APPENDIX

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APPENDIX A

United States Court of Appeals for the Fifth Circuit

No. 25-60163

United States Court of Appeals
Fifth Circuit
FILED
March 17, 2026
Lyle W. Cayce
Clerk

United States of America,

Plaintiff—Appellee,

versus

Elijah Porter,

Defendant—Appellant.

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 1:24-CR-11-1

Before Smith, Wiener, and Higginson, *Circuit Judges*.

Jerry E. Smith, *Circuit Judge*:

Elijah Porter was charged with possession of a machinegun in violation of 18 U.S.C. § 922(o). He challenges (1) the denial of his motion to suppress vehicle-location data obtained from a license plate reader ("LPR") and a firearm obtained in a vehicle search and (2) the district court's ruling that 18 U.S.C. § 922(o) is not unconstitutional. Because the use of an LPR did not constitute a search, no warrant was required; the stop was supported by reasonable suspicion, and the officer found the Glock and its machinegun conversion switch in plain view. Our circuit precedent forecloses Porter's Second Amendment challenge. We affirm.

I. Factual Background

A. Evidentiary Hearing

At the suppression hearing, the district court heard testimony from Charles Hoggard, a former officer for the Gautier Police Department. Video footage from Hoggard's body camera was also presented.

1. Officer Hoggard's Testimony

While on patrol in January 2024, Hoggard received an alert on his phone that an LPR located at a specific intersection captured the license plate of a vehicle that was associated with criminal activity. He contacted dispatch and was told that the vehicle was "associated with" Elijah Porter, who had a warrant for aggravated assault. Hoggard conducted a computer check for the license plate, which revealed the vehicle was associated with "James Stewart" or "E.L. Porter." He located the vehicle and conducted a traffic stop.

After identifying Porter as the driver, Hoggard detained him and patted him down. Hoggard observed a firearm protruding from under the driver's seat. He was able to see the slide and barrel of the firearm, and a "little silver switch on the back of it," which he "believed to be the switch of an automatic [G]lock." Hoggard asked Porter if there were any weapons in the car "to see if he was going to be honest" and later retrieved the firearm during an inventory search of the vehicle, at which point he had not yet confirmed that "the warrant was valid and true." After Hoggard secured the firearm in his patrol car, the warrant was confirmed, and he took Porter to the police station.

Hoggard stated that the LPR system allowed him to see when a vehicle had passed an LPR camera at a particular location, and he estimated there were no more than ten LPR cameras stationed across Gautier. He did not know how long the location data was stored within the LPR system, but he "could look and see how many times [a vehicle] passed within the general . . . time period." Hoggard stated there had been other LPR "hits" on Porter's vehicle earlier that day and the day before, but he was not able to locate the vehicle on those occasions because of heavy traffic. He acknowledged that he did not have a physical description of Porter when he initiated the traffic stop. Hoggard also noted that after seeing the firearm, he left it in Porter's unlocked car, which was in a residential area, and did not immediately tell his colleague at the scene about the weapon.

2. Body Camera Footage

The footage is consistent with Hoggard's testimony. Hoggard patted Porter down next to the open driver's side door and asked if he had any weapons, to which Porter said he did not. Hoggard then removed several personal items from Porter's pockets and placed them on the driver's seat. Just as Hoggard turned toward the driver's seat, he asked Porter if there were any weapons in the car—Porter answered no. As Hoggard put Porter into his patrol unit, Hoggard removed an earbud from Porter's ear and returned to Porter's car to place it on the driver's seat with his other belongings.

Hoggard then locked Porter's car and told his colleague that he had to confirm "the hit." He returned to Porter's vehicle, opened the center console, and looked underneath the driver's seat. Immediately thereafter, he tried to flag down his colleague. Hoggard then reached under the driver's seat, pulled out a firearm, and said, "Oh, s--t." The firearm was not visible on the video until this point. Hoggard motioned again for his colleague to come over and told him there's "a f--king switch on that [G]lock." Hoggard then said, "it was basically in plain view," and "the barrel [was] sticking out from under the seat, so I saw it in plain view."

3. Porter's Arguments

Porter asserts that the use of LPR cameras to detect his vehicle's location constituted a search under the Fourth Amendment and that the vehicle-location data should be suppressed. He posits that he had a reasonable expectation of privacy in his location and movements that were captured by the LPR cameras and that a warrant was required for police to obtain such data from the LPR system. Porter also urges that the traffic stop was invalid because it was not supported by reasonable suspicion and that the firearm should be suppressed. Porter theorizes that even if the stop were lawful, the firearm was not in plain view and was not discovered during a lawful inventory search. And Porter claims that § 922(o) violates the Second Amendment, both facially and as applied to him.[1]

B. District Court's Rulings

In a bench ruling, the district court determined that § 922(o) is not unconstitutional and denied Porter's motion to dismiss the indictment. The court denied his motion to suppress the vehicle-location data, reasoning that "an individual traveling in an automobile on public thoroughfares has no reasonable expectation of privacy in their movements from one place to another" and "motorists do not have a privacy interest in their license plates," since they are "constantly open to plain view of" passersby.

The court requested supplemental briefing on the threshold issue of whether the traffic stop was lawful. The court then stated that if the stop was valid, it would deny the motion to suppress based on its finding that the plain-view doctrine applied. The court also determined that the inevitable-discovery doctrine would apply because the firearm would have been found during the inventory search.

After the parties submitted the requested supplemental briefing, the

[1] Although he did at the district court, Porter does not make a Commerce Clause challenge on appeal.

court concluded that the traffic stop was lawful, denied Porter's motion to suppress, and explained that the stop was valid for three reasons:

> First, Officer Hoggard, had reasonable suspicion to initiate the traffic stop based solely on the automatic license plate reader, or the ALPR, hit that revealed an outstanding arrest warrant for Mr. Porter; Number 2, the ["be on the lookout"] BOLO [report], or ALPR, hit does not need to include a physical description of the driver to provide an officer reasonable suspicion to initiate a traffic stop; and number 3, under the collective knowledge doctrine, the ALPR was reliable and provided Officer Hoggard with reasonable suspicion to initiate the traffic stop.

Thereafter, Porter consented to a bench trial,[2] where he was found guilty.

II. Denial of Motion to Suppress

When reviewing the denial of a suppression motion, we review factual findings for clear error and legal conclusions—"including whether an expectation of privacy is reasonable under the circumstances"—*de novo*. *United States v. Gomez*, 276 F.3d 694, 697 (5th Cir. 2001) (internal quotation marks and citation omitted). The evidence is "viewed in the light most favorable to the Government, as the prevailing party below." *United States v. Garcia*, 99 F.4th 253, 266 (5th Cir. 2024). We "uphold the district court's ruling if there is any reasonable view of the evidence to support it." *United States v. Alvarez*, 40 F.4th 339, 344 (5th Cir. 2022) (internal quotation marks and cita-

[2] Porter's jury-trial waiver, the one that he, his counsel, the prosecutor, and district judge signed, notes that Porter was "fully informed of [his] right to a trial by jury," "waive[d] that right," and "waive[d] [his] right to special findings." Some of the stipulations, that Porter "knowingly and voluntarily" agreed to, include that "Officer Hoggard . . . received an alert for a 2017 White Ford Fusion . . . associated with an outstanding arrest warrant for Elijah Porter" and "Elijah Porter was the driver, and sole occupant of the Ford Fusion."

tion omitted).

And "[w]hen the denial of a motion to suppress is based on live testimony, the clearly erroneous standard is particularly strong because the judge had the opportunity to observe the demeanor of the witnesses." *United States v. Jefferson*, 89 F.4th 494, 502 (5th Cir. 2023) (internal quotation marks and citation omitted). "Where testimony conflicts with video evidence, our court must view the 'facts in the light depicted by the videotape,'"[3] but "[w]hen video evidence is 'ambiguous,'" no such consideration applies.[4]

III.

