

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

FILED

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U.S. DISTRICT COURT  
N.D. OF ALABAMA

UNITED STATES OF AMERICA, )  
)  
V. )  
)  
ERIC ROBERT RUDOLPH, )  
)  
Defendant. )

CR-00S-422-S

**MOTION TO DETERMINE LEGALITY OF DETENTION, ARREST  
AND/OR QUESTIONING OF MR. RUDOLPH  
AND  
TO SUPPRESS FRUITS OF ANY RESULTING FOURTH, FIFTH OR SIXTH  
AMENDMENT VIOLATION**

COMES NOW defendant, Eric Robert Rudolph, by and through counsel, and moves this court to determine the legality of the original detention and/or arrest that occurred on or about May 31, 2003 and to suppress the fruits of any illegal detention or arrest.<sup>1</sup>

**Factual Background**

The following factual background is taken from various police reports provided in discovery, and is subject to amplification or contradiction at an evidentiary hearing.

In the early morning of May 31, 2003, sometime before 3:30 a.m., Officer Jeff Postell of the Murphy Police Department observed an individual behind the Save-A-Lot

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<sup>1</sup>The government has advised that it will only seek to admit statements made by Mr. Rudolph from the time of the initial contact with Officer Postell until the point at which he told the officers his name was Eric Robert Rudolph. The government has advised that it will not seek to admit conversations between Mr. Rudolph after he was identified or any evidence obtained as a result of those conversations, e.g., any items seized from Mr. Rudolph's campsites. According to the reports, in response to expressed safety concerns by law enforcement, it was Mr. Rudolph who told the officers the location of both of his campsites.

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food store in Murphy, North Carolina. Officer Postell indicated that the individual appeared to be kneeling in the road, that the person ran when he saw the police car, and then dove into some stacked up milk crates behind the store. Postell called for backup, drew his weapon, and ordered the individual to step out. The individual complied. In response to Postell's question, the individual indicated that he was alone. Postell then ordered the individual to lie down on the ground and not move. He handcuffed the individual, patted him down, and left him face down on the ground. The pat down revealed a "mag light" tied with a piece of rope hanging around the man's neck. Postell felt a bulge in the front of the man's jacket and asked whether he had any guns. The man replied that he did not. Postell asked for identification and the man responded that he did not have any and was homeless. Postell then discovered that the bulge in the jacket was binoculars, a ziplock bag, and a black trash bag.

In response to Postell's further questioning, the man advised that his name was "Jerry Wilson," that he was looking in the garbage for food, that he was hungry, that he had been staying underneath the bridge for about two or three days, and that he had hitchhiked to Murphy and was from Ohio. Another officer, Matthews, who had arrived as additional backup (even though either Postell or the first backup, Officer Kilby, had called in a cancellation of the backup request), pulled Postell aside and suggested that "Wilson" resembled Eric Rudolph. The officers rolled "Wilson" over to see his face and then stood him up to observe him more closely. Another officer disagreed with the suggestion of resemblance, and Postell apparently said he was not familiar enough with Rudolph to know.

Postell called in the date of birth "Wilson" had given, and 13 minutes later,

dispatch advised they could find no record. During this 13 minute period, it appears that the officers asked “Wilson” for his social security number. After being told that he did not have one and had not used one for the last four years, the officers placed “Wilson” in the back of the patrol car. Officer Postell then transported “Wilson” to the sheriff’s office for “safekeeping and identification purposes.”

Once at the sheriff’s office, “Wilson” was placed in the booking room. Officer Postell printed a picture of Eric Rudolph from the FBI website to compare to “Wilson.” Officer Matthews told “Wilson” he looked like someone he used to know. An officer Bandy compared the photograph to “Wilson” and told “Wilson” to tell them his real name. “Wilson” then replied that he was Eric Robert Rudolph.

Notations in the dispatch log indicate that at 3:27 a.m. “suspect at gun point,” at 3:32 a.m. “check on Jerry Wilson,” at 4:08 a.m. “from Save A Lot 10-17 to jail,” at 4:16 a.m. that “they have Eric Robert Rudolf [sic],” and at 4:18 a.m. that “they may have Eric Robert Rudolf [sic].”

### **The Detention Exceeded the Limits of the Fourth Amendment**

A brief, investigatory stop is permitted under the Fourth Amendment when a “police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot.” *Terry v. Ohio*, 392 U.S. 1, 30 (1968). The officer is entitled, where nothing in the initial stages of the encounter dispels a reasonable fear for officer safety, to conduct a limited pat down of the outer clothing for weapons which might be used against the officer. *Id.* While an on the street detention may continue for the time necessary to quickly confirm or dispel legitimate suspicions, *United States v. Sharpe*, 470 U.S. 675, 687 (1985), seizing an individual and

transporting him to the police station transforms a detention into a custodial arrest that must be justified by probable cause that a crime has been committed. *See, Dunaway v. New York*, 422 U.S. 200, 210- 211 (1979).

Here, Officer Postell's initial detention of Mr. Rudolph - ordering him out from the milk crates at gun point, directing him onto the ground and handcuffing him - clearly implicated the Fourth Amendment. Given the hour of the night, and the fact that Mr. Rudolph appeared to the officer to be attempting to hide, the government could well argue that this initial detention was justified under the "reasonable suspicion" standard of *Terry v. Ohio* and its progeny. However, this kind of intrusion seems indistinguishable from a traditional arrest and was not justified in this case by probable cause that a crime was being or had been committed.

Regardless of the validity of the initial intrusion, the almost 41 minutes of continued detention of Mr. Rudolph cannot be justified under the Fourth Amendment. The pat down for weapons was fruitless, and there was nothing in Mr. Rudolph's answers that required the officers to detain him for further investigation. The failure of dispatch to find the name "Jerry Wilson" from Ohio did not justify detention. While there was apparently a dispute between the officers regarding whether or not the individual they had in custody resembled the fugitive Eric Rudolph, such debate between officers did not justify any continued detention, and did not rise to a finding of probable cause that a crime had been committed or that a fugitive was in their custody.

This lengthy detention of Mr. Rudolph was not necessary to quickly confirm or dispel suspicions. In essence, the detention of Mr. Rudolph became an arrest without probable cause. Certainly, if the circumstances of Mr. Rudolph's detention did not

constitute an actual arrest on the scene, his transportation to the jail dispelled any doubt that Mr. Rudolph was in custody and was under arrest. Mr. Rudolph was in actual custody and had been hand cuffed and placed face down for some period of time despite the fact that a pat down proved fruitless. Nevertheless, the physical restraint continued en route to the police station.

It does not matter whether the officers advised Rudolph he was under arrest, or that he was "booked." What matters is that his detention was indistinguishable from a traditional arrest and was without probable cause. *See. Dunaway v. New York*, 422 U.S. at 212-213. The fruits of an illegal detention or arrest must be suppressed. *Wong Sun v. United States*, 371 U.S. 471 (1963).

#### **Conclusion**

It is requested that this Court hold a hearing to determine the validity of the detention and arrest of Mr. Rudolph, and suppress all evidence and statements obtained as a result of an illegal detention and arrest.

Dated: September 20, 2004

Respectfully submitted,

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BY:   
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### CERTIFICATE OF SERVICE

I hereby certify that on this the 20 day of SEPTEMBER, 2004 a copy of the foregoing was served upon the following by placing a copy of same in the United States mail, postage prepaid and properly addressed:

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