

STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellant,

Supreme Court no. 160150
Court of Appeals no. 339668
Circuit Court no. 15-031675-AR
District Court no. 15-1272-STA

v.

ANTHONY MICHAEL OWEN,
Defendant-Appellee.

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APPELLANT'S BRIEF
ORAL ARGUMENT REQUESTED

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STATEMENT OF THE QUESTION PRESENTED

Where (1) the stop occurred on a residential street within the village, (2) the road has a 25 MPH sign going the other way, and (3) almost all the rest of the village has 25 MPH signs, did the deputy reasonably believe that this road (without a sign going that way) is also 25 MPH?

The Court of Appeals answered:

No

Plaintiff-Appellant answers:

Yes

STATEMENT OF FACTS

On June 20, 2017 (after plenty of hearings, appeals, and remands), defendant entered a conditional guilty plea to impaired driving, MCL 257.625(3), and carrying a concealed firearm while intoxicated, MCL 28.425k(2), in return for plaintiff reducing the charge from drunk driving, MCL 257.625, and dismissing possessing a firearm while under the influence, MCL 750.237. Then, on July 24, 2017, Ionia County Circuit Court Judge Robert Sykes denied leave to appeal. The Court of Appeals did the same thing on January 30, 2018. (6a). This Court, however, on September 12, 2018, remanded as on leave granted. 503 Mich 855 (2018). (8a). The Court of Appeals then reversed on July 23, 2019. (10a-16a). Then, on March 23, 2020, this Court granted a MOA, 940 NW2d 68 (2020), asking the parties to address “whether the arresting deputy made an objectively reasonable mistake of law regarding the applicable speed limit that justified the traffic stop of the defendant’s vehicle.” (18a).

On September 5, 2015, Ionia County Deputy Derrick Madsen stopped defendant on Parsonage Road in Sanilac for speeding. (October 21, 2015, Evidentiary Hearing Transcript [ETrl], pp 5-8; 31a-34a). Defendant was going 43. (ETrl, p 8; 34a). Deputy Madsen testified that the speed limit is 25. (ETrl, p 13; 39a).

Defendant had just turned left from Summit Road southbound onto Parsonage. (ETrl, p 17; 43a). This corner is a residential neighborhood within the village. (ETrl, p 17; 43a). Every sign except one in the village is 25. (The only one different, a 40 MPH is on the other side of town.) Although no sign exists on southbound Parsonage saying “25,” (ETrl, p 10; 36a), a sign saying

“25” exists northbound just as the road enters the village. (February 8, 2016, Evidentiary Hearing Transcript [ETrII], p 25; 60a). Also, an advisory sign on southbound Parsonage (a little ways further south) says “20.” (ETrII, p 20; 57a).

The Court of Appeals opinion then states what happened after Deputy Madsen stopped defendant:

The deputy required defendant to perform a series of field sobriety tests and gave him a preliminary breath test, which defendant failed. The deputy placed defendant under arrest. (P 1, 10a).

As it turned out, however, despite the road being inside the village and the sign going the other way being “25,” the speed limit going this way was “55” (simply because no sign was up). (ETrII, p 60, p , 25a). The hearing that decided the speed limit occurred five months after the traffic stop.

ARGUMENT

Because (1) the stop occurred on a residential street within the village, (2) the road has a 25 MPH sign going the other way, and (3) almost all the rest of the village has 25 MPH signs, the deputy reasonably believed that this road (without a sign going that way) is also 25 MPH.

This road has a 25 MPH sign going the other way. The road is inside a village where the speed limit is 25 almost everywhere else. It took the court and the parties five months to figure out that the speed limit going this way is 55, as counterintuitive as it seems. As no one would naturally come to such a conclusion, the deputy made a reasonable mistake when he concluded that the traffic rules in this village made sense—rather than the other way around. Not only did the Court of Appeals ignore each of these facts, but it came up with a test that requires officers to know what it took the lower courts five months to figure out. Whether a mistake of law, a mistake of fact, or a hybrid, the decision to stop defendant was reasonable. This Court should reverse and reinstate the conviction.

As pointed out in *Heien v North Carolina*, 574 US 54, 57; 135 S Ct 530; 190 L Ed 2d 475 (2014), a stop may still be good even if no traffic violation occurred. An officer needs nothing more than a reasonable belief that a motorist has committed a traffic violation. *People v Simmons*, 316 Mich App 322, 326; 894 NW2d 86 (2016). As stated in *Illinois v Rodriguez*, 497 US 177; 185-186; 110 S Ct 2793; 111 L Ed 2d 148 (1990), “it is generally demanded of the many factual determinations that must regularly be made by agents of the government . . . is not that they always be correct, but that they always be reasonable.” Earlier, *Brinegar v United States*,

338 US 160, 176; 69 S Ct 1302; 93 L Ed 2d 1879 (1949), said:

Because many situations which confront officers in the course of executing their duties are more or less ambiguous, room must be allowed for some mistakes on their part. But the mistakes must be those of reasonable men, acting on facts leading sensibly to their conclusions of probability.

This Court reviews this issue de novo. *People v Mазzie*, 326 Mich App 279, 289; 926 NW2d 359 (2018).

Here, Deputy Madsen's mistake was reasonable (understandable). Most people (at least most non-lawyers) try to make sense of the law. A law that says that one way on a residential street within a village is 55 while the other way is 25 makes no sense (especially where almost the rest of the village is 25). Compounding the matter is the advisory sign saying 20 around an upcoming curve. (ETrII, p 20). Reducing the speed from 25 to 20 makes a lot more sense than from 55 to 20.

