

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

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

SOUTHERN DIVISION

JHB

UNITED STATES OF AMERICA :
 :
-v- : CR 00-S-0422-S
 :
ERIC ROBERT RUDOLPH, :
Defendant :

**UNITED STATES'S RESPONSE TO DEFENDANT'S
MOTIONS TO DETERMINE LEGALITY OF DETENTION, ARREST,
AND/OR QUESTIONING OF RUDOLPH AND TO SUPPRESS FRUITS**

Comes Now the United States of America, by and through its counsel, Alice H. Martin, United States Attorney for the Northern District of Alabama, and Michael W. Whisonant and William R. Chambers, Jr., Assistant United States Attorneys, and respectfully files this Response to the Defendant's Motions to Determine Legality of Detention, Arrest, And/or Questioning of Rudolph and to Suppress Fruits. Rudolph filed the present Motion on September 20, 2004. In the Motion, Rudolph argues that officers lacked probable cause to arrest him on May 31, 2003, and that, because of the wrongful arrest, any and all derivative evidence obtained after Rudolph's arrest must be suppressed.

The United States has represented that, of the evidence challenged by Rudolph, it plans to introduce at trial only Rudolph's statements on May 31, 2003, that

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occurred from the time he was discovered by Officer Jeffrey Postell until Rudolph accurately identifies himself. The United States will not introduce into evidence at trial any of Rudolph's later statements or items seized from Rudolph's campsites. Consequently, the admissibility of statements by Rudolph occurring after he accurately identified himself on May 31, 2003, and the admissibility of physical evidence seized from Rudolph's campsites, need not be resolved by the Court.

With respect to the statements that the United States intends to introduce at trial, Rudolph's Motion should be denied for four reasons. First, the officers initiated a lawful investigative stop after discovering Rudolph sneaking behind the Sav-A-Lot supermarket at 3:27 a.m. Second, this investigative stop properly continued until at least the moment the officers placed Rudolph in a police cruiser to transport him to the Jefferson County Jail. Third, the investigative facts amply establish the existence of probable cause to place Rudolph under arrest at that time; in fact, probable cause to arrest Rudolph arose earlier during the investigative stop. Finally, regardless of Rudolph's custodial status at the time he made his statements, the statements are admissible as responses to routine, administrative questions asked with no intention to elicit an incriminating response.

Background

At approximately 3:25 a.m. on May 31, 2003, Murphy Police Officer Jeffrey

Postell turned his marked cruiser into the parking lot of the Valley Village Shopping Center in Murphy, North Carolina. Postell often patrolled the shopping center to ensure that the businesses, all of which were closed at night, were secure and that there were no suspicious persons in the parking lot. Postell varied his approach when patrolling, and this time he turned off the headlights of his cruiser and turned quickly around a corner of the shopping center to enter the loading and parking area behind the building. As Postell passed the corner of a Sears store and began driving behind the building, he surprised a man who was crouching or kneeling in the middle of the parking lot. Postell saw that the man was wearing dark clothing, including dark pants, a dark scarf, a camouflage jacket, and tennis shoes.

Postell assumed he had discovered an ordinary trespasser or burglar. Unknown to Postell, however, he had found Eric Rudolph.

After Postell turned the corner, Rudolph sprinted towards the back of the Sav-A-Lot supermarket and hid behind some bread racks or milk crates stored near a dumpster. Postell immediately noticed that, as Rudolph ran toward the store, Rudolph was carrying a long, dark object that Postell believed was a gun. At 3:27 a.m., Postell radioed his dispatch unit and asked for immediate assistance. Postell stopped his cruiser, pointed his spotlight toward the back of the supermarket, drew his revolver, and crouched behind his car door as he pointed his revolver at the

dumpster. Postell called for Rudolph to come out from behind the crates with his hands raised and lie face down on the ground. Rudolph did so, and at approximately that time Postell heard the sirens of back-up units on their way to the shopping center. Postell holstered his weapon and approached Rudolph, handcuffing Rudolph's hands behind his back while he remained lying on the ground.

Postell asked Rudolph if he had any weapons, and Rudolph answered no. Postell performed a pat-down search and discovered that the long object he believed to be a gun was a large flashlight tied in a sling with rope and slung over Rudolph's shoulder. Postell also felt a bulge under Rudolph's coat and found that Rudolph was wearing a pair of binoculars fastened to a piece of rope and draped over his neck. Finally, Postell noticed numerous plastic storage bags in a pocket of Rudolph's coat. In a conversational voice, Postell asked Rudolph what he was doing behind the shopping center, and Rudolph answered that he was hungry and was looking for food.

