

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

UNITED STATES OF AMERICA

Plaintiff,

v.

NORMAN R. WISE, JEREMY K. URBAN,
and, ROBERT P. STEEL

Defendants.

No. 05-CR-170

ORDER DENYING GOVERNMENT'S
MOTION TO RECONSIDER AND
GRANTING DEFENDANTS' MOTION TO
SUPPRESS STATEMENTS

THE COURT HAS BEFORE IT the government's motion filed March 30, 2006 seeking to reconsider the Court's prior ruling of March 2, 2006. On April 11, 2006, defendants Norman Wise and Jeremy Urban filed separate briefs in resistance to the government's motion. A hearing was held on May 3, 2006. On May 4, 2005, the government submitted additional support for its argument on the standing issue. The matter is considered fully submitted.

I. BACKGROUND

Defendants Norman Wise ("Wise"), Jeremy Urban ("Urban"), and Robert Steel ("Steel") each are charged with possession with intent to distribute cocaine in violation of 21 U.S.C. § 841(a)(1), (b)(1)(A)(ii) and 18 U.S.C. § 2(1). On March 2, 2006, this Court entered an order granting defendants' motion to suppress evidence seized as the result of a traffic stop and subsequent search that occurred on May 5, 2005. The facts of this case are set out in detail in the March 2nd order. Only the facts necessary to resolve the present motion will be repeated here.

The March 2nd suppression order found that defendants were illegally stopped while

driving a Winnebago eastbound on Interstate 80 in Dallas County, Iowa on May 5, 2005. Following this stop, Dallas County Deputy Sheriff Troy Genovese (“Deputy Genovese”) illegally detained defendants. Deputy Genovese then asked Steel for consent to search the Winnebago. The Court found that, given the illegality of the stop and subsequent detention, Steel’s consent was not voluntary. Finally, the Court concluded that Urban and Wise had standing to contest the search of the vehicle because they were living in the Winnebago at the time of the stop.

The Government has asked the Court to reconsider its ruling on three issues: (1) whether an unchallenged voluntary consent may purge the taint of an illegal stop; (2) the admissibility of post-*Miranda* statements made by Urban and Wise (an issue not previously considered by this Court); and (3) Urban and Wise’s standing to challenge the search of the vehicle.

II. LAW AND ANALYSIS

A. Whether Steel’s Consent Purges the Taint of the Stop

In its motion for reconsideration, the government points to precedent holding that an unchallenged voluntary consent will purge the taint of an illegal stop. *See Untied States v. Green*, 442 F.3d 667 (8th Cir. 2006). While this is true, such precedent is inapplicable here. Steel, who provided the consent, contested the voluntariness of the consent in his motion to suppress. Mot. to Suppress of Def. Steel, Sept. 23, 2005 at ¶ 6.¹ Because the government’s

¹ It appears there may have been a misunderstanding among counsel regarding whether Steel continued to contest the voluntariness of the consent as the motion proceeded. *See Hr’g Tr.* May 3, 2006. The brief on the motion to suppress, however, is the only place on the record that Steel ever indicated his intent to contest or not contest the voluntary nature of his consent. Because there is no record of Steel admitting that his consent was voluntary, the burden falls on the government to prove that the consent was given voluntarily by Steel.

argument is premised on a misunderstanding that Steel was not contesting the voluntariness of his consent, the Court will deny the government's motion on this issue.

B. Urban's and Wise's Standing to Challenge the Search

Next, the Government argues that the Court's comparison between the Winnebago and a motel room is flawed because the Winnebago is mobile and operated on a public highway, and because neither Urban or Wise had an ownership interest in the motor home. Thus, the government argues that Wise and Urban did not have a privacy interest sufficient to grant them standing to challenge the search.

In support of its argument, the government cites to *California v. Carney*, 471 U.S. 386 (1985), which held that the automobile exception to the warrant requirement applied to motor homes. In *Carney*, the Supreme Court reasoned that in addition to factors of mobility that justify expedited searches, individuals also have a lesser expectation of privacy in an automobile than in a home or office. *Id.* at 391. Even in a motor home, which the Court recognized possessed some of the attributes of a home, the Court applied the exception, finding that its applicability depended on the ready mobility of the vehicle and on its use for transportation. *Id.* at 393-94.