Cases quite similar to the present have upheld the stop. In *Harrison v State*, 800 So 2d 1134 (Miss, 2001), deputies stopped a car by a construction zone going 67 to 70 on Interstate 55. Despite the 60 MPH sign, the law said that the speed limit was really 70. (The sign applied only when workers were present, which they were not.) With the stop, the deputies found drugs. Because of the sign, they had an objective basis to stop the car despite the mistake of law. 800 So 2d 1139.

City of Atwood v Pinalto, 301 Kan 1008; 350 P3d 1048 (2015), is very similar to the present case. There, because a 20 MPH sign had been knocked down, by law, the speed

became 30 MPH. The Kansas Supreme Court first concluded that the officer had made a mistake of fact. 301 Kan 1015. It then found that the mistake was reasonable. 301 Kan 1016-1017.

United States v Blackburn, unpublished opinion of the Northern District of Oklahoma, issued 2/20/2002 (Docket no. 01-CR-86), also came to a conclusion opposite to the Court of Appeals in a very similar situation. Someone had mistakenly placed “45” over a highway sign where the speed was 75. (The sign was close to a construction site.) Even though the law unambiguously said that the speed limit there was really 75, the court upheld stopping the car. The officer reasonably mistakenly relied on an inaccurate speed-limit sign in stopping the defendant—even though the law itself was unambiguous. Call it “mistake of law,” “mistake of fact,” or some type of hybrid mistake, the mistake was reasonable. Almost anyone would have made it.

Just as almost anyone would have made the mistake in the present case. A 55 zone in a residential neighborhood in a village one way with the zone being 25 the other way is something that just about anyone would not have readily accepted. Common sense says otherwise. Officer Madsen made a mistake that just about anyone else would have made. In fact, the legislature itself has noticed that common sense really should apply. Since the stop in the present case, the legislature amended MCL 257.627, the statute that applies in this case. Subsection (2)(e) now says that a person may not exceed:

Until January 1, 2024, 25 miles per hour on a highway segment that is

part of the local street system as designated by a local jurisdiction and approved by the state transportation commission . . . and that is within land that is zoned for residential use by the governing body of an incorporated city or village . . . unless another speed is fixed and posted.

The legislature changing the law (even if temporarily) at the very least tends to show that Deputy Madsen's conclusions were rational, i.e., reasonable.

Heien's statement that an officer should not get an advantage "through a sloppy study of the laws," 574 US 67, does not apply here. Since the courts took five months to determine the speed limit (under the old law), Deputy Madsen was not "sloppy."

The Court of Appeals was wrong in concentrating entirely on what the statute said even if (after careful study) unambiguous. By doing so, it not only ignored facts like the 25 MPH sign going the other way on this residential street, but also failed to realize that the situation is more complicated than it thought. Just because the statute itself is (was) unambiguous is not by itself enough to make the officer's actions unreasonable. An unambiguous law may be ambiguous as applied to certain situations—like the present one.

In other words, the Court of Appeals said that the deputy should have known in this counterintuitive situation what the lower courts took five months to figure out—exactly what the speed limit is for the road going that way (even though it is much lower going the other way). Thus, even though these cases deal with somewhat different situations, the following underlying concepts apply. The police "spend their time trying to protect the public, not reading

case-books.” *Ashford v Raby*, 951 F3d 798, 804 (CA 6, 2020). “In those crucial seconds, officers don’t have the time to pull out law books and analyze the fine points of judicial precedent. To avoid ‘paralysis by analysis,’ qualified immunity protects all but plainly incompetent officers or those who knowingly violate the law.” *Howse v Hodous*, 953 F3d 402, 407 (CA 6, 2020).

In the end, suppressing here accomplishes nothing. It does not have the deterrent value necessary to excluding evidence. This was a mistake, nothing more, nothing pernicious, nothing sloppy. As stated in *Herring v United States*, 555 US 135, 147; 129 S Ct 695; 172 L Ed 2d 496 (2009):

Petitioner’s claim that police negligence automatically triggers suppression cannot be squared with the principles underlying the exclusionary rules, as they have been explained in our cases. In light of our repeated holdings that the deterrent effect of suppression must be substantial and outweigh any harm to the justice system, . . . we conclude that when the police mistakes are the result of negligence such as that described here, rather than systemic error or reckless disregard of constitutional requirements, any marginal deterrence does not “pay its way.” . . . In such a case, the criminal should not “go free because the constable has blundered.”

The Court of Appeals failed and defendant fails to explain how the officer not figuring out something counterintuitive (that took the lower courts five months to figure out) is either “systemic error or reckless disregard of constitutional requirements.”

RELIEF

ACCORDINGLY, plaintiff asks this Court to reverse and remand.

Dated: May 22, 2020

Respectfully submitted,

/s/ Jerrold Schrottenboer

JERROLD SCHROTENBOER (P33223)
Chief Appellate Attorney

Proof of Service

The undersigned certifies that this document was served upon:

EDWARD STERNISHA (P75394)

Attorney for Defendant-Appellee

By Truefiling. I declare that the statements above are true to the best of my information, knowledge, and belief.

Dated: May 22, 2020

/s/ Stacy Harris

STACY HARRIS

LEGAL SECRETARY

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

FILED

FEB 20 2002

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 THOMAS L. BLACKBURN,)
)
 Defendant.)

Case No. 01-CR-86-H

ORDER

This matter comes before the Court pursuant to Defendant Thomas L. Blackburn's motion to suppress evidence and statements, filed January 15, 2002 (Docket No. 20). The Court held a hearing on this matter on January 30, 2002. For the reasons set forth below, and in accordance with the ruling announced at the hearing, Defendant's motion is hereby denied.

I

Based upon the testimony given