At roughly the same time, Postell was joined by Cherokee County Sheriff's Deputy Sean Matthews, TVA Police Officer Jody Bandy, and Murphy Police Officer Charles Kilby, who parked their cruisers nearby. As the other officers got out of their cruisers, Postell asked Rudolph to provide his name and identification. Rudolph identified himself as "Jerry Wilson" and said that he had no identification. Postell asked for Rudolph's date of birth, to which Rudolph responded, "December 19,

1964.”¹ Postell asked Rudolph where he was from and where he was staying while in Murphy. Rudolph said that he was originally from Cleveland, Ohio, and had hitchhiked from Asheville, North Carolina, to Murphy. Rudolph then said that he was camping underneath a bridge and gestured toward the four-lane highway located across a field behind the shopping center parking lot.

Postell left Rudolph lying on the ground, walked toward the other officers, and summarized to them the information he had collected thus far. Matthews walked over to Rudolph and asked him to roll over. Rudolph rolled away from Matthews, so Matthews asked Rudolph to roll in his direction so that Matthews could see his face. Rudolph did so, and Matthews noticed that the man looked like Eric Rudolph, who was a well-known fugitive in the area and who Matthews had encountered several times when Matthews was in high school. Matthews suggested this resemblance to Bandy, who also was looking at Rudolph’s face, and Bandy agreed.

Postell called to the dispatch officer and asked for the officer to run the name of Jerry Wilson with the birthdate of December 19, 1964. The dispatch records indicate that this occurred at 3:32 a.m., or approximately five minutes after Postell initially called for help.

Matthews then asked Rudolph to provide his name, date of birth, place of birth,

¹ Rudolph’s real date of birth is September 19, 1966.

and Social Security number. Rudolph again identified himself as Jerry Wilson, said that he had hitchhiked from Asheville, and advised that he had no Social Security number. Matthews replied that all United States citizens have a Social Security number, and Rudolph said that he had no use for one for years. Rudolph added that he had been living under the bridge by the highway and was looking for food in the Sav-A-Lot dumpster when Postell found him.

Bandy and Kilby also asked Rudolph if he had any identification, and Rudolph responded that he had no need for any identification for five years. Bandy asked for Rudolph's Social Security number, and Rudolph replied that he did not have one and "did not believe in them."

The Murphy Police Department dispatch radioed Postell and advised that a search of its databases failed to yield a match for a Jerry Wilson with the birthdate provided by Rudolph in either North Carolina or Ohio. Postell asked if Rudolph had a middle name, and Rudolph said that he did not. The officers performed a quick search of the area to see if they could find any burglary tools and discovered a rucksack and a walking stick lying in the grass at the edge of the parking lot. The officers searched the rucksack and found twine and plastic bags. Matthews asked Rudolph about the rucksack, and Rudolph said that it belonged to him.

Postell, Matthews, and the other officers stood Rudolph up and discussed what

to do with him. Matthews insisted to the other officers that he believed that the man strongly resembled Rudolph's description from fugitive bulletins, as well as Matthews' own familiarity with Rudolph from several meetings in high school. In addition, Matthews was worried that Rudolph may have burgled one of the nearby stores, so he decided to detain Rudolph until they could resolve these issues. Postell, for his part, decided to detain Rudolph until they could determine his true identity.

Postell and Kilby placed Rudolph into Postell's cruiser. Dispatch records indicate that Postell began driving to the jail at 4:08 a.m., so the placement of Rudolph into the cruiser took place some time before 4:08 a.m.—in other words, about 30 minutes after Postell placed Rudolph in handcuffs. Matthews told Rudolph that he was not under arrest, but that the officers wanted to take him to the jail until they could determine his identity. Rudolph responded, "Fine, go ahead and do what you have to do." Rudolph made no other statements, except to advise Matthews that the handcuffs hurt his wrists and ask if he could get out of the cruiser and have the handcuffs switched to a position where his arms were in front of, rather than behind, his body. Matthews declined.

Postell transported Rudolph to the jail in his cruiser. No conversation occurred during the two-minute ride to the jail.

Rudolph arrived at the jail at approximately 4:10 a.m. Matthews escorted

Rudolph into a booking room and asked him to sit in a chair. Matthews told Rudolph that he looked like someone Matthews knew, and Rudolph grinned but did not respond. Matthews left to retrieve a “wanted” poster for Rudolph in order to compare the picture on the poster to Rudolph’s face. Postell found the poster on the internet and printed out a copy. While the copy was printing, Matthews walked back to the booking room and once again asked Rudolph for his name and Social Security number. Rudolph again identified himself as Jerry Wilson and said that he had no need for a Social Security number.

