

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

In Re:)	CASE NO. CV 16 860295
)	
\$75,000.00 U.S. Currency)	JUDGE BRENDAN J. SHEEHAN
)	
Plaintiff,)	
)	
)	OPINION AND JUDGMENT
)	ENTRY
)	
)	

I. FACTS AND ISSUES PRESENTED.

This matter is before the Court on Plaintiff's Complaint for Forfeiture and Mr. Katz's Motion to Suppress certain evidence. The issues have been fully briefed and heard by the Court.

On January 12, 2016, the High Intensity Drug Trafficking Area (HIDTA) received information from a confidential source concerning potential drug trafficking activity. Detective Scott Payne, a task force officer with HIDTA, discovered that a local resident, Lee Shepherd, had rented a motel room for one night, paying in cash, and a California resident, Elee Guzman, claimed the room and extended his stay for one additional night. According to Detective Payne, one night stays of individuals from drug source states, such as California, are indicative of potential drug courier activity.

As Detective Scott explained:

We do a lot of drug interdiction, courier interdiction, and we look for those indicators, folks that come to the area from drug source states. A lot of those folks will stay at hotels, they'll pay cash, day-to-day, extend their stay day after day. They typically don't have reservations. Those are all indicators to us that they are here

on what they believe is a temporary basis. And we try to identify those folks and observe them and see what they do when they're here.

Transcript of Proceedings, 10:4-12.

Det. Payne learned that two men were staying in the local motel, Guzman and Ricardo Olalde. A criminal records search on the three men revealed that Mr. Shepherd had been arrested and convicted multiple times for drug trafficking and possession related offenses, Mr. Guzman had been arrested for possession and attempting to sell cocaine and possession with intent to sell a controlled substance in 2011 and 2015, and Mr. Olalde had been arrested for possession of cocaine in 1994, for possession of controlled substance in 2008 and for possession of a controlled substance in 2013.

The local resident picked up both men from the motel and took them to his house, where they remained for approximately 5 hours. Mr. Shepherd returned them to the motel that evening and returned to pick them up again the next morning. The individuals spent approximately four more hours at Mr. Shepherd's house before being returned to their hotel room, where they summoned a cab to take them to the airport. The two men, Guzman and Olalde, were separately questioned at the airport and provided conflicting stories of why they were in the Cleveland area and where they had been.

At the same time, another HIDTA task force officer conducted a search of the vacated motel room where he found a red felt tipped pen, receipts for food saver bags, a large container of rubber bands, a screwdriver set, a pair of pliers, a table vise, and a package of sanding discs. Det. Payne stated that the rubber bands and food saver bags are often used in packaging currency incident to a drug transaction. Because the three individuals involved, Messrs. Shepherd, Guzman and Olalde all had criminal histories involving drug trafficking, surveillance continued

on Mr. Shepherd to attempt to locate either the drugs or the drug proceeds related to a likely imminent drug transaction.

On February 15, 2016, Mr. Shepherd drove to the airport and waited to pick up Alfred Olalde, Jr and Brian Katz who arrived on a flight from California. Mr. Shepherd drove both of them to a downtown hotel. One of the individuals checked into the hotel but left with Mr. Shepherd.

On February 16, 2016, Mr. Shepherd picked up both individuals from the hotel and brought them to his house. Mr. Olalde drove a white Camry with California license plates out of Mr. Shepherd's drive. Mr. Katz got in the vehicle and drove away. Mr. Shepherd then drove Mr. Olalde to the airport where Mr. Olalde flew back to California.

The Ohio State Highway Patrol was alerted of potential courier action concerning Mr. Katz's vehicle. State Highway Patrol Officer Lt. Travis Hughes received the information about the possible courier and spotted Mr. Katz's vehicle on Interstate 71 southbound near West 150th Street. Lt. Hughes paced Mr. Katz's vehicle traveling between 68-73 miles per hour in a 60 mile per hour zone. Lt. Hughes initiated a traffic stop based on the speeding violation.

Subsequent events were recorded by Lt. Hughes' vehicle's dash cam, Exhibit L. The video recording of the events demonstrates that the vehicle was stopped at approximately 1:39 PM. Lt. Hughes verifies the driver's identity and calls in the registration check of the vehicle and check of Mr. Katz's California driver's license at 1:44:41 PM. At 1:44:13 PM, while Lt. Hughes is processing the traffic stop information, Patrolman Andrejcek arrived and deployed his K-9, Daisy, to sniff for the presence of drug odor. The K-9 alerted on both rear passenger doors of the vehicle by 1:45:01 PM.

The recording of the traffic stop show that Lt. Hughes advised Mr. Katz of his Miranda warnings twice. Mr. Katz was informed that the K-9 alerted to the car indicating that there might be "narcotics or unusual large sums of money". Mr. Katz was asked: "Is there anything that we're going to find?" Mr. Katz responded: "Not that I know of."

Mr. Katz was moved to the rear of another patrol car while his car was searched. The State Highway Officers were unable to complete a search of the vehicle due to its location on the narrow shoulder of the highway. The video recording of the search clearly shows that the officers were dangerously close to oncoming traffic as they moved about the car.

Accordingly, the vehicle was towed from the highway at 2:28 PM and taken to the Highway Patrol garage where a search was conducted. The inspecting officers noted an odd pungent smell in the rear interior of the car. Upon lifting the carpet from the floor of the vehicle, freshly painted modifications to the area by the car's rocker panels were clearly visible. The inspecting officers accessed the hidden compartment in the vehicle and retrieved 13 bundles of U.S. currency, in plastic bags coated with oil and wrapped in plastic again, totaling \$75,000.00.

At approximately 4:11 PM, Det. Payne began interviewing Mr. Katz, Exhibit K. He verified that Mr. Katz had been advised of his rights and understood his rights. Mr. Katz was informed that a significant amount of money was found in hidden compartments in the car. When asked if the money was his, Mr., Katz responded: "No, I know nothing about it." Mr. Katz stated that he had driven to Cleveland from California for the night and then was on his way to Columbus to buy cars at an auction.

Mr. Katz further stated that he had no idea how the money could have gotten into his car. In the two years he had leased the vehicle, he had only had an airbag repaired. Otherwise, the car had not been out of his possession for more than a couple of hours.

Mr. Katz further reiterated that he did not know there was cash in the car and stated he would not have risked speeding had he known the cash was there. Mr. Katz was advised that the search was continuing to ensure there were no other compartments in the vehicle.

Mr. Katz stated he needed to be in Columbus by the next morning for the auction. He asked to have a cigarette but did not ask for an attorney, his phone, or his medication. He was offered the chance the chance to write a statement disclaiming the money, which he completed after the interview stating "I never knew about money found in car. It's not my money", Exhibit B. The interview concluded 4:29 PM.

When the search was completed, Katz was given a Release Receipt and Notification of Property Seizure for the 2014 Camry and 13 bundles of cash. Katz was given an opportunity to gather his luggage and personal effects and was taken to the airport where he planned to return to California, despite his statements that he needed to get to Columbus by the next morning. He left some personal items to be claimed later. Mr. Katz testified in Court that he was detained for 5 or 6 hours.

Because Mr. Katz's vehicle was a leased vehicle, the titleholder was a Toyota affiliate. It notified law enforcement that cutting holes in the floor of the vehicle to create hidden compartments had breached the terms of the lease. Accordingly, Toyota reclaimed the 2014 Camry from law enforcement. The personal items that Mr. Katz left at the State Highway garage were not reclaimed. State Highway, at its own cost, shipped the items to Mr. Katz in California. Only the \$75,000 in U.S. currency remains at issue.

As to the money, Mr. Katz testified that he disclaimed the money because he was afraid he was going to be arrested because of the hidden compartment. He said the money was his life savings: "I lost a lot of money in 2008, in the crash because I had most of my funds in the stock

market, aggressive stock market, and they aggressively went right down the drain, just like a lot of other people. So I decided to keep my money, to hide it, and I paid taxes on the money anyway, because it was income. So it was my hard-earned money for 44 years, because that's how long I was in the car business for." Transcript of Proceedings, July 5, 2016 ("Transcript"), 116:25, 117:1-7

Mr. Katz testified that he created the compartments in the car and had stashed \$105,000 in the compartments in 15 bundles. He further stated:

Q. Are you aware that your attorney, when he deposed Lieutenant Hughes, stated that the money was soaked in a solvent in order to try to confuse any drug dogs?

A. It wasn't a solvent. It was grease.

The money was put in vacuum packed bags, then it was wrapped, then greased, and the reup into a vacuum-type bag. I never saw the money when they had me at the post. I wasn't granted any time.

Q. So you're telling me that you put -- explain this to me. You put grease on bundles of money?

A. Brake grease.

Q. And why did you do that?

A. Because if any -- because it deters any odors.

Q. Why would you do that?

A. Because it deters any odors.

Transcript, 127:21-25, 128:1-10.

The State of Ohio seeks forfeiture of the money pursuant to R.C. 2981.05.

II. LAW AND ANALYSIS.

A. Motion To Suppress

Mr. Katz seeks to suppress all evidence resulting from the search of his vehicle and his statement disclaiming ownership of the money on the basis that his traffic stop was prolonged to conduct an illegal search, the search was conducted without a warrant, he was wrongfully detained during the search, and his right to counsel was violated.

The uncontroverted testimony before the Court, from both Lt. Hughes and Mr. Katz, demonstrates that Mr. Katz was exceeding the speed limit on I-71. It is well settled law that:

"[w]here a police officer stops a vehicle based on probable cause that a traffic violation has occurred or was occurring, the stop is not unreasonable under the Fourth Amendment to the United States Constitution even if the officer had some ulterior motive for making the stop, such as a suspicion that the violator was engaging in more nefarious criminal activity." *Dayton v. Erickson*, 76 Ohio St.3d 3, 1996 Ohio 431, 665 N.E.2d 1091 (1996), syllabus, citing *United States v. Ferguson*, 8 F.3d 385, 391 (6th Cir.1993).

State v. White, 8th Dist. Cuyahoga No. 100624, 2014-Ohio-4202, ¶ 15.

Within five minutes of the initial stop for the traffic violation, the K-9 was deployed on Mr. Katz's vehicle.

"When conducting the stop of a motor vehicle for a traffic violation, an officer may detain the vehicle for a time sufficient to investigate the reason for which the vehicle was initially stopped." *State v. Bennett*, 8th Dist. Cuyahoga No. 86962, 2006-Ohio-4274, ¶ 21, citing *State v. Bolden*, 12th Dist. Preble No. CA2003-03-007, 2004-Ohio-184. "Generally, the duration of the stop is limited to the time necessary to effectuate the purpose for which the stop was made." *Id.*, citing *Bolden*. "This time period includes the time necessary to run a computer check on the driver's license, registration and vehicle plates." *Id.*, citing *Delaware v. Prouse*, 440 U.S. 648, 99 S.Ct. 1391, 59 L.Ed.2d 660 (1979). The Supreme Court of Ohio has also cautioned that where an officer stops a motorist initially based upon probable cause that he has violated traffic laws, the officer must limit both the scope and duration of

the stop to the matter at hand, namely, writing the citation, and any expanded investigation unrelated to the traffic violation must be based upon reasonable articulable suspicion. *State v. Duran*, 9th Dist. Lorain No. 11CA009969, 2012-Ohio-2114, ¶ 13, citing *State v. Robinette*, 80 Ohio St.3d 234, 1997 Ohio 343, 685 N.E.2d 762 (1997).

Id., at ¶ 17.

Additionally, the Eighth District Court of Appeals has noted:

While a K-9 search was permitted after a traffic stop, we still must consider whether the officer's detention of White up to this moment is sufficiently limited in time. A detention justified by issuing a ticket to the driver can become unlawful if it is prolonged beyond the time reasonably required to complete that process. "[A]n officer should, on average, have completed the necessary checks and be ready to issue a traffic citation in approximately 15 minutes." *State v. Brown*, 183 Ohio App.3d 337, 2009-Ohio-3804, 916 N.E.2d 1138, ¶ 23 (6th Dist.). Here, the record shows that the K-9 search, which detected the presence of narcotic odor inside the vehicle, occurred within eight minutes of the initial traffic stop. We cannot say the detention before the K-9 search was unreasonably or unlawfully prolonged.

Id., at ¶ 22.

Probable cause to search the vehicle was established within six minutes of the initial stop and Mr. Katz was advised of his rights within nine minutes of the stop. Under the circumstances presented, the Court finds that the detention before the K-9 search was not unreasonably or unlawfully prolonged.

Once the K-9 alerted to the odor of drugs from the vehicle, there was probable cause to justify a warrantless search of the vehicle for contraband. *Id.* at ¶ 23. If the circumstances attending a stop produce a reasonable suspicion of some other illegal activity, the vehicle may be detained for as long as that new articulable and reasonable suspicion continues. The totality of the circumstances must be considered when determining whether a detention was reasonable.

State v. Jones, 8th Dist. Cuyahoga No. 100300, 2014-Ohio-2763, ¶ 21, citing *State v. French*, 104 Ohio App.3d 740, 747, 663 N.E.2d 367 (12th Dist.1995). See also *State v. Fontaine*, 8th Dist. Cuyahoga No. 99771, 2013-Ohio-5257, ¶ 17-19 ("the detention of a stopped driver may continue beyond [the normal] time frame when additional facts are encountered that give rise to a reasonable, articulable suspicion of criminal activity beyond that which prompted the initial stop.")

In this case, interstate traffic was passing mere feet from the stopped vehicle. The decision to move the vehicle to a safer location to conduct the search was not unreasonable under the circumstances. It appears that, once the vehicle was at the garage, the search took several hours. However, the length of time does not appear to be caused by law enforcement's undue delay. Rather, the lengthy search is plainly attributable to the methods used to elude law enforcement detection, namely hidden compartments within the vehicle. Probable cause existed to search the interior of the vehicle and, consequently "warrantless searches of any part of a vehicle that may conceal evidence . . . where there is probable cause to believe that the vehicle contains evidence of a crime." *United States v. McGlory*, 968 F.2d 309, 343 (3d Cir. 1992) (internal quotation marks omitted); see also *United States v. Ross*, 456 U.S. 798, 825, 102 S. Ct. 2157, 72 L. Ed. 2d 572 (1982) ("If probable cause justifies the search . . . , it justifies the search of every part of the vehicle and its contents that may conceal the object of the search.").

The smell of fresh paint and the obvious non-factory body work along the vehicle's rocker panels necessitated additional investigative time. The Court finds that the period of detention to conduct a full search of the vehicle, including accessing the hidden compartments and searching for additional hidden compartments was not unreasonable under the circumstances.

As to Mr. Katz's argument, that the search was illegal because no warrant was obtained, "under the automobile exception to the warrant requirement, the police may search a motor vehicle without a warrant if they have probable cause to believe that the vehicle contains contraband." *State v. Battle*, 10th Dist. Franklin No. 10AP-1132, 2011-Ohio-6661, ¶ 33." *State v. Franklin*, 8th Dist. Cuyahoga No. 99806, 2014-Ohio-1422, ¶ 17. "Once a trained drug dog alerts to the odor of drugs from a lawfully detained vehicle, there is probable cause to search the vehicle for contraband." *Id.* at ¶ 23. Accordingly, no warrant was required to search Mr. Katz's vehicle once the trained K-9 alerted to the passenger doors of the car since probable cause existed that the vehicle contained contraband. Having discovered hidden compartments in the vehicle where the K-9 alerted, the officers' conduct was reasonable and within the confines of the automobile exception.

Finally, Mr. Katz claims that he asked to speak with his attorney. The only evidence of this request is Mr. Katz's testimony, which is controverted by two taped interactions where Mr. Katz was advised of his rights, acknowledged understanding his rights, and proceeded to talk with law enforcement officers without mentioning an attorney. The record reflects that Mr. Katz repeatedly asked for a cigarette but failed to ask for an attorney at any opportunity documented to the Court.

Based on the foregoing, Mr. Katz's Motion to Suppress is denied.

B. Forfeiture Claim.

1. Forfeiture as Proceeds or Instrumentality.

Ohio law provides:

The court shall issue a civil forfeiture order if it determines that the prosecutor has proved by a preponderance of the evidence that the property is subject to forfeiture under section 2981.02 of the Revised Code, and, after a proportionality review under section 2981.09 of the Revised Code when relevant, the trier of fact specifically describes the extent of the property to be forfeited. A civil forfeiture order shall state that all interest in the property in question of the adult or juvenile who committed the act that is the basis of the order is forfeited to the state or political subdivision and shall make due provision for the interest in that property of any other person, when appropriate under this section. The court may issue any additional order to affect the forfeiture, including, but not limited to, one or more orders under section 2981.06 of the Revised Code.

R.C. 2981.05.

The following property is subject to forfeiture to the state or a political subdivision under either the criminal or delinquency process in section 2981.04 of the Revised Code or the civil process in section 2981.05 of the Revised Code:

- (1) Contraband involved in an offense;
- (2) Proceeds derived from or acquired through the commission of an offense;
- (3) An instrumentality that is used in or intended to be used in the commission or facilitation of any of the following offenses when the use or intended use, consistent with division (B) of this section, is sufficient to warrant forfeiture under this chapter:
 - (a) A felony;
 - (b) A misdemeanor, when forfeiture is specifically authorized by a section of the Revised Code or by a municipal ordinance that creates the offense or sets forth its penalties;
 - (c) An attempt to commit, complicity in committing, or a conspiracy to commit an offense of the type described in divisions (A) (3) (a) and (b) of this section.

(B) In determining whether an alleged instrumentality was used in or was intended to be used in the commission or facilitation of an

offense or an attempt, complicity, or conspiracy to commit an offense in a manner sufficient to warrant its forfeiture, the trier of fact shall consider the following factors the trier of fact determines are relevant:

- (1) Whether the offense could not have been committed or attempted but for the presence of the instrumentality;
- (2) Whether the primary purpose in using the instrumentality was to commit or attempt to commit the offense;
- (3) The extent to which the instrumentality furthered the commission of, or attempt to commit, the offense.

R.C. 2981.02.

In this case, no illegal drugs were found, only currency. "Mere possession of cash is not unlawful. *** To prove that money is contraband and therefore subject to forfeiture, 'the state must demonstrate that it is [sic] more probable than not, from all of these circumstances, that the defendant used [the money] in the commission of a criminal offense.'" *State v. Parks*, 8th Dist. Cuyahoga No. 90368, 2008-Ohio-4245, ¶ 28, quoting *State v. Blackshaw* (May 29, 1997), Cuyahoga App. No. 70829, 1997 Ohio App. LEXIS 2362, quoting *State v. Golston* (1990), 66 Ohio App.3d 423, 431, 584 N.E.2d 1336, internal citations omitted; *State v. Jimenez* (Nov. 25, 1998), Cuyahoga App. No. 73804, 1998 Ohio App. LEXIS 5574.

The evidence before the Court demonstrates that this was not merely cash in the passenger compartment or even in the vehicle's trunk. Nor was the amount of cash such that it could be reasonably explained under ordinary circumstances. Rather, it was \$75,000 in 13 packets, (wrapped in plastic, coated with brake grease to mask its odor, and wrapped again in plastic) secreted within two hidden compartments in the vehicle. The amount of currency, its manner of packaging, and the efforts at deception in both packaging and storage are compelling evidence that the money was used for or derived from illegal activities.

The attendant circumstances of Mr. Katz's activities bolster this conclusion. As Det. Payne recounted, substantial activity associated with drug trafficking was occurring around Mr. Katz disclaimed all knowledge of the compartments or the currency at the time of the search.

Standing alone, this pattern of conduct strongly indicates drug trafficking. The Court cannot hypothesize a reasonable explanation for creating hidden compartments in a vehicle to store cash or to package the cash to avoid detection by law enforcement. Additionally, the creation of hidden compartments in a leased vehicle is even more suspect since such material alteration voids the terms of the lease.

If there were a reasonable explanation for hiding substantial sums of money in hidden compartments in one's car, Mr. Katz had ample opportunity to establish it as well as to establish his claim to the money. He did neither. Mr. Katz offered conflicting versions of why he was in Cleveland and how he arrived here. First, he told officers he drove here frequently, then he told them he flew in to pick up his car to drive to an auto auction, and finally it was to retrieve his car that had been damaged during his last visit to a friend in Amherst even though he frequently disclaimed that any body work had been done on the car.

Additionally, the explanation that the vehicle was used as a "car-bank" is incredible. No reasonable person, living in the State with one of the highest theft rates (<https://www.nicb.org/newsroom/news-releases/2015-hot-spots-vehicle-theft-report>), driving one of the most frequently stolen vehicles (NICB's Hot Wheels: America's 10 Most Stolen Vehicles, <https://www.nicb.org/newsroom/news-releases>), would seal his life savings in an easily destructible object, much less leave that vehicle with a stranger to perform body work for a period of weeks.

2. Forfeiture as Unclaimed Funds.

Mr. Katz consistently disclaimed that he owned or even knew of the money at the time of the traffic stop and the subsequent seizure. While he now maintains the currency is his, he did not know where the money was or how much money was seized at the time of the search. His testimony in Court offered no competent or credible evidence establishing his ownership of the money. As set forth above, his explanation for how and why the money was found sealed in hidden compartments in his vehicle lacked credibility. Mr. Katz failed to present any corroborating evidence to establish his ownership of the funds.

III. CONCLUSION.

Based upon the foregoing, the Court finds that it is more probable than not, from all of these circumstances, that \$75,000 in currency, wrapped in plastic, coated with brake grease to avoid scent detection, then vacuum sealed and placed in hidden compartment in a vehicle, is either proceeds derived from or acquired through the commission of an offense or an instrumentality that was used in or intended to be used in the commission or facilitation of a felony. Based on the evidence presented, it is more probable than not that the currency resulted from or was intended to facilitate drug trafficking. The property, the property to is forfeited pursuant to ORC 2981.05 and shall be disposed of pursuant to ORC 2981.13.

Alternatively, the \$75,000 U.S. currency is unclaimed and therefore subject to disposition pursuant to ORC 2981.12.

Dated: 11/23/16


JUDGE BRENDAN J. SHEEHAN