



to look for a traffic infraction so that the officers could investigate the purchase of the pills. Officer Lippard admitted that the ultimate stop was pretextual and that the purpose the stop was to investigate potential drug crimes.

The truck driven by defendant stopped at a convenience store where no suspicious activity took place. By this time, Officer Hannes of the Salina Police Department became involved. He advised Lippard that when backing out of a parking place at the convenience store the truck did not display back-up lights. This, he reasoned, was a basis to stop the car. The flaw in this reasoning is that there is no legal requirement that a vehicle be equipped with back-up lights.

After the truck left the convenience store, defendant proceeded to drive onto K-135 on the west side of Salina. There, according to Officers Lippard and Hannes (through hearsay testimony), the truck crossed over the white fog line on the entrance ramp to the highway. Based upon this alleged infraction the vehicle was stopped.

Officer Hannes approached the defendant's truck and obtained his license, registration, and insurance information and then proceeded to take an inordinate amount of time to exercise his duties relating to a traffic stop. The video of this stop runs in excess of 30 minutes.

The two passengers in the truck were asked to get out of the vehicle. [REDACTED] was questioned about her purchase of cold pills and she admitted to doing so, claiming she had pneumonia.

[REDACTED] denied having been in Target. [REDACTED] refused to answer

further questions and she and [REDACTED] were ultimately allowed to leave the scene after a taxi had been called for them.

Meanwhile, defendant remained in the truck until Hannes gave him a ticket for not having insurance. At this point defendant should have been free to go on his way. However, Officer Hannes asked defendant for permission to search the vehicle and the defendant refused. A drug dog was brought to the scene, but failed to alert to the presence of drugs in the truck. When defendant refused consent to search, Deputy Lippard and Officer Mangels decided to seize the truck and have it impounded at the Salina Police Department while they applied for a search warrant.

Defendant was told he was free to leave, but it is clear there was nowhere for him to go without his vehicle. He advised the officers that he would stay with his truck. Defendant was transported to the Saline County Jail where he was detained in a booking room and a holding cell. Deputy Lippard again asked defendant for consent to search the truck and defendant this time consented. The officers searched the truck, but could find nothing. One of the officers asked the defendant for help in finding the cold pills and defendant ultimately showed them where they were hidden.

In the evening hours defendant was transported to Clay Center as a passenger in his truck, which was driven by Deputy Lippard. Defendant was provided food during the ride back to Clay Center. Deputy Lippard advised defendant that no charges would be brought against him in Saline County if he would participate in a controlled delivery of drug-related items to one [REDACTED].

██████'s name came up because she had left a voice mail on defendant's cell phone, which Lippard listened to without defendant's consent. He had previously taken the cell phone from defendant.

Thereafter, defendant cooperated with the Saline and Clay County officers and made a controlled delivery to ██████. This occurred during the night of May 28 or early morning hours of May 29, 2005.

After arrival back in Clay Center, defendant was taken to the law enforcement center where he was held until the controlled delivery could be arranged. He was not in possession of his truck or the keys until time of the delivery. Officer Kemp of the Clay County Sheriff's Office asked defendant to stay around and told him not to make any phone calls.

Approximately 5:00 a.m. on May 29, Clay Center Police Officer Steve Squires encountered defendant at the law enforcement center. Defendant was trying to sleep. Squires asked defendant if he would consent to the search of his home. Defendant refused. Squires read a search warrant waiver to defendant and told him to think about it, and left the room. He later came back into the room and asked defendant again to sign the waiver. Defendant did. Defendant was advised that the authorities would approach the magistrate for a search warrant if he refused.

A search was then undertaken of defendant's home and items were confiscated that give rise to the charges herein.

#### THE LAW

State v. Mitchell, 265 Kan. 238(1998), citing various cases,

stands for the proposition that a traffic stop is a seizure within the meaning of the Fourth Amendment and is an investigative detention. To determine the reasonableness of an investigative detention a dual inquiry must be made. First, was the law enforcement officer's action justified at its inception, and secondly, whether the action was reasonably related in scope to the circumstances which justified the interference in the first place.

Syl.(4): "A law enforcement officer conducting a routine traffic stop may request a driver's license and vehicle registration, run a computer check, and issue a citation. When the driver has produced a valid license and proof that he or she is entitled to operate the car, the driver must be allowed to proceed on his or her way, without being subject to further delay by the officer for additional questioning. In order to justify a temporary detention for further questioning, the officer must also have reasonable suspicion of illegal transactions in drugs or of any other serious crime."

"The mere purchase and possession of two packages of cold pills containing pseudoephedrine is not sufficient evidence to infer criminal intent." State v. Schneider, 32 Kan.App.2d 258(2003). See also State v. Knight, 33 Kan.App.2d 325(2004).

"Once a traffic stop has become an unlawful detention, evidence thereafter discovered is not admissible on the inevitable discovery exception." Schneider at Syl.(6).

Even if this Court assumes that drifting one time over the fog line gave Officer Hannes a legitimate reason to stop

defendant's truck, it is clear from the evidence presented that the alleged violation was not the purpose of the stop. It is clear because defendant was not even-cited for the alleged violation. The purpose was to investigate whether defendant and his passengers were involved in illegal drug activity. That was admitted by the officers involved.

Here, the two passengers chose to invoke their right to remain silent. Here, the traffic stop took in excess of 35 minutes. Here, the defendant was detained long enough to have a drug dog called out. Here, the minute the defendant denied Officer Hannes' request to search the truck, Officers Mangels and Lippard decided to impound the truck, claiming they had probable cause to do so.

What did these officers have as probable cause? They knew defendant and the two passengers had each purchased cold pills. They knew the truck was registered to [REDACTED]. They knew passenger [REDACTED] seemed nervous and that she invoked her right to remain silent. Are these facts sufficient to form a reasonable articulable suspicion that a crime had been, was being, or was about to be committed? The Court finds they are not.

Next, the State seeks to justify the search of defendant's home, claiming that it was the product of a voluntary consent. The Court finds otherwise.

Here, the defendant was stopped about 2:30 in the afternoon on May 28, 2005. The Court has found the impounding of his truck to have been unlawful. He was detained first at the Salina Law Enforcement Center where he was cajoled into making a controlled

delivery in Clay County by promises of no charges being brought in Salina. His truck was not returned to him after it had been searched. In fact, he rode as a passenger back to Clay County, where he spent the night under the watchful eyes of law enforcement authorities. Some 15 hours after the original stop, the defendant signed the consent form to allow the search of his house.

Was this consent voluntary? The Court believes not. The evidence shows that the consent was the result of frustration and fatigue and involved coercion to cooperate on the part of the law officers involved.

An involuntary consent leads to an illegal search and all evidence derived therefrom must be and it is hereby Ordered that it be suppressed.

The parties are Ordered to appear for further proceedings consistent with this decision on April 4, 2006, at 9:45 a.m.

Because of this order of suppression, this Court needs not reach the issue of disqualifying the Clay County Attorney in this case. Also, the Court has reviewed in camera the personnel records of Deputy Glenn Lippard and will state that it found nothing therein to be helpful to the defendant in impeaching the credibility of Deputy Lippard. Thus, the Court declines defendant's request to review the records.

IT IS SO ORDERED.



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PAUL E. MILLER  
District Court Judge, Div. I