After the officers had a chance to study the printout of Rudolph’s photo, Bandy took the printout and walked into the booking room. Bandy held the printout slightly behind Rudolph’s face so that only the officers could see the paper, stepped back, and asked Rudolph, “Tell us who you are.” Rudolph again answered, “Jerry Wilson.” Bandy said, “Now, tell us who you really are.” Rudolph laughed and said something to the effect of, “I’m Eric Robert Rudolph. You’ve got me.”

DISCUSSION

Rudolph’s Motion presents only one argument: that the officers lacked probable cause to arrest Rudolph. Rudolph appears to concede that reasonable suspicion existed to initiate an investigative stop, but contends that the encounter quickly matured into an unlawful arrest. Rudolph’s argument fails for four reasons.

First, although not challenged by Rudolph, the officers lawfully initiated an investigative stop of Rudolph after seeing him slinking behind the supermarket in the middle of the night. Second, the investigative stop did not ripen into an arrest until the moment that Rudolph was placed in the cruiser for transport to the Jefferson County Jail, which occurred roughly 30 minutes after he was handcuffed by Officer Postell. Third, probable cause existed to justify this arrest; indeed, probable cause to arrest Rudolph arose much earlier during the investigative stop. Fourth, the timing of the arrest is a moot issue, because the statements to be admitted consist only of answers to officers' routine administrative questions, and such evidence is admissible as responses to routine booking questions regardless of a defendant's custodial status or compliance with Miranda.

I. The Officers Initiated a Proper Terry Investigative Stop

The Eleventh Circuit employs a “dual inquiry” for evaluating the validity of an investigative stop. United States v. Acosta, 363 F.3d 1141, 1144 (11th Cir. 2004) (quoting United States v. Sharpe, 470 U.S. 675, 682 (1985)). First, the Court examines “whether the officer’s action was justified at its inception.” Id. (quoting United States v. Powell, 222 F.3d 913, 917 (11th Cir. 2000)) (internal quotation marks omitted). Second, the Court assesses “whether the stop went too far and matured into arrest before there was probable cause.” Id. In this section of the Response, the

United States focuses on the first prong and sets forth the facts that establish a reasonable suspicion to initiate the investigative stop of Rudolph, while discussion of whether the stop matured into an arrest is reserved for the following section.

A police officer may conduct a brief, warrantless, investigatory stop of an individual if, under the totality of the circumstances and relying upon the collective knowledge of the officers involved in the stop, the officers possessed a reasonable, articulable suspicion that a person had engaged, or was about to engage, in a crime. Terry v. Ohio, 392 U.S. 1, 30 (1968); Acosta, 363 F.3d at 1145.

“Reasonable suspicion” has been defined as more than a hunch, but less than probable cause that a crime has been committed. United States v. Sokolow, 490 U.S. 1, 7 (1989); Mikell, 102 F.3d at 475. “Thus, while ‘reasonable suspicion’ is a less demanding standard than probable cause and requires a showing considerably less than a preponderance of the evidence, the Fourth Amendment requires at least a minimal level of objective justification for making the stop.” Acosta, 363 F.3d at 1145 (quoting Jackson v. Sauls, 206 F.3d 1156, 1165 (11th Cir. 2000)). The existence of reasonable suspicion is considered in the totality of the circumstances, and “[t]his process allows officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that might well elude an untrained person.” United States v. Arvizu, 122 S. Ct.

744, 750-51 (2002) (internal quotation marks omitted). Importantly, reasonable suspicion “does not require officers to catch the suspect in a crime. Instead, ‘[a] reasonable suspicion of criminal activity may be formed by observing exclusively legal activity.’” Acosta, 363 F.3d at 1145 (quoting United States v. Gordon, 231 F.3d 750, 754 (11th Cir. 2000)).

Rudolph properly does not contest the existence of reasonable suspicion to commence an investigatory stop. Officer Postell encountered Rudolph in the middle of the night behind a shopping center in which all the businesses were closed, and Rudolph immediately ran and attempted to hide. Postell saw that Rudolph was wearing dark clothing and appeared to be carrying a gun. Indeed, these events alarmed Postell to such an extent that he drew his weapon and immediately radioed for backup assistance. Viewing Rudolph’s actions in the context of a closed shopping center in the darkest hours of the night, an officer reasonably could have believed that Rudolph was trespassing or was involved in burglarizing the businesses in the shopping center.