A. Vehicle Location Data

Contrary to Porter's assertion, the use of an LPR system did not invade any reasonable expectation of privacy and did not constitute a search, so no warrant was required.

Where an individual has a reasonable expectation of privacy, "official intrusion into that private sphere generally qualifies as a search and requires a warrant supported by probable cause." *United States v. Smith*, 110 F.4th 817, 830 (5th Cir. 2024) (internal quotation marks and citation omitted), *cert. denied*, 146 S. Ct. 356 (2025). "A person does not surrender all Fourth Amendment protection by venturing into the public sphere," *Carpenter v. United States*, 585 U.S. 296, 310 (2018), but "[a] person travel[]ing in an automobile on public thoroughfares has no reasonable expectation of privacy in his movements from one place to another," *United States v. Knotts*, 460 U.S. 276, 281 (1983).

[3] *See United States v. Anderson*, No. 23-50110, 2024 WL 2829243, at *1 (5th Cir. 2024) (per curiam) (unpublished) (citing *Scott v. Harris*, 550 U.S. 372, 380-81 (2007)).

[4] *See id.* (citing *Aguirre v. City of San Antonio*, 995 F.3d 395, 410 (5th Cir. 2021)).

The LPR system provides periodic information about a vehicle's location on "public streets and highways." A scan occurs when a vehicle passes one of the locations where a camera is stationed.[5] The LPR system is not capable of tracking the "whole of [an individual's] physical movements," much less "for a very long period," to the extent that a cell phone can because the LPR system does not "faithfully follow[]" individuals "beyond public thoroughfares."[6] Indeed, Hoggard's previous inability to locate Porter's vehicle, notwithstanding the earlier "hits" and the LPR technology's around-the-clock capabilities, illustrates the significant limitations of this technology relative to cell-site location information ("CSLI"), which can "provide[] an intimate window into a person's life, revealing not only his particular movements, but through them his familial, political, professional, religious, and sexual associations." *Carpenter*, 585 U.S. at 311 (internal quotation marks and citation omitted).

With a gloss from *Olabisiomotosho v. City of Houston*,[7] which made clear that "[a] motorist has no privacy interest in their [*sic*] license plate number," the LPR system is more analogous to the beeper signals in *Knotts*[8]

[5] *See Knotts*, 460 U.S. at 281 (reasoning that law enforcement's monitoring the beeper signals after placing a hidden beeper in a barrel of drug-precursor chemicals (which was later purchased by the suspect's accomplice and placed in the suspect's vehicle) "amounted principally to the following of an automobile on public streets and highways" and did not constitute a search).

[6] *Cf. Carpenter*, 585 U.S. at 310–11 ("A cell phone faithfully follows its owner beyond public thoroughfares and into private residences, doctor's offices, political headquarters, and other potentially revealing locales.").

[7] *See Olabisiomotosho*, 185 F.3d 521, 529 (5th Cir. 1999) (holding that the police did not need probable cause to use an onboard computer to check a stranded motorist's license plate number since "[a] motorist has no privacy interest in their license plate number").

[8] *See Knotts*, 460 U.S. at 277–79, 285 (noting that the beeper transmitted periodic radio signals that enhanced the police's ability to surveil the vehicle's movements and allowed police to track the vehicle to a drug lab); *see also id.* at 285 (reasoning that a "sci-

than to the CSLI at issue in *Carpenter*. True, the LPR system allows the government to access an historical record for some time, and that type of retrospective data can allow police to "travel back in time to retrace a person's whereabouts" without needing to "know in advance whether they want to follow a particular individual, or when."[9] But the LPR technology in the instant case provides only periodic information about a vehicle's location when a vehicle passes one of its ten locations where an LPR camera is stationed in Gautier and is much more limited than CSLI and geofence[10] data, which is capable of capturing a greater volume of comprehensive information with a higher degree of quality and precision.[11]

entific enhancement of this sort raises no constitutional issues which visual surveillance would not also raise").

[9] *See Carpenter*, 585 U.S. at 312; *see also Smith*, 110 F.4th at 834 (expressing "particular concern" with "the fact that a geofence will retroactively track anyone with Location History enabled, regardless of whether a particular individual is suspicious or moving within an area that is typically granted Fourth Amendment protection").

[10] Though geofences are typically limited to a discrete time period, "a brief snapshot can expose highly sensitive information," such as a person's "visit to 'the psychiatrist, the plastic surgeon, the abortion clinic, the AIDS treatment center, the strip club, the criminal defense attorney, the by-the-hour-motel, the union meeting, the mosque, synagogue or church, [or] the gay bar,' or a location other than home during a COVID-19 shelter-in-place order." *See Smith*, 110 F.4th at 833 (citation omitted; alteration in original).

[11] *Cf. Smith*, 110 F.4th at 823 ("Once a person enables Location History, Google begins to 'log[] [the] device's location [into the Sensorvault], on average, every two minutes' by 'track[ing] [the] user's location across every *app* and every *device* associated with the user's account.") (alteration and emphasis in original); *see also id.* (noting that the "data is 'considerably more precise than other kinds of location data, including cell-site location information because [Location History] is determined based on multiple inputs, including GPS signals, signals from nearby Wi-Fi networks, Bluetooth beacons, and cell towers'") (alteration in original).

B. Vehicle Search

1. The Stop

The traffic stop was lawful because Hoggard had reasonable suspicion to stop Porter's vehicle. "The 'touchstone of Fourth Amendment analysis is reasonableness.'" *United States v. Henry*, 37 F.4th 173, 176 (5th Cir. 2022) (per curiam) (quoting *United States v. Brigham*, 382 F.3d 500, 507 (5th Cir. 2004) (en banc)). "[I]if police have reasonable suspicion, grounded in specific and articulable facts, that a person they encounter was involved in or is wanted in connection with a completed felony, then a *Terry* stop may be made to investigate that suspicion."[12]

There is no reason to disagree with the district court's thorough rationale:

> Officer Hoggard [ ] had reasonable suspicion to initiate the traffic stop based solely on the automatic license plate reader, or the ALPR, hit that revealed an outstanding arrest warrant for Mr. Porter; Number 2, the BOLO, or ALPR, hit does not need to include a physical description of the driver to provide an officer reasonable suspicion to initiate a traffic stop; and number 3, under the collective knowledge doctrine, the ALPR was reliable and provided Officer Hoggard with reasonable suspicion to initiate the traffic stop.

After all, the BOLO report "provide[d] the reasonable suspicion necessary to justify an investigatory stop" because the arrest warrant information from

[12] *United States v. Hensley*, 469 U.S. 221, 229 (1985); *see United States v. Ochoa*, 667 F.3d 643, 649 (5th Cir. 2012) ("The officer making the arrest need not have direct knowledge of all the facts establishing probable cause, as long as he has communicated with the officer who does."); *see also United States v. Alvarez*, 40 F.4th 339, 352 (5th Cir. 2022) ("Officers may conduct an investigatory stop in reliance on information issued through police channels, such as a wanted flyer or bulletin or radio dispatch, if the information is based on 'articulable facts supporting a reasonable suspicion that the wanted person has committed an offense.'") (citing *Hensley*, 469 U.S. at 232).

the other Mississippi jurisdiction was "credibl[e] and reliabl[e]"—it "specifi[ed] Porter's vehicle information, allowed Hoggard to "verif[y]" the match, and related to an active warrant, which turned out to be valid.[13] Even though he didn't need to do so because "[t]he reasonable suspicion inquiry 'falls considerably short' of 51% accuracy," Hoggard carefully conducted a computer check for the license plate, which revealed the vehicle was associated with "James Stewart" or "E.L. Porter."[14] That the vehicle may have belonged to someone other than Porter or that Hoggard lacked a physical description of the driver does not change the calculus in Porter's favor[15] because Hoggard had sufficiently specific information to stop the car—he knew the make and model, its license plate number, its approximate location, and that Porter was wanted for arrest for aggravated assault.