The *Carney* decision did not address questions of standing, but rather focused on the automobile exception to the warrant requirement. The factors critical to the Court's analysis in *Carney* are not the same for the standing question presently before the Court. *Carney* was concerned with the mobility of the vehicle and the ability to secure a warrant when the vehicle could be moved quickly. *See Carney*, 471 U.S. at 390. Standing analysis, however, focuses not on the practicalities of the search, but on whether an individual has a subjective expectation of privacy that society is willing to recognize as objectively reasonable. *United States v. Green*,

275 F.3d 694, 699 (8th Cir. 2001). The fact that the automobile exception applies equally to owners, drivers, and passengers, whereas standing considerations vary considerably between such individuals, highlights the differences in the legal considerations between *Carney* and the question presently before the Court. That said, *Carney* does highlight the fact that society may be less willing to recognize an individual's privacy expectation in a vehicle as reasonable. See *Carney*, 471 U.S. at 391-92.

The Government is correct that a Winnebago is not directly analogous to a hotel room or a temporary resident in a home. The mobility of the Winnebago raises special considerations, and the question of standing in this case is a close one. Nonetheless, the circumstances here are distinguishable from the typical case of a passenger in an automobile. All three defendants were in an equal position with respect to ownership and use of the vehicle. Urban and Wise were *living in the Winnebago* at the time of the stop. The nature of the vehicle makes it clear that it is designed for such use. Urban and Wise, like a temporary visitor in a hotel or home, had possessions throughout the vehicle. It was merely fortuitous for Steel that he was driving at the time the vehicle was stopped. With that one exception of fate, he would have no greater claim to privacy than Wise or Urban. Although an individual may have a decreased expectation of privacy in a motor vehicle, the Court finds that the defendants in this case had a subjective expectation of privacy and that it is one society would accept as reasonable. Like with a hotel or temporary visitor, it is reasonable to think that an individual would maintain an interest of privacy in the area in which he or she is presently residing, even if only temporarily.

Additionally, the Court notes that the burden of proving the legality of the search in this case falls on the government. Defendants are not directly challenging the legality of the search.

Rather, it is the government's burden to establish that a valid consent purged the taint of the illegal stop and subsequent illegal detention. If the government fails to meet this burden of proof, then the evidence cannot be admitted regardless of whether defendants have standing to challenge the consent.²

This Court finds that Urban's and Wise's expectation of privacy is both subjectively and objectively reasonable and that they have standing to challenge the search. The Court also reiterates its earlier ruling that the government has failed to meet its burden of establishing the legality of the search. Accordingly, the motion to reconsider this issue will be denied.

C. Post-*Miranda* Statements of Urban and Wise

Finally, the government has requested that this Court rule on the admissibility of certain statements made by Wise and Urban. After the Winnebago was searched and defendants were placed under arrest, defendants were taken to the Dallas County Jail in Adel, Iowa. Once there, they were questioned by Adam Infante, a Deputy with the Dallas County Sheriff's Office ("Deputy Infante"). A second officer, Jeremy Pickett of the Urbandale Police Force ("Officer Pickett") was also present when Deputy Infante began questioning defendants.

Deputy Infante first questioned Urban. He read him his *Miranda* warnings, and Urban signed a *Miranda* warning form at 8:03pm. Both Deputy Infante and Officer Pickett testified that Urban understood the waiver and Urban does not contest that he signed the waiver voluntarily. Deputy Infante testified at the hearing that after being advised of his *Miranda* rights and signing the form, Urban told Deputy Infante that he, Wise, and Steel had driven from Ohio to California where they loaded up what he believed to be a large amount of cocaine into a

² As explained in the prior order, Urban and Wise have standing to challenge the stop and detention. See *Green*, 275 F.3d at 699.

hidden compartment in the motor home. He then explained that they drove to Denver where they picked up Wise's girlfriend. Urban then told Deputy Infante how to access the cocaine from the inside of the motor home without having to remove the floor.

Next, Deputy Infante questioned Steel, who was also given his *Miranda* warnings. It is unclear from the record whether Steel signed a Miranda Warning form or not, but in any case, Steel did not make any statements when questioned by the officers.

Finally, Deputy Infante questioned Wise. Wise was also informed of his *Miranda* rights and signed a *Miranda* Warning form. Wise then told Deputy Infante that he did not know that the compartment was full of cocaine and that he thought they were transporting marijuana. He explained to Deputy Infante that he would not have been transporting cocaine because he was familiar with the penalties associated with transporting the drug. He also told Deputy Infante that they were going to drop the drugs off in Detroit and would be paid after they made the delivery.

Urban and Wise argue that these statements should be suppressed as fruit of the poisonous tree. "Verbal statements obtained as a result of a Fourth Amendment violation are as much subject to the exclusionary rule as are items of physical evidence discovered during an illegal search." *United States v. Yousif*, 308 F.3d 820, 832 (8th Cir. 2002) (citing *Wong Sun v. United States*, 371 U.S. 471, 485 (1963)). Generally, statements resulting from an illegal detention are not admissible. *United States v. Hernandez-Hernandez*, 384 F.3d 562, 565 (8th Cir. 2004) (citing *United States v. Ramos*, 42 F.3d 1160, 1164 (8th Cir. 1994)). Such a statement is admissible, however, if "the statement is 'sufficiently an act of free will to purge the primary taint.'" *Ramos*, 42 F.3d at 1164 (citing *Wong Sun*, 371 U.S. at 486).

In determining whether a statement is ‘sufficiently an act of free will to purge the primary taint,’ the Court considers the following factors: *Miranda* warnings, the temporal proximity of the arrest and the confession, the presence of intervening circumstances, and the purpose and flagrancy of the official misconduct. *United States v. Vega-Rico*, 417 F.3d 976, 979 (8th Cir. 2005). Although Urban and Wise were given their *Miranda* warnings, and signed waivers of those rights, this is the only factor weighing in favor of admitting the statements. A *Miranda* warning coupled with a voluntary statement does not necessarily make the statement admissible. *Ramos*, 42 F.3d at 1164. The other factors must also be considered.

First, the statements were made the same evening as the illegal stop, detention, and search of defendants’ automobile; relatively little time passed between the illegal events and the making of the statements. Second, there were no intervening circumstances which would separate the illegality from the statements. To the contrary, between the time of the initial stop and the making of the statements, police had conducted an extensive and time consuming search of the vehicle, placed defendants under arrest, and transported them to jail. None of these circumstances purges the taint of the illegality, but rather, these factors serve to strengthen the connection between the illegal stop, detention, and search and the subsequent statements.

Finally, this Court discussed the purpose and flagrancy of the official conduct as it related to the stop, detention, and search at length in the March 2nd suppression order. The same analysis applies here and this factor weighs in favor of suppressing the statements. Even if the officers questioning defendants were acting with the best of intentions, Deputy Genovese had no objective reason to stop and detain the defendants in the first instance. The lack of an objectively reasonable basis for the initial stop weighs against finding that statements made just a

few hours later where sufficiently attenuated so as to not be tainted by the initial illegality.

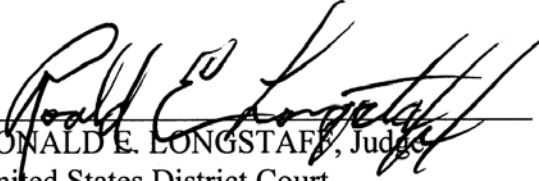
After balancing the factors, the Court finds that the statements were not sufficiently an act of free will such that they purged the taint of the prior illegal stop, detention, and search.

Urban's and Wise's motions to suppress the statements made on May 5, 2005 are granted.

III. CONCLUSION

The government's motion to reconsider the March 2nd suppression order on questions relating to the voluntariness of defendant Steel's consent and on defendants Urban and Wise's standing to challenge the search is denied. Defendants Urban and Wise's motions to suppress statements made on May 5, 2005 following their arrests are granted.

It is ordered. This 10th day of May, 2006.


RONALD E. LONGSTAFF, Judge
United States District Court