Once Postell had handcuffed Rudolph and performed a pat-down search, Postell discovered that Rudolph was carrying a flashlight and binoculars that were tied around his neck with rope. The officers immediately recognized these items to be “tools of the trade” used by burglars. Moreover, Rudolph was not carrying any

identification and provided as his residence a campsite beneath a bridge, which prevented the officers from confirming a local residence. Finally, and perhaps most importantly, Rudolph not only resembled the description of a known fugitive, but appeared to Matthews to resemble Rudolph based on his own personal encounters with Rudolph during high school. Rudolph's statements to Matthews that he was hungry and searching for food in the dumpster, and that he did not "believe in" or have use for a Social Security number for many years, corroborated Matthews' suspicions about Rudolph's actual identity.

When these facts are considered together with Rudolph's suspicious behavior, the officers possessed more than enough information to reasonably suspect that Rudolph was either a burglar, trespasser, or fugitive from justice.² The facts therefore abundantly support the initiation of the investigative stop of Rudolph.

² The United States submits that, given these facts, probable cause to arrest Rudolph existed at this point in the encounter, even though the officers did not formally arrest Rudolph until later. "The subjective belief of an individual officer as to whether probable cause existed for detaining a criminal suspect is not dispositive. That an officer did not believe probable cause existed to detain a suspect does not preclude the Government from justifying the suspect's detention by establishing probable cause." United States v. Treto-Haro, 287 F.3d 1000, 1005 (10th Cir. 2002); Florida v. Royer, 460 U.S. 491, 507 (1983) (plurality opinion). The existence of probable cause to arrest Rudolph at this time constitutes another, independent basis to hold that the officers lawfully detained Rudolph.

II. The Investigative Stop Lawfully Continued Until Rudolph Was Placed in the Cruiser for Transport to the Jefferson County Jail

The investigative stop lawfully continued until the officers placed Rudolph in Officer Postell's cruiser for transport to the Jefferson County Jail. When identifying when an investigative stop matures into an arrest, the Court must determine "whether [the stop] was reasonably related in scope to the circumstances which justified the interference in the first place." Acosta, 363 F.3d at 1145 (quoting Sharpe, 470 U.S. at 682)) (brackets in original). The Eleventh Circuit has identified four non-exclusive factors that are relevant when making this determination, including: (1) the law enforcement purposes served by the detention; (2) the diligence with which the police pursued the investigation; (3) the scope and intrusiveness of the detention; and (4) the duration of the detention. Acosta, 363 F.3d at 1146 (quoting United States v. Gil, 204 F.3d 1347, 1351 (11th Cir. 2000)).

1. The Law Enforcement Purposes Served by the Detention

When assessing the law enforcement purposes served by the detention, "the most important [consideration] 'is whether the police detained [the defendant] to pursue a method of investigation that was likely to confirm or dispel their suspicions quickly, and with a minimum of interference.'" Acosta, 363 F.3d at 1146 (quoting Gil, 204 F.3d at 1351) (brackets in original). The Eleventh Circuit explains:

A Terry stop is justified to give the police an opportunity to engage in brief and nonintrusive investigation techniques, such as noncustodial questioning of the detained person. A Terry stop cannot be used as the basis of a ‘full search’ that normally would be warranted only by the existence of probable cause, consent, or a valid arrest. Nor may the police use an investigative stop to subject a suspect to custodial interrogation that would ordinarily require a formal arrest and Miranda warnings.

Id. (quoting United States v. Hardy, 855 F.2d 753, 759 (11th Cir. 1988)). The officers therefore should use “brief, minimally intrusive investigation technique[s] appropriate under Terry.” Id. (quoting Hardy, 855 F.2d at 759) (internal quotation marks omitted).

Here, the single law enforcement purpose of Rudolph’s detention was to identify Rudolph and his purpose in sneaking around behind the shopping center in the middle of the night. To achieve this goal, the officers relied upon perhaps the most straightforward and minimally intrusive investigative technique taught at the police academy: they asked Rudolph who he was and what he was doing, and then attempted to verify his responses by contacting the dispatch officer.