2. Glock Pistol and Machinegun Conversion Switch

a. Plain View

Hoggard found the Glock pistol and machinegun conversion switch and testified in open court "that the barrel was sticking out from under the seat" in plain view. Not only was the "incriminating nature" of the automatic conversion switch "immediately apparent,"[16] but the district judge,

[13] *United States v. Gonzalez*, 190 F.3d 668 (5th Cir. 1999) ("Whether a particular tip or BOLO report provides a sufficient basis for an investigatory stop may depend upon the credibility and reliability of the informant, the specificity of the information contained in the tip or report, the extent to which the information in the tip or report can be verified by others in the field, and whether the tip or report concerns active or recent activity, or has instead gone stale.") (citing *Alabama v. White*, 496 U.S. 325, 328-32 (1990)).

[14] *See Kansas v. Glover*, 589 U.S. 376, 381 (2020) (noting that "[t]he reasonable suspicion inquiry 'falls considerably short' of 51% accuracy").

[15] *See Heien v. North Carolina*, 574 U.S. 54, 60 (2014) ("To be reasonable is not to be perfect.").

[16] *See United States v. Rodriguez*, 601 F.3d 402, 407 (5th Cir. 2010) (noting that the "plain view" exception "allows police to seize items where (1) the police lawfully entered

who had an opportunity to observe Hoggard's demeanor, said in no uncertain terms, "I do find Officer Hoggard's testimony to be credible."[17] There is no reason to depart from the district court's sound determination.

One may be inappropriately tempted to engage in a frame-by-frame, instant replay-type analysis of Hoggard's behavior, based on the body camera footage, considering the proposition that "[w]here testimony conflicts with video evidence, our court must view the 'facts in the light depicted by the videotape.'"[18] But because the video evidence is ambiguous at best for Porter, no such consideration applies.[19]

Although we first notice the gun at about the six-minute mark when Hoggard physically removes it from under the driver's seat, his body camera may not have fully captured everything that he saw at eye-level with a dynamic field of vision because the camera was in a static position near his torso.[20] There is nothing that "plainly contradicts the district court's finding

the area where the item was located; (2) the item was in plain view; (3) the incriminating nature of the item was 'immediately apparent'; and (4) the police had a lawful right of access to the item") (citing *Horton v. California*, 496 U.S. 128, 136–37 (1990)).

[17] *See United States v. Gibbs*, 421 F.3d 352, 357 (5th Cir. 2005) ("One of the most important principles in our judicial system is the deference given to the finder of fact who hears the live testimony of witnesses because of his opportunity to judge the credibility of those witnesses.") (internal quotation marks and citation omitted).

[18] *Anderson*, 2024 WL 2829243, at *1 (citing *Scott v. Harris*, 550 U.S. 372, 380–81 (2007)).

[19] *See id.* ("When video evidence is 'ambiguous[,]' however, *Scott v. Harris* 'has no application.'") (alteration in original) (citing *Aguirre v. City of San Antonio*, 995 F.3d 395, 410 (5th Cir. 2021)).

[20] *See, e.g.*, *United States v. Stuckey*, No.24-CR-2017-CJW-MAR, 2025 WL 34816, at *2 (N.D. Iowa 2025) (noting that "the body camera is positioned—on [the officer']s torso, and thus does not capture what [he] could see from an eye-level angle"); *United States v. Gray*, No.20-191 (CKK), 2021 WL 2209462, at *2 (D.D.C. 2021) ("Because the body-worn cameras focus only straight ahead and are lower than the officers' sight-line, the

that the officer saw" the Glock and the switch "in plain view."[21]

Another rejoinder is that the factual circumstances suggest that Hoggard did not see the Glock and its switch in plain view. True, Hoggard initially left the Glock in an unlocked car in a residential neighborhood and did not immediately tell his colleague at the scene about the weapon. But there was no traffic on the side street, where another patrol car was already present and blocking incoming traffic from the cross street. And during the three-and-a-half-minute stretch between Hoggard's initial discovery of the Glock and the subsequent physical possession of it, Hoggard had other priorities—he escorted Porter to his patrol vehicle, put Porter's personal items in his car, and rolled its windows up to prevent rain from coming in. Hoggard did not raise the immediate alarm bells because he wanted "to see if [Porter] was going to be honest," something he testified to in open court, which the district court found credible.

The footage is not clear-cut in Porter's favor. In fact, it shows that Hoggard seamlessly reached under the seat in a "quick darting motion," suggesting that he knew precisely where the Glock and the switch were because he had previously seen them in plain view. Admittedly, the officer did exclaim, "Oh s--t," but that can be explained by the fact that physically seizing a suspect's gun that has an attached machinegun conversion device

camera does not capture everything that each officer sees."); *United States v. Rowson*, 652 F. Supp. 3d 436, 444 (S.D.N.Y. 2023) ("[B]ody camera footage sometimes does not pick up nuances visible to the naked eye, including based on the different distances and angles involved, and that the camera may not have focused on the same, precise part of a suspect's anatomy as did the officers.").

[21] *See United States v. Riggins*, No. 22-10306, 2023 WL 2964408, at *1 (5th Cir. 2023) (per curiam) (unpublished) ("Even if the body camera recording does not clearly show that the syringe was visible inside Riggins's pocket, we see nothing that plainly contradicts the district court's finding that the officer saw the syringe in plain view.").

may not be an everyday occurrence even for experienced officers, who may be rightfully shocked. Far from being clear-cut in Porter's favor, the footage confirms that Hoggard contemporaneously corroborated that "[the Glock] was basically in plain view," and "the barrel [was] sticking out from under the seat, so [he] saw it in plain view."

Viewing the evidence in the light most favorable to the government as the prevailing party, there is nothing that plainly contradicts the district court's reasoned assessment that Hoggard saw the Glock and its switch in plain view.

IV. Constitutionality of a Criminal Statute

This court reviews a preserved challenge to the constitutionality of a statute *de novo*. *United States v. Howard*, 766 F.3d 414, 419 (5th Cir. 2014). "When a litigant brings both facial and as-applied challenges, we generally decide the as-applied challenge first because it is the narrower question." *Ostrewich v. Tatum*, 72 F.4th 94, 104 (5th Cir. 2023). "To sustain a facial challenge, 'the challenger must establish that no set of circumstances exists under which the statute would be valid.'"[22] A facial challenge will necessarily fail if a statute is constitutional as applied to a defendant's individual case. *Id.*

V. 18 U.S.C. § 922(o)

This court's jurisprudence forecloses Porter's Second Amendment challenge to 18 U.S.C. § 922(o) argument—machineguns "do not receive Second Amendment protection."[23] Indeed, very recently, we squarely

[22] *United States v. Diaz*, 116 F.4th 458, 471 (5th Cir. 2024) (quoting *United States v. Salerno*, 481 U.S. 739, 745 (1987)), *cert. denied*, 145 S. Ct. 2822 (2025).

[23] *See Hollis v. Lynch*, 827 F.3d 436, 451 (5th Cir. 2016) (concluding that machineguns "do not receive Second Amendment protection" and noting that "[m]achineguns are

answered this question, reasoning that *Hollis* continues to bind us" and that the defendant's "Second Amendment challenge to his § 922(o) conviction must fail" "because *Hollis* controls." *United States v. Wilson*, 164 F.4th 380, 385–87 (5th Cir. 2026). *Wilson* makes clear that "*Bruen* reinforces the portion of *Heller* on which *Hollis* relied."[24] Under our Rule of Orderliness,[25] "only an intervening change in the law . . . permits a subsequent panel to decline to follow a prior Fifth Circuit precedent."[26] *Bruen* does not unequivocally overrule *Hollis* because *Bruen* addressed a law limiting the ability of law-abiding citizens to carry *handguns* outside the home. *See New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 13–14 (2022).

