threats or promises. At one point, having overheard the officers speaking, Defendant initiated a conversation with officers and asked them questions about where the drugs were found. There is no evidence Defendant lacked the maturity, education, physical condition, or mental condition to resist any perceived police pressure or to stop speaking with officers. Defendant is also a convicted felon and thus familiar with the criminal justice system and experienced in interactions with law enforcement. Defendant's statements were entirely voluntary.

Accordingly,

IT IS HEREBY RECOMMENDED to Chief United States District Court Judge Robert Rossiter, Jr. that Defendant's Motion to Suppress (Filing No. 42) be denied.

Dated this 6th day of January, 2022.

BY THE COURT:

s/ Susan M. Bazis
United States Magistrate Judge

ADMONITION

Pursuant to NECrimR 59.2, any objection to this Findings and Recommendation shall be filed within fourteen (14) days after being served with a copy of this Findings and Recommendation. Failure to timely object may constitute a waiver of any such objection. The brief in support of any objection shall be filed at the time of filing such objection. Failure to file a brief in support of any objection may be deemed an abandonment of the objection.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	8:20CR308
)	
Plaintiff,)	
)	
vs.)	OBJECTION TO FINDINGS
)	AND RECOMMENDATIONS
KATHERINE L. WOITASZEWSKI,)	AND REQUEST FOR ORAL
)	ARGUMENT
Defendant.)	

COMES NOW Katherine Woitaszewski, and Objects to the Findings of Fact and Recommendations. In support of this motion, the Defendant Katherine Woitaszewski shows the Court as follows:

OBJECTION TO FINDINGS OF FACT

1. It is not explicitly stated in the fact section, but in the discussion regarding the statements. "Here there is no dispute that Defendant was in custody after she was removed from the truck and she was not advised of her *Miranda* rights." (findings and recommendations at 10). The Defendant disputes this as the point that the Defendant was taken into custody for purposes of *Miranda*. The Defendant asserts that she was taken into custody the moment that the traffic stop started. Marshal Potter's testimony is definitive on this point.

Q. All right. And so effectively as soon as that traffic stop started, Miss Woitaszewski was under arrest.

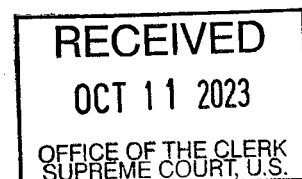
A. Yes. We were - - we were going to take her into custody so we knew she was in the vehicle.

Q. And she was not free to leave.

A. No.

(TR 100: 13-18).

OBJECTIONS TO DISCUSSION AND RECOMMENDATION



Appendix D

2. The Defendant was detained the moment the traffic stop started. Officers then talked to her for approximately 18 minutes before placing her in handcuffs and continued to ask her questions thereafter. This custodial interrogation ultimately Ellicited statements from the Defendant that led to the discovery of a firearm. Both the statements and the evidence obtained as a result of the statements should be suppressed.

Wherefore, the Defendant respectfully requests the Court to grant an Oral argument on this Motion and overrule the Magistrate's Findings and Recommendations denying the Motion to Suppress in this matter and enter an Order granting the Motion to Suppress and for such other relief as deemed just by the Court.

Katherine Woitaszewski,
Defendant,

By: s/Justin A. Quinn
Justin A. Quinn #23509
209 S. 19th Street, #540
Omaha, NE 68102
(402) 346-2500
Email: Quinn719@gmail.com
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on January, 20th, 2022, I electronically filed the foregoing with the Clerk of Court using CM/ECF system which sent notification of such filing to the following: Sean Lynch, Special Assistant United States Attorney, Omaha, Nebraska.

s/Justin A. Quinn

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 22-2704

United States of America

Appellee

v.

Katherine L. Woitaszewski

Appellant

Appeal from U.S. District Court for the District of Nebraska - Omaha
(8:20-cr-00308-RFR-1)

ORDER

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

July 10, 2023

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

/s/ Michael E. Gans

Appendix E