The Supreme Court expressly recognizes the legitimacy of this purpose when conducting an investigative stop. Hiibel v. Sixth Judicial Dist. Court of Nevada, Humboldt County, 124 S. Ct. 2451 (2004). Hiibel provides a useful summary of the Court’s precedent regarding this principle:

Our decisions make clear that questions concerning a suspect's identity are a routine and accepted part of many Terry stops. United States v. Hensley, 469 U.S. 221, 229 (1985) (“[T]he ability to briefly stop [a suspect], ask questions, or check identification in the absence of probable cause promotes the strong government interest in solving crimes and bringing offenders to justice”); Hayes v. Florida, 470 U.S. 811, 816 (1985) (“[I]f there are articulable facts supporting a reasonable suspicion that a person has committed a criminal offense, that person may be stopped in order to identify him, to question him briefly, or to detain him briefly while attempting to obtain additional information”); Adams v. Williams, 407 U.S. 143, 146 (1972) (“A brief stop of a suspicious individual, in order to determine his identity or to maintain the status quo momentarily while obtaining more information, may be most reasonable in light of the facts known to the officer at the time”). Obtaining a suspect's name in the course of a Terry stop serves important government interests. Knowledge of identity may inform an officer that a suspect is wanted for another offense, or has a record of violence or mental disorder. On the other hand, knowing identity may help clear a suspect and allow the police to concentrate their efforts elsewhere.

Id. at 2458.

Rudolph’s false answers and the officers’ inability to confirm his identity, however, gave rise to yet another investigative fact that increased the officers’ suspicion that Rudolph had violated the law. The officers therefore were justified in continuing the investigative stop to maintain the status quo while they further endeavored to identify their suspect and investigate whether he had burgled a store. “Police may take reasonable action, based upon the circumstances, to protect themselves during these encounters, or to maintain the status quo.” United States v.

Kapperman, 764 F.2d 786, 790 n.4 (11th Cir. 1985) (emphasis added); see also United States v. Hernandez-Hernandez, 327 F.3d 703, 706 (8th Cir. 2003) (a Terry detention “is permissible to determine the suspect’s identity or to maintain the status quo while obtaining more information. [cit.] The officer may ask a moderate number of questions to determine the person’s identity and to try to obtain information confirming or dispelling the officer’s suspicions.”) (quoting United States v. Rodriguez-Arreola, 270 F.3d 611, 617 (8th Cir. 2001)).

Accordingly, the investigative techniques employed by the officers are expressly countenanced by the courts, and the officers employed these techniques for a proper purpose in conducting the investigative stop.

2. **The Diligence With Which the Police Pursued the Investigation**

When assessing the diligence with which the police pursued the investigation, the court asks “whether the methods the police used were carried out without unnecessary delay.” Id.

Here, the record establishes that the officers not only acted without delay but with expediency in pursuing the investigation. Upon confirming that Rudolph did not possess any weapons, the officers immediately asked Rudolph for his name, biographical information, and his purpose for being behind the supermarket. The officers then reported the false name and birthdate provided by Rudolph to the

dispatch officer and awaited the response, which arrived soon afterward. After dispatch reported no matches for the false name, the officers searched the area to see if they could find any burglary tools or other evidence, and found a rucksack that contained plastic bags and twine. In all, these steps were completed in roughly 30 minutes.

For these reasons, the officers' pursuit of the investigation was sufficiently swift and diligent during the entire length of the investigative stop.

3. The Scope and Intrusiveness of the Detention

When examining the scope and intrusiveness of the detention, the court determines whether the scope and intrusiveness of the detention exceeded the amount reasonably needed by police to ensure their personal safety or maintain the status quo. Acosta, 363 F.3d at 1146; Kapperman, 764 F.2d at 790 n.4 (“Police may take reasonable action, based upon the circumstances, to protect themselves during these encounters, or to maintain the status quo.”) (emphasis added). These actions may include the use of force against, combined with restraint of the movement of, the detainee. For example, “an investigative stop does not necessarily ripen into an arrest because an officer draws his weapon, [cit.], handcuffs a suspect, [cit.], orders a suspect to lie face down on the ground, [cit.], or secures a suspect in the back of a patrol car.” Acosta, 363 F.3d at 1146 (citations omitted). In short, “restriction on

freedom of movement is a factor to be taken into account in determining whether a person is under arrest, [but] it alone is not sufficient to transform a Terry stop into a de facto arrest.” Id.; see United States v. Blackman, 66 F.3d 1572, 1576 (11th Cir. 1995) (“an investigatory stop is not an arrest despite the fact that a reasonable person would not believe that he was free to leave”); United States v. Diaz-Lizaraza, 981 F.2d 1216, 1220-21 (11th Cir. 1993) (where agent drew weapon, ordered suspects out of car, conducted frisk for weapons, and asked for identification, these factors did not necessarily convert investigative stop into an arrest); see also Gallegos v. City of Los Angeles, 308 F.3d 987, 989 (9th Cir. 2002) (suspect was ordered from his truck at gunpoint, handcuffed, placed in a police car, and driven to the scene of the crime, and court held the encounter was an investigative detention which neither amounted to an arrest nor violated the Fourth Amendment under Terry).