AFFIRMED.

dangerous and unusual and therefore not in common use").

[24] *Wilson*, 164 F.4th at 386 ("In *Hollis*, the court cited dicta from *Heller* for the proposition that the Second Amendment does not protect dangerous and unusual weapons. And in *Bruen*, the Supreme Court reiterated that portion of *Heller*, observing that it is 'fairly supported by the historical tradition of prohibiting the carrying of dangerous and unusual weapons that the Second Amendment protects the possession and use of weapons that are in common use at the time.'").

[25] *See Thompson v. Dall. City Att'y's Off.*, 913 F.3d 464, 468 n.17 (5th Cir. 2019) ("[A] panel's interpretation of a Supreme Court decision is binding on a subsequent panel even if the later panel disagrees with the earlier panel's interpretation.") (citing *United States v. Traxler*, 764 F.3d 486, 489 (5th Cir. 2014) ("Even if persuaded that [our prior panel opinion] is inconsistent with [an earlier Supreme Court opinion], we may not ignore the decision, for in this circuit one panel may not overrule the decision of a prior panel.") (alteration in original)).

[26] *United States v. Alcantar*, 733 F.3d 143, 145 (5th Cir. 2013); *id.* at 146 (noting that the intervening change in the law "must be unequivocal").

NOTE: Identify Changes with Asterisks(*))
AO 245B(Rev. 09/19) Judgment in a Criminal Case

APPENDIX B

AB/mc

UNITED STATES DISTRICT COURT

Southern District of Mississippi

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
FILED
Mar 26 2025
ARTHUR JOHNSTON, CLERK

UNITED STATES OF AMERICA
v.
ELIJAH PORTER

AMENDED JUDGMENT IN A CRIMINAL CASE

Case Number: 1:24cr11TBM-BWR-001

USM Number: 02911-511

Omodare B. Jupiter
Defendant's Attorney

Date of Original Judgment 03/24/2025

THE DEFENDANT:

☐ pleaded guilty to count(s)

☐ pleaded nolo contendere to count(s) which was accepted by the court.

* ☑ was found guilty on count(s) Count 1 of the single count Indictment after a plea of not guilty.

* ✓ Correction of Sentence for Clerical Mistake (Fed R Crim P36(a))

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. §§ 922(o) and 924(a)(2)	Possession of a Machine Gun	1/25/2024	1

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s)

☐ Count(s) ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

March 17, 2025
Date of Imposition of Judgment

Taylor B. McNeel
Signature of Judge

The Honorable Taylor B. McNeel, U.S. District Judge
Name and Title of Judge

March 26, 2025
Date

DEFENDANT: **ELIJAH PORTER**
CASE NUMBER: 1:24cr11TBM-BWR-001

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:

forty-six (46) months as to Count 1 of the single count Indictment.

☑ The court makes the following recommendations to the Bureau of Prisons:

The Court recommends that the defendant participate in any drug treatment programs he is eligible for while in the custody of the Bureau of Prisons, and that the defendant be housed in a facility that is nearest to his home for which he is eligible to facilitate visitation.

☑ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at ______________ ☐ a.m. ☐ p.m. on ______________ .

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on ______________ .

☐ as notified by the United States Marshal, but no later than 60 days from the date of this judgment.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on ______________ to ______________

at ______________ , with a certified copy of this judgment.

____
UNITED STATES MARSHAL

By ______________
DEPUTY UNITED STATES MARSHAL

DEFENDANT: **ELIJAH PORTER**
CASE NUMBER: 1:24cr11TBM-BWR-001

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of:

three (3) years as to Count 1 of the single count Indictment.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
   ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☑ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: **ELIJAH PORTER**
CASE NUMBER: 1:24cr11TBM-BWR-001

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature ______________________________ Date ______________

DEFENDANT: **ELIJAH PORTER**
CASE NUMBER: 1:24cr11TBM-BWR-001

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall provide the probation office with access to any requested financial information and must notify the Court of any changes in economic circumstances that might affect his ability to pay the imposed financial penalties.

2. The defendant shall not incur new credit charges or open additional lines of credit without the approval of the probation office unless the defendant is in compliance with the installment payment schedule.

3. The defendant shall pay all criminal monetary penalties in accordance with the schedule of payment on the judgment order.

4. The defendant shall participate in a program of testing and outpatient treatment (or inpatient treatment if separately ordered or approved by the Court during the term of supervised release) for drug abuse as directed by the probation office. When enrolled in a drug treatment program, either inpatient or outpatient, the defendant shall abstain from consuming alcoholic beverages during treatment and shall continue abstaining for the remaining period of supervised release. The defendant shall contribute to the cost of treatment in accordance with the probation office copayment policy.

5. The defendant shall not possess, ingest, or otherwise use, a synthetic cannabinoid, or other synthetic narcotic.

6. In the event that the defendant resides in, or visits, a jurisdiction where marijuana, or marijuana products have been approved, legalized, or decriminalized, the defendant shall not possess, ingest, or otherwise use marijuana or marijuana products.

7. The defendant shall submit his person, property, house, residence, vehicle, papers, electronic communication devices, or office, to a search conducted by a United States Probation Officer. Failure to submit to such a search may be grounds for revocation of supervised release. The defendant shall warn any other occupants that the premises may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that the defendant has violated a condition of his supervised release, and that the areas to be searched contain evidence of such a violation. Any search must be conducted at a reasonable time and in a reasonable manner.

DEFENDANT: **ELIJAH PORTER**
CASE NUMBER: 1:24cr11TBM-BWR-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 7.

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment**
TOTALS	$ 100.00	$	$ 3,000.00	$	$

☐ The determination of restitution is deferred until __________. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss***	Restitution Ordered	Priority or Percentage
TOTALS	$ 0.00	$ 0.00	

☐ Restitution amount ordered pursuant to plea agreement $ __________

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☑ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☑ the interest requirement is waived for the ☑ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.
** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.
*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: **ELIJAH PORTER**
CASE NUMBER: 1:24cr11TBM-BWR-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A ☐ Lump sum payment of $ ________ due immediately, balance due

☐ not later than ____________ , or
☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☑ Payment to begin immediately (may be combined with ☐ C, ☑ D, or ☑ F below); or

C ☐ Payment in equal ________ *(e.g., weekly, monthly, quarterly)* installments of $ ________ over a period of ________ *(e.g., months or years)*, to commence ________ *(e.g., 30 or 60 days)* after the date of this judgment; or

D ☑ Payments to be made in monthly *(e.g., weekly, monthly, quarterly)* installments of $ 125.00 over a period of 36 months *(e.g., months or years)*, to commence 30 days *(e.g., 30 or 60 days)* after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within ________ *(e.g., 30 or 60 days)* after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☑ Special instructions regarding the payment of criminal monetary penalties:
The payment of the fine shall begin while the defendant is incarcerated. In the event that the fine is not paid in full prior to the termination of supervised release, the defendant is ordered to enter into a written agreement with the Financial Litigation Program of the U.S. Attorney's Office for payment of the remaining balance. Additionally, the value of any future discovered assets may be applied to offset the balance of criminal monetary penalties. The defendant may be included in the Treasury Offset Program, allowing qualified federal benefits to be applied to offset the balance of criminal monetary penalties.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Case Number Defendant and Co-Defendant Names *(including defendant number)*	Total Amount	Joint and Several Amount	Corresponding Payee, if appropriate

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

UNITED STATES

v. **CRIMINAL NO. 1:24-cr-11-TBM-BWR**

ELIJAH PORTER

ORDER

This matter came before the Court on Elijah Porter's Motion to Suppress [25], [27], and his Motion to Dismiss the Indictment [29]. At the hearing conducted on July 12, 2024, the Court, having considered the pleadings, the record, the oral arguments of the parties, and the relevant legal authority, announced on the record its detailed findings and conclusions.

IT IS THEREFORE, ORDERED AND ADJUDGED that, for the reasons stated on the record on July 12, 2024, Elijah Porter's Motion to Suppress [25] is DENIED in part and TAKEN UNDER ADVISEMENT in part. As discussed at the hearing, the parties must provide supplemental briefing on the validity of the initial stop by July 25, 2024.

IT IS FURTHER ORDERED AND ADJUDGED that for the reasons stated on the record on July 12, 2024, Elijah Porter's Motion to Suppress [27] is DENIED.

IT IS FURTHER ORDERED AND ADJUDGED that for the reasons stated on the record on July 12, 2024, Elijah Porter's Motion to Dismiss the Indictment [29] is DENIED.

THIS, the 12th day of July, 2024.

Taylor B. McNeel

TAYLOR B. McNEEL
UNITED STATES DISTRICT JUDGE

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

UNITED STATES OF AMERICA

VS. CRIMINAL NO. 1:24cr11

ELIJAH PORTER

BENCH RULING

BEFORE THE HONORABLE TAYLOR B. MCNEEL
UNITED STATES DISTRICT JUDGE

AUGUST 2, 2024
GULFPORT, MISSISSIPPI

APPEARANCES:

FOR THE GOVERNMENT:
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REPORTED BY: SHERRI L. PENNY, RPR, FCRR
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THE COURT: Madam Clerk, will you please call the case.

DEPUTY CLERK: United States of America versus Elijah Porter, criminal case number 1:24cr11, set for bench ruling.

THE COURT: Would counsel please enter their appearances for the record?

MR. McCREIGHT: Good morning, Your Honor. Hunter McCreight and Lee Smith and Mike Knoll on behalf of the government, and we are ready to proceed.

MR. JUPITER: Good morning, Your Honor. Omodare Jupiter on behalf of Elijah Porter. Also seated at counsel table is Attorney Victoria McIntire. Elijah Porter is present, we're ready to proceed.

THE COURT: Thank you.

I had previously taken under advisement a portion of defendant Elijah Porter's motion to suppress, namely that's document number 25. I took it under advisement at the July 12th, 2024, hearing, and I previously ordered supplemental briefing on the issue of whether the traffic stop itself was lawful in light of some of my other instructions that I made at that hearing and some concerns that I had.

And after reviewing the supplemental briefing submitted by the parties and after conducting additional research that I conducted, I do find that the traffic stop itself was lawful. And as a result, I am denying the motion to suppress. I find that the traffic stop was lawful for three reasons:

First, Officer Hoggard, had reasonable suspicion to initiate the traffic stop based solely on the automatic license plate reader, or the ALPR, hit that revealed an outstanding arrest warrant for Mr. Porter;

Number 2, the BOLO, or ALPR, hit does not need to include a physical description of the driver to provide an officer reasonable suspicion to initiate a traffic stop;

And number 3, under the collective knowledge doctrine, the ALPR was reliable and provided Officer Hoggard with reasonable suspicion to initiate the traffic stop.

And since Officer Hoggard did initiate a valid *Terry* stop, and a valid investigatory stop, Mr. Porter's motion to suppress is denied.

I am now going to explain my reasoning in more detail, and also the cases that I have relied on in making my ruling. To analyze the legality of a vehicle stop under *Terry*, a Court ordinarily must follow the two-step process that's been set forth in numerous opinions. For example, *United States versus Brigham*, that's B-R-I-G-H-A-M, 382 F.3d 500 at page 506, a Fifth Circuit case from 2004, includes these steps; only the first step, though, whether the officer was justified in stopping the vehicle at its inception is at issue here. In a *Terry* stop to investigate a completed crime, there normally is either a reasonable suspicion that the person stopped is the known individual wanted for a crime that is known to have occurred, or a reasonable suspicion that the stop will undercover evidence of a recently committed crime. That can be found in *United States versus Monteiro,* M-O-N-T-E-I-R-O, 447 F.3d 39 at page 49, a First Circuit opinion from 2006, that is citing *United States versus Hensley*, a United States Supreme Court opinion from 1985 that can be found at 469 U.S. 221 at page 224, where the police department in the United States Supreme Court opinion had issued a wanted flyer for the driver.

So here the issue is whether Officer Hoggard had reasonable suspicion that the person stopped is the known individual, that is Mr. Porter, that is wanted for a crime that is known to have occurred. In this instance, the crime essentially is the outstanding arrest warrant for aggravated assault. And as I said before, Officer Hoggard did have that reasonable suspicion to initiate the *Terry* stop for three reasons.

The first, based on the United States Supreme Court's decision in *Kansas versus Glover*, that's at 2020 -- a 2020 opinion that can be found at 589 U.S. 376, Officer Hoggard did have reasonable suspicion to initiate that traffic stop based solely on the ALPR hit, the automated license plate reader hit, that revealed an outstanding arrest warrant for Mr. Porter.

In *Glover*, the question presented to the United States Supreme Court was whether a police officer violates the Fourth

Amendment by initiating an investigative traffic stop after running a vehicle's license plate and learning that the registered owner has a revoked driver's license. That can be found at page 378 in the *Glover* opinion.

The Supreme Court in that case explained that before initiating the stop, the officer observed an individual operating a 1995 Chevrolet 1500 pickup truck with Kansas plate 295ATJ. The officer also knew that the registered owner of the truck had a revoked license and that the model of the truck matched the observed vehicle. From these three facts, the officer drew the common sense inferences that Glover was likely the driver of the vehicle which provided more than reasonable suspicion to initiate the stop. Again, that can be found at 381 in the *Glover* opinion.

And as in *Glover*, here Officer Hoggard initiated an investigatory traffic stop after a license plate reader revealed the vehicle at issue was associated with a person who had an outstanding arrest warrant. At this point, I think it's important to go back to the testimony of Officer Hoggard and get a little bit more factually specific as to what Officer Hoggard testified to. Because there's three different checks that Officer Hoggard did that helped him develop reasonable suspicion. The first is Officer Hoggard received an alert, this alert contained a good bit of information. The alert gave a picture of the vehicle, the specific vehicle that was pulled over in the case and the tag of the vehicle form on is officer knew the very specific vehicle, the color, make, model and the tag number. And then he also understood from the alert that the vehicle was associated -- was allegedly associated with criminal activity.

So second, Officer Hoggard then reached out to dispatch for more information; in other words, he immediately ran the alert through dispatch and dispatch confirmed that that was in fact a vehicle that he should be looking for and confirmed that there was a warrant that was out for Elijah Porter for aggravated assault.

I also go back to when Officer Hoggard got that alert, Officer Hoggard testified that that alert gives him information about who is associated with that vehicle and it did come back as Elijah Porter was associated with that vehicle. And dispatch then also gave Officer Hoggard the same information according to Officer Hoggard's testimony. So first, there's an alert, Officer Hoggard is getting a lot of information through the alert about the vehicle, about why it's being associated with criminal activity, and then second dispatch is confirming a lot of this information and in fact gives very specific information to Officer Hoggard that says the hit is for Elijah Porter and that it relates to an arrest warrant for aggravated assault. And then third, Officer Hoggard does more to create reasonable suspicion, he actually runs the tag number through

-- he runs the tag number that is associated with the vehicle. And when he ran that tag number, it came back according to Officer Hoggard, it came back to being associated with two different individuals. The last name of Stewart and to EL Porter and EL Porter is the defendant.

So similar to Glover, Officer Hoggard initiated an investigatory traffic stop after a license plate reader revealed that the vehicle was associated with the person who had an outstanding arrest warrant. To me, it is not outcome determinative that Mr. Porter was not the owner of the vehicle because Officer Hoggard is getting information from more than one source that Elijah is associated with this vehicle.

Additionally, just like the officer in Glover before initiating the traffic stop, Officer Hoggard observed the vehicle, observed that the vehicle matched the make and model of the vehicle that he was looking for, he confirmed the license plate number was the number that he was looking for, and confirmed that Mr. Porter who was associated with the vehicle did have an outstanding warrant for aggravated assault. As a result, simply relying on the Glover opinion Officer Hoggard had reasonable suspicion to initiate the traffic stop.

But in addition to Glover, I find that other cases support Officer Hoggard having reasonable suspicion. For example, United States versus Mcbrown, that's a 1998 opinion from the Fifth Circuit that can be found at 149 F.3d 1176. In that opinion, the Fifth Circuit recognized that reasonable suspicion is present when an officer runs a vehicle's license plate through a computer which reveals outstanding arrest warrants on the driver of the vehicle for traffic violations.

Additionally, United States versus Williams, 796 F.3d 951 an Eighth Circuit case from 2015 which when there was an alert indicating a certain person was wanted for domestic assault and may be armed and dangerous and had been associated with a nearby car, well then that justified stopping that particular vehicle.

Additionally, United States versus Castro, 379 F. App'x 549 at page 5550, that's a Ninth Circuit case from 200110 which ultimately recognized there was reasonable suspicion present and a *Terry* stop was allowed when someone had been associated with the particular vehicle in that case.

To be sure, even though Porter was not the owner of the vehicle, at the time of the traffic stop Officer Hoggard had plenty of information that Mr. Porter was associated with the vehicle and he had gotten this information through law enforcement channels. This is a different situation I find because a lot of the defense's argument has been about well, how did Officer Hoggard not know that this was some anonymous tip and I understand this could have been a different situation for example if Officer Hoggard had simply received some anonymous tip through maybe one law enforcement channel that had said there's a driver of a vehicle that is currently driving down Highway 90 that has methamphetamine under his floorboard. Clearly, that would have to come through some type of at this point of someone. This is not an anonymous tip situation. This is an outstanding arrest warrant. Outstanding arrest warrants are commonplace in terms of how they are inputted into law enforcement databases throughout the country that use this type of information to share. To be sure, one of the law enforcement databases at issue in this case is the NCIC and the NCIC is a federal database that is shared with law enforcement agencies throughout the country and there are all kinds of tools and steps and policies and procedures that are used to help make sure that information does not -- that ends up in that system in a way that does not go overly stale, etcetera. That's not to say that information can never end up in that system that can be overly stale. But in this situation, again this is a different circumstance from an anonymous tip for somebody may have, say, an anonymous tip of a gun in a vehicle or drugs in a vehicle. This is an outstanding arrest warrant. This is the quintessential type of thing that is regularly shared in law enforcement databases throughout the country. This is not the type of thing that ordinarily would end up in law enforcement database through some type of anonymous tip, through an anonymous individual who is not law enforcement.

Going back to *United States versus Mcbrown*, that Fifth Circuit case from 1998, the Fifth Circuit held that even where later evidence reveals that the defendant was not the owner of the vehicle, such a discovery does not alter the conclusion that the officer had reasonable suspicion at the time to pull over the vehicle. The Fifth Circuit said, he did not know that the defendant was not the owner of the vehicle.

Accordingly, even if Officer Hoggard later discovered that Mr. Porter's brother or someone else was actually the owner of the vehicle does not negate any reasonable suspicion that Officer Hoggard had at the time to initiate the traffic stop.

Similarly, whether Mr. Porter was associated with the vehicle or not is also -- that is the type of thing that is regularly included in law enforcement databases and is not the thing that necessarily comes from an anonymous tip.

I further note going back to *Kansas versus Glover*, the Supreme Court said, reasonable suspicion is a particularized and objective basis for suspecting the particular person stopped of criminal activity. And officers are allowed to draw on their own experience and specialized training to make inferences from and deductions from the cumulative information available to them that might well elude an untrained person.

And that's citing to *Kansas versus Glover*, and also *United States versus Brown*, an Eighth Circuit opinion from 2023 that is quoting *United States versus Arvizu*, United States Supreme

Court opinion that can be found at 534 U.S. 266, and that's a 2002 opinion. The Eighth Circuit opinion can be found at 60 F.4th 1179 at page 1182.

I also find a number of other cases persuasive in my ruling, these include *United States versus Jackson*, 2021 Westlaw 2665750, a Northern District of Ohio opinion that can be found at -- excuse me, that was handed down June 29th of 2021 and can be found at 2021 Westlaw 2665750. Also, *United States versus Farlee*, F-A-R-L-E-E, 2019 Westlaw, 7971884 at page 4, a District of South Dakota opinion from November 5 of 2019.

And finally *United States versus Jacquez*, 409 F. Supp. 2d 1286 at page 1296. That's a reported opinion from the District of New Mexico, September 27, 2005. And in that opinion, the District of New Mexico opinion, the Court found that the traffic stop was supported by reasonable suspicion because the officer had received information that the defendant was seen driving a black Escalade with a specific license plate. He was also told there was an arrest warrant for the defendant. The officer located the black Escalade and made a traffic stop to investigate whether the defendant was in the vehicle.

And I said previously there were three different -- three different reasons for my opinion today. And the second reason is a BOLO, or ALRP, or an ALPR, automated license plate reader, need not include a physical description of the driver to provide an officer reasonable suspicion to initiate a traffic stop. In other words, the information that was contained in the alerted issue here, which identified Mr. Porter by name and included the make, the model, the color, the license plate number and why the vehicle was listed in the alert, was sufficient to provide Officer Hoggard reasonable suspicion to initiate the traffic stop, especially in light of the fact that Officer Hoggard took additional steps which included reaching out to dispatch and running the tag number.

A number of courts have found traffic stops to be valid in situations similar to this one where the officer had reasonable suspicion that the driver of the vehicle had an outstanding arrest warrant even though the officer had no identifying information for the driver. I am quoting and citing back to *United States versus Jacquez*, again, 409 F. Supp. 2d, 1286 at page 1296, a District of New Mexico opinion from September 27 of 2005.

In fact, the Sixth Circuit in *United States versus Marxen*, that's M-A-R-X-E-N, 410 F.3d 326 at page 321, a Sixth Circuit case from 2005, found reasonable suspicion was present for a traffic stop where the police were reasonably certain of the make, the model, and the general color of the automobile used in the robbery, and that description matched the defendant's vehicle. There, the Sixth Circuit held that police are permitted to conduct a *Terry* stop to investigate completed felonies if they have reasonable suspicion to believe that the vehicle stopped was involved in criminal activity, even if officers do not have reasonable suspicion to believe that the owner and/or driver of the vehicle was directly involved in the criminal activity. I also note in the *Marxen* opinion, my recollection is the stop was days, a number of days post-robbery, which I also found to be persuasive.

Also persuasive are cases where although physical descriptions were available, potentially, to the officers, courts have declined to require officers to match the physical description of the registered owner or potential driver from the license plate check to the driver of the vehicle before initiating a traffic stop, or a *Terry* stop because such a rule would put the onus on the officer to maneuver himself into a position to clearly observe the driver in the midst of traffic. That can be found in *United States versus Whitis*, W-H-I-T-I-S, 2017 Westlaw 3097617 at page 3, an Eastern District of Kentucky opinion from July 20th, 2017.

Additionally, *United States versus Chartier*, C-H-A-R-T-I-E-R, 772 F.3d 539, an Eighth Circuit opinion from 2014, noting weather conditions were poor and therefore identifying the driver through some type of identity confirmation was not necessary.

These cases are persuasive to me because even if Officer Hoggard had received a physical description of Mr. Porter before initiating the traffic stop, it would not have been realistic for Officer Hoggard to put himself in a position to identify Mr. Porter before initiating the stop. And there are two different reasons for why that would not be really a realistic.

First off, Mr. Porter was leaving from his job at Ingalls Shipbuilding at the time of the traffic stop. According to Officer Hoggard's testimony, there had been hits on Mr. Porter's vehicle that he was driving in the days before the traffic stop, but the vehicle could not be located by law enforcement when it was being driven as a result of traffic or heavy traffic.

Now, there's some context that's probably needed for the record here. When Officer Hoggard was testifying about that and about traffic leaving Ingalls, that is a common -- that is common knowledge on the Mississippi Gulf Coast. Ingalls Shipbuilding is the largest, or at the very least one of the largest employers in the entire State of Mississippi. When there is a shift change that occurs at Ingalls Shipbuilding, the traffic is extraordinarily heavy. That's just common knowledge on the Mississippi Gulf Coast, and that's obviously the information I can take from what Officer Hoggard was describing. When Ingalls Shipbuilding lets out, there is significant traffic. And so it is not surprising that it would be difficult to locate the vehicle in prior days because of heavy traffic.

Additionally, I went back and reviewed the body-cam footage again and reconfirmed that Mr. Porter recognizes that he was leaving his job from Ingalls. So taking that into consideration and Officer Hoggard's testimony about traffic that correlates to when Ingalls Shipbuilding has a shift change and thousands and thousands of employees or contractors are leaving Ingalls Shipbuilding at the same time, and noting also that this particular road where Mr. Porter was pulled over from is Gautier-Vancleave Road, that's where the blue lights were initiated, Gautier-Vancleave Road is the first north/south corridor leaving Ingalls Shipbuilding when you are heading west to get to the interstate. It is the very first north/south corridor leaving Ingalls Shipbuilding if you are heading west. That's also common knowledge on the Mississippi Gulf Coast. So -- and then furthermore, for context, where this traffic stop took place, it's a familiar location on Gautier-Vancleave Road. The actual street is included in the body-cam footage, and it is clear that Mr. Porter is heading north. It's unknown whether he is going to take the interstate or continue heading north, but regardless it is also common knowledge that where that traffic stop is initiated is close, you're probably -- you're certainly less than five miles from the interstate, you're probably a few miles from the interstate. And so for Officer Hoggard to attempt some type of vehicular maneuver, he would have to try to speed up in traffic, get close to Mr. Porter's vehicle, attempt to look into Mr. Porter's vehicle in traffic, potentially get in front of Mr. Porter's vehicle in traffic to attempt to get a physical description, and all while you are approximately a few miles from the interstate, certainly less than five miles from the interstate. And then you're also -- that interstate is very close to the end of the Gautier city limits. Again, this is common knowledge on the Mississippi Gulf Coast. So all of this maneuver would have to happen in a pretty quick period of time with regard to Officer Hoggard, and it's happening in traffic with Ingalls Shipbuilding and employees being let out in a shift change. So I think that context is important, and I can take that context under consideration in terms of what Officer Hoggard's testimony was about the traffic and the inferences of what that means.

Additionally, I went back and looked at the body-cam footage, and the vehicle at issue has extremely tinted windows. In fact, the windows are so tinted that when Officer Hoggard exits his vehicle, begins walking up to the vehicle, you can't make out the shape of anyone in the vehicle. In fact, there's no way to tell, the windows are so tinted, whether there's four people in the vehicle, five people in the vehicle, one person in the vehicle, there's no way of knowing. To be sure, when Officer Hoggard is approximately six feet away from the vehicle, Officer Hoggard tells Mr. Porter to put his hands outside the vehicle and to roll down his windows, and windows pleural because it is clear what he is meaning is you need to roll down your back window because I can't see in this vehicle, and Mr. Porter does just that. Not only does he roll down his driver's side window, he rolls down his back, his rear driver window. And so there's two windows rolled down. And at that point in time, once those two windows are rolled down and Officer Hoggard is merely feet away from the vehicle is the first time that you can actually clearly see into the vehicle and even she see a shape. Of course, you can see Mr. Porter once the window is rolled down, but it's not until windows are rolled down that you can see any type of even shape of individual in the vehicle, much less a physical description of an individual.

So even if there was a physical description of Mr. Porter in the alert or through dispatch or through a tag -- running a license plate check, I don't find that it would have been realistic in that short period of time involving a car that had extremely tinted windows, and where Officer Hoggard would have to incorporate a number of different traffic maneuvers in an attempt to figure out if this individual matched the physical description from any type of information I have, I don't find that that would have been realistic for Officer Hoggard to have attempted to accomplish such a traffic maneuver. Indeed, that could have very well been overly dangerous in light of traffic and in light of the tint of the windows.

Finally, the third reason that I am denying this final ground of the motion to suppress is I find under the collective knowledge doctrine the automated license plate reader alert itself was reliable, and the information from dispatch was reliable, and the information from running a tag was reliable, and collectively it provided Officer Hoggard with reasonable suspicion to initiate the traffic stop, and all of this flows from the Collective Knowledge Doctrine itself.

Courts have found that the collective knowledge doctrine does permit an officer to stop, search or arrest a suspect at the direction of another officer, even if the officer himself does not have firsthand knowledge of facts that amount to the necessary level of suspicion to permit the given action. That be can be found in *United States versus Williams*, 627 F.3d 247 at page 252 through 253, a Seventh Circuit case from 2010.

Additionally, *United States versus Hensley*, that is a Supreme Court opinion from 1985, 469 U.S. 221, I have already referenced that previously, and also *United States versus Street*, 917 F.3d 586 at 597, Seventh Circuit case from 2019. And, finally, a Fifth Circuit case from 1999, *United States versus Ibarra Sanchez* 1199 F.3d 753, where it was held that the traffic stop initiated based on a DEA bulletin was constitutional because the DEA agent's knowledge could be imputed to the officers under the collective knowledge doctrine.

Additionally persuasive in my decision is a Sixth Circuit case from 2015, *Brown versus Lewis*, 779 F.3d 401 at page 412 through 413, which held that if a flyer or a bulletin has been issued on the basis of facts supporting a reasonable suspicion that the wanted person has committed an offense, then reliance on that flyer or bulletin justifies a stop to check identification, to pose questions to the person, or to detain the person briefly while attempting to obtain further information.

Finally, a Ninth Circuit case from 2007, *United States versus Ramirez*, 473 F.3d 1026, found that the collective knowledge doctrine includes no requirement regarding the content of the communication that one officer must make to another where one officer knows facts constituting reasonable suspicion and he communicates an appropriate order or request, another officer may conduct a warrantless stop, search or arrest without violating the Fourth Amendment.

So I ultimately disagree with the parties that the appropriate analysis should flow from *United States versus Gonzalez* because the parties were analyzing the credibility and reliability of informants under that test. I ultimately disagree with the parties on that test. I don't think that's the applicable test. Quite frankly, I think the test is how I have articulated it today, and in conclusion the collective knowledge doctrine is what allows Officer Hoggard to ultimately have the knowledge that's imputed to him to effectuate the traffic stop. But even if I am wrong and the parties are correct and that test for reliability of annual informant under *United States versus Gonzalez* is the correct test, I still find that the stop is lawful, and the motion to suppress is denied.

That test states that, whether a tip provides a sufficient basis for an investigatory stop may depend upon, number 1, the credibility and reliability of the informant; number 2, the specificity of the information contained in the tip or the report; number 3, the extent to which the information in the tip or report can be verified by officers in the field; and number 4, whether the tip or report concerns active or recent activity or has instead gone stale.

Here, one reason I don't think this test is applicable is because Officer Hoggard doesn't think he is dealing with a tip, he thinks he is dealing with the collective knowledge doctrine. He thinks he is dealing with information that is solely relayed from other police officers to him, and that is what he is dealing with through law enforcement databases or through dispatch or through running a tag. But even still, even if this is the correct test, I find that the credibility and the reliability of the informant supports the stop. First, whether the informant is law enforcement, certainly that is credible and reliable, numerous cases says that. But even if the source of the information is unknown, because maybe it's the Crystal Springs Police Department who is putting the arrest warrant in the database, or at least one of the databases, or who is putting in the information that Mr. Porter is associated with this particular vehicle, well this type of information I do not find is the type of information that you would have to make some type of credibility and reliability determination and see, well, who is telling us this information. Again it's coming from law enforcement databases, it's coming from an alert, an automated license plate reader, it's coming from dispatch, and it's coming from running the tag. That's reliable information.

And even if we don't know precisely how Mr. Porter is associated with this vehicle, I find that it is perfectly appropriate for Officer Hoggard to assume that that is coming from law enforcement and not coming from an anonymous source. And, in fact, there's no evidence that's been presented by the defense or anybody that this information came from an anonymous source or came from any type of layperson.

Secondarily, the specificity of the information contained in the tip or the report is extraordinarily reliable and supports the stop. It is very specific in terms of everything that Officer Hoggard gathered: The make, the model, the color of the vehicle, he had pictures of the vehicle, he had the specific license plate number, he knew that Mr. Porter was associated with the vehicle, and he had information that Mr. Porter was associated with potentially an arrest warrant for a violent crime.

Number 3, the extent to which the information in the tip or the report can be verified by officers in the field. Well, Officer Hoggard did everything that he reasonably could have done to verify. He received the alert, he was on the lookout for the vehicle, he went to look for the vehicle, then he reached out to dispatch, got more information from dispatch, or confirmed information from dispatch, and then number three, he ran the tag. So that supports the stop as well.

And then number 4, whether the tip or the report concerns active or recent activity or has instead gone stale. Well, all of the information in this -- again, this is not a situation where there is some type of anonymous tip and says well, there was some tip that an individual driving in this vehicle may have had methamphetamine in the vehicle or drugs in the vehicle and we received this tip weeks ago, that's not this situation. This situation is for an outstanding arrest warrant. And Officer Hoggard, for an outstanding arrest warrant, to make sure and to help make sure it is not stale, he did two different follow-ups, he reached out to dispatch and he ran a tag on the vehicle. There's really nothing else he could have done in such a limited timeframe where he may have only had a few miles at his disposal in heavy traffic to do any other type of investigatory work.

So I find that even if the test that the parties are advocating for is the correct test, that even still the motion to suppress should be denied.

And I mentioned the NCIC database. I understand that the NCIC data base was -- according to the testimony, it may have been primarily used for making sure that the arrest warrant is still valid, still a valid arrest warrant. So I wasn't indicating that NCIC database was used previous to that. But it's just emblematic of the fact that law enforcement databases are used and their information is shared.

And I also recognize that the warrant didn't come back as so-called valid and true until after the NCIC database, my understanding was, was checked. But that takes a while for that information to be checked, and there's not enough time for Officer Hoggard to have that information checked in the time period -- in a few-minute time period in heavy traffic before Mr. Porter can be pulled over; in other words, there was certainly reasonable suspicion for Officer Hoggard to pull over Mr. Porter. There was probable cause to arrest Mr. Porter for the outstanding warrant after the NCIC database was checked and it came back as a valid and true warrant.

And I also want to clarify, my understanding is when the tag reader, according to Officer Hoggard's testimony, indicates that that hit tells an officer that it's for a warrant or a stolen vehicle. And then Officer Hoggard takes that next step, step number 2, and radios into dispatch to find out what exactly the hit is for in terms of specifics and that's when he finds that the hit, more specifically, is for that warrant for aggravated assault. And then Officer Hoggard went on to do step number 3, is he ran the tag number associated with the vehicle.

So for all of those reasons and after those clarifications, I find that Officer Hoggard did initiate a valid *Terry* stop, and the remaining portion of Mr. Porter's motion to suppress is denied.

Is there anything else on behalf of the government?

MR. McCREIGHT: No, Your Honor.

THE COURT: Anything else on behalf of the defense?

MR. JUPITER: Could I get a second, Your Honor?

THE COURT: Yes.

MR. JUPITER: Just one clarification, Your Honor. The Court indicated the three things that Officer Hoggard did to -- that court relied on for finding that the stop was made with reasonable suspicion, the Court is finding that all three of those things were done prior to Officer Hoggard initiating the stop?

THE COURT: Well, my understanding is he definitely had the alert before the traffic stop. He definitely talked to dispatch before the traffic stop. So it sounds like your question is did he run the tag before the traffic stop?

MR. JUPITER: To be honest with you, I am trying to make sure on all three, Your Honor, but yes. And when you say -- and I am talking about before he, I guess, blue-lighted him. And I am not saying I am sure one way or the other, I just wanted to make sure that that is what the Court is ruling, that all of those were done before the stop.

THE COURT: Well, to clarify, I don't recall -- my understanding was -- does the government have a recollection if all three were done before the traffic stop?

MR. McCREIGHT: Your Honor, I know that the first two were. I cannot recall what Officer Hoggard's testimony was whether he ran the tag number before he blue-lighted him or as in the process of conducting that traffic stop.

THE COURT: Okay. And to clarify, I don't recall specifically. Because there's a line of questioning and testimony where it's very clear he did those three things. He had the alert, he -- according to his testimony, when he received the alert he immediately ran the alert through dispatch. And then according to Officer Hoggard's testimony, dispatch then confirmed who he was looking for and what the warrant was for. And dispatch told him the hit was for an Elijah Porter and it was for aggravated assault. Dispatch did not tell him where the warrant was out of. He was able to get that information before the traffic stop was conducted. He also testifies immediately thereafter that he ran the tag number associated with this vehicle. It seems to me the inference is that he did this before the traffic stop in that line of questioning. But I will clarify my ruling that I believe that based off of all the cases that I have cited to today, that even if he just had the alert, and spoke with dispatch before the traffic stop, and had not, in fact, also ran the tag number before the traffic stop was conducted, I find that based off of the cases in the law that I have cited today that he still had reasonable suspicion to initiate the traffic stop.

MR. JUPITER: Thank you for the clarification. I have nothing further, Your Honor. Obviously, we respectfully object and we are ready to proceed.

THE COURT: Okay. Anything else that we need to take up with the parties before we recess today's proceedings?

MR. McCREIGHT: Not from the government, Your Honor.

MR. JUPITER: Not from the defense, Your Honor.

THE COURT: Mr. Porter, you are remanded back to the custody of the United States Marshals Service to await further proceedings in this case. Court will stand in recess.

(HEARING CONCLUDED)

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CERTIFICATE OF COURT REPORTER

I, Sherri L. Penny, RPR, FCRR, Official Court Reporter for the United States District Court for the Southern District of Mississippi, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a correct transcript of the proceedings reported by me using the stenotype reporting method in conjunction with computer-aided transcription, and that same is a true and correct transcript to the best of my ability and understanding.

I further certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

S/ Sherri L. Penny
OFFICIAL COURT REPORTER

APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

UNITED STATES

v. **CRIMINAL NO. 1:24-cr-11-TBM-BWR**

ELIJAH PORTER

ORDER

At the hearing on July 12, 2024, the Court took under advisement a portion of Defendant Elijah Porter's Motion to Suppress [25]—specifically, whether the traffic stop itself was lawful. At the hearing conducted on August 2, 2024, the Court announced on the record its detailed findings and conclusions on this remaining issue. Having considered the pleadings, the record, the oral arguments of the parties, and the relevant legal authority, the Court concluded that Officer Hoggard initiated a valid traffic stop.

IT IS THEREFORE, ORDERED AND ADJUDGED that, for the reasons stated on the record on August 2, 2024, the remaining portion of Elijah Porter's Motion to Suppress [25] is DENIED.

THIS, the 5th day of August, 2024.

TAYLOR B. McNEEL
UNITED STATES DISTRICT JUDGE