Here, the degree of restriction used by the officers in no way exceeded the amount reasonably necessary to ensure the safety of the officers and maintain the status quo. Importantly, Postell initially believed that Rudolph carried a firearm, so Postell drew his weapon and instructed Rudolph to lie on the ground with his arms raised. Postell quickly holstered his weapon, however, and none of the other officers ever pointed their weapons at Rudolph for the remainder of the investigative stop. Postell then placed Rudolph in handcuffs to ensure Postell’s safety while he

investigated whether Rudolph was carrying a gun. Furthermore, Rudolph's attempted flight justified Postell's use of handcuffs and instructions to remain on the ground to ensure that Rudolph did not persist in his attempts to run and hide. Finally, Postell and the officers used conversational tones with Rudolph and did not otherwise attempt to intimidate or use any force against him other than the restraint effected by the handcuffs.

As set forth above, the case law expressly holds that the use of handcuffs and instructions to a suspect to lie on the ground constitute permissible limitations on a suspect's freedom during an investigative stop. Viewed in context with the case law cited earlier, the scope and intrusiveness of Rudolph's detention was reasonable and necessary to ensure the officers' safety and eliminate the risk that Rudolph would flee before the officers confirmed his identity and purpose in sneaking around behind the supermarket.

4. The Duration of the Detention

When reviewing the duration of the detention, courts inquire simply whether the length of the detention was reasonable under the circumstances. Acosta, 363 F.3d at 1147. The test is one of "common sense and ordinary human experience." Id. (quoting Sharpe, 470 U.S. at 685). "There is no rigid time limitation or bright line rule regarding the permissible duration of a Terry stop." Id. In Acosta, for example,

the court concluded that “[t]hirty minutes duration is not beyond the pale of reasonableness for Terry stops, as our prior decisions make clear.” Id. at 1148; see also Gil, 204 F.3d at 1350 (investigative stop of defendant, who was handcuffed and seated in rear of patrol car, lasted for 75 minutes); Hardy, 855 F.2d at 761 (investigative stop lasted 50 minutes); United States v. Davis, 151 F. Supp. 2d 1343, 1345 (M.D. Ala. 2001) (“Investigatory stops of over an hour have been allowed when justified by the purpose of the detention, the diligence of the police investigation, and the scope and intrusiveness of that investigation.”), aff’d, 288 F.3d 1263 (11th Cir. 2002) (per curiam).

An examination of the duration of an investigative stop necessarily dovetails with the second factor examined above, in that “the duration of the stop may be longer if police diligently pursued a means of investigation likely to confirm or dispel their suspicions quickly, during which time it was necessary to detain the defendant.” Acosta, 363 F.3d at 1147.

Here, the investigative stop of Rudolph lasted roughly 30 minutes before the officers decided to place Rudolph into Postell’s cruiser and drive him to the jail. As expressly observed in Acosta, an investigative stop of 30 minutes “is not beyond the pale of reasonableness for Terry stops.” 363 F.3d at 1147. Indeed, the Eleventh Circuit has approved investigative stops that lasted more than twice as long. Here,

the duration of the investigative stop was reasonable, especially in light of the swiftness and diligence with which the officers pursued the investigation.

5. The Four Factors Identified by the Eleventh Circuit Establish That the Investigative Stop Did Not Mature Into an Arrest

In sum, after consideration of all four factors identified by the Eleventh Circuit, the Court should conclude that the investigative stop was “reasonably related in scope to the circumstances which justified the interference in the first place.” Acosta, 363 F.3d at 1145. The investigative stop therefore continued lawfully until the moment that the officers transported Rudolph to the Jefferson County Jail.

III. The Officers Possessed Probable Cause to Arrest Rudolph

The United States submits that the investigative stop ended and matured into an arrest when the officers placed Rudolph in the police cruiser. The Supreme Court has held that, as a general matter, transportation to a police station for purposes of fingerprinting and identifying a suspect generally requires either probable cause or consent. See Hayes v. Florida, 470 U.S. 811, 814-16 (1985).³ Here, the record

³ The Court has, however, expressly left open the possibility that, “under circumscribed procedures,” a court might validly authorize transportation to a jail on less than probable cause when the object of the trip is to fingerprint and identify a suspect. Hayes, 470 U.S. at 817. Because the facts establish that the officers had probable cause to arrest Rudolph before they transported him to the jail, the United States does not argue in this Response that the exception in Hayes applies. However, by the same token, the United States does not concede this argument, and reserves the right to raise this argument if appropriate.

establishes that probable cause existed to justify Rudolph's arrest and transportation to the jail.⁴

“Probable cause exists where the facts and circumstances within an officer's knowledge and of which he had reasonably trustworthy information are sufficient to warrant a person of reasonable caution in the belief that an offense has been or is being committed by the person to be arrested.” United States v. Allison, 953 F.2d 1346, 1350 (11th Cir. 1992). Probable cause is a “fluid concept” that takes its substantive content from the particular factual contexts in which the standard is being assessed. Ornelas v. United States, 517 U.S. 690, 696 (1996).

When examining the existence of probable cause, the court first identifies the historical facts that occurred leading up to the arrest. Id. The court next decides “whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to ... probable cause.” Id.

The historical facts in this case show that Rudolph was discovered by an officer patrolling the back parking lot of a shopping center at 3:27 a.m., after all the stores were closed. Rudolph was wearing dark clothing, and he sprinted to hide behind a stack of crates after seeing the police cruiser. Once Postell handcuffed Rudolph and

⁴ As argued earlier, probable cause to arrest Rudolph actually arose much earlier, during the investigative stop, thus giving rise to an independent basis for the Court to conclude that the officers lawfully detained Rudolph.

performed a pat-down search, Postell discovered that Rudolph was carrying a long flashlight and a pair of binoculars tied around his neck with rope. Rudolph said that he was not carrying any identification. When asked where he lived, Rudolph said that he was camping under a bridge under the highway, thus appearing evasive in identifying his place of residence. A search of the immediate area yielded a rucksack that contained plastic bags and string.

These facts are abundantly sufficient to give rise to a reasonable belief that Rudolph intended to commit, or had committed, a trespass or burglary at one of the businesses in the shopping center. Stated simply, the officers discovered Rudolph in the middle of the night, skulking behind a closed shopping center and wearing clothing consistent with that worn by burglars, and in possession of tools of the trade. In addition, Rudolph attempted to hide from Officer Postell when he approached in a marked police cruiser. When questioned, Rudolph was not able to provide any information that could be corroborated, and indeed appeared to be evasive in response to questions regarding his place of residence and requests for identification.

In addition to a reasonable belief that Rudolph was trespassing or burglarizing the shopping center, probable cause existed to believe that the suspect was, in fact, Eric Rudolph and therefore subject to arrest as a fugitive. Deputy Matthews immediately noticed Rudolph's resemblance to the physical description publicized

in fugitive bulletins. More significantly, Matthews recognized a resemblance based on his own prior contacts with Rudolph while Matthews was in high school. Matthews' suspicions were corroborated by other investigative facts relating to Rudolph's fugitive status: (a) Rudolph said that he was hungry and looking for food in the dumpster, which is consistent with bulletins advising that Rudolph may be hiding in the wilderness near Murphy; and (b) Rudolph told the officers that he had no use for identification or a Social Security number for five years, which matches the number of years that Rudolph had been a fugitive. Under these circumstances, the officers reasonably could have believed that Rudolph was a fugitive from justice. See Kapperman, 764 F.2d at 789 (that a defendant matches a description of a fugitive, when viewed in context of other investigative facts that corroborate the potential identification, contributes to a finding of probable cause that defendant was a fugitive even before officers confirmed his identity).

Whether the probable cause relates to burglary or Rudolph's fugitive status, one additional investigative fact merits special attention. When the officers asked Rudolph for his name, Rudolph provided a false name, Jerry Wilson, provided a false date of birth, and lied about being from Ohio. Rudolph possessed no identification to verify these statements, so the officers provided this biographical information to the dispatch officer, who promptly reported that databases for Ohio and North

Carolina contained no matches for a Jerry Wilson with the birthdate provided by Rudolph. This fact strongly contributes to a finding that probable cause existed with respect to the burglary offense and fugitive status.

Accordingly, the record abundantly establishes that probable cause existed for the officers to arrest Rudolph.

IV. Rudolph's Statements Are Admissible As Answers to Administrative Questions Not Intended to Elicit Inculpatory Responses

As stated earlier, the United States intends to introduce at trial only Rudolph's statements to police after he was found by Officer Postell in the Sav-A-Lot supermarket parking lot, up to and including Rudolph accurately identifying himself at the Jefferson County Jail. The statements address a select few topics, namely: (1) Rudolph's name, birthdate, and place of residence; (2) Rudolph's lack of a need for a Social Security number or identification; and (3) Rudolph's purpose in being behind the supermarket at 3:30 in the morning.

Although the record in this case does not reflect that the officers read Rudolph a Miranda warning before Rudolph made any of the statements, these statements are admissible regardless of Rudolph's custodial status and the provision of a Miranda warning. Specifically, even if Rudolph was in custody while making these statements, the statements fall within an exception to the Miranda requirement for

routine administrative questions. See United States v. Gaston, 357 F.2d 77, 82 (D.C. Cir.) (“we do not need to decide [whether Terry stop matured into arrest] ... because the questioning fell within the [routing booking] ... exception to Miranda”), cert. denied, 124 S. Ct. 2827 (2004).

The Supreme Court held in Pennsylvania v. Muniz, 496 U.S. 582 (1990), that officers asking routine booking questions “reasonably related to the police’s administrative concerns” are not engaged in interrogation as defined in Miranda and therefore do not have to give Miranda warnings. 496 U.S. at 601-02; Hiibel, 124 S. Ct. at 2458 (“Asking questions is an essential part of police investigations. In the ordinary course a police officer is free to ask a person for identification without implicating the Fourth Amendment.”). The Court explained that interrogation under Miranda is limited to “any words or actions on the part of police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect,” and therefore questions regarding purely administrative information do not fall within the scope of this definition. Id. The Court specifically sanctioned queries for “biographical data necessary to complete booking or pretrial services” as falling within this exception. Id. “[Q]uestions regarding [a defendant’s] name, address, height, weight, eye color, date of birth, and current age do not qualify as custodial interrogation ... merely

because the questions were not intended to elicit information for investigatory purposes.” *Id.* at 601;⁵ United States v. Sweeting, 933 F.2d 962, 965 (11th Cir. 1991) (“An officer’s request for ‘routine’ information for booking purposes is not an interrogation under Miranda, even though the information turns out to be incriminating.”) (quoting United States v. Sims, 719 F.2d 375, 378-79 (11th Cir. 1983)).

Relying on this principle, courts have held that “asking the defendant his name, birthdate, address and the like ordinarily does not amount to interrogation; police officers typically have no reason to believe a suspect will incriminate himself by answering such questions.” United States v. Henley, 984 F.2d 1040, 1042 (9th Cir. 1993). This conclusion holds even if the defendant has invoked his Fifth Amendment rights not to incriminate himself, and the police later obtain from the defendant his name and other biographical data. Sweeting, 933 F.2d at 965; United States v. Taylor, 799 F.2d 126, 128 (4th Cir. 1986). Taylor provides an apt illustration of this principle in practice. The defendant refused to answer any questions without a

⁵ This section of the Court’s opinion garnered only a plurality of four votes, but Chief Justice Rehnquist concurred specially, also expressing the views of four Justices, that it was unnecessary to determine whether the challenged statements fell within an exception to the Miranda requirement because a defendant’s responses to booking questions were not testimonial and did not warrant application of the privilege. *Id.* at 608 (Rehnquist, J., concurring).

lawyer, and the police then asked the defendant for his name. 799 F.2d at 128. The defendant provided a false name, and later admitted his real name, and these statements were admitted a trial to disprove his alibi. Id. The Fourth Circuit held that “Although Taylor invoked his right to counsel, the officers’ subsequent questioning of him concerning his identity did not amount to an interrogation prohibited by Miranda. The fact that Taylor’s response later proved to be incriminating does not require that it be suppressed, as the officers had no reasonable expectation that their questions would be likely to elicit such information.” Id.

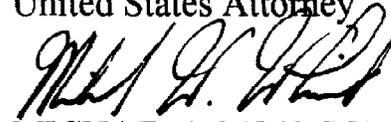
With the exception of Rudolph’s statements regarding his purpose for being behind the supermarket, Rudolph’s statements all occur in response to requests to provide his name, birthdate, address, and Social Security number. Rudolph’s statements thus fall expressly within the scope of the exception recognized in Muniz and its progeny. Applied here, the principle set forth in Muniz compels a conclusion that Rudolph’s statements regarding biographical data are admissible regardless of whether they occurred during the course of the investigative stop or following his arrest, and regardless of the reading of a Miranda warning.

CONCLUSION

For the reasons set forth above, Rudolph’s Motion should be denied in its entirety.

Respectfully submitted this the 8th day of October, 2004.

ALICE H. MARTIN
United States Attorney

A handwritten signature in black ink, appearing to read "Michael W. Whisonant", written over the printed name below.

MICHAEL W. WHISONANT
Assistant United States Attorney

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been served on the defendant by mailing a copy of same this date 8th day of October, 2004, by First Class, United States mail, postage prepaid, to his attorneys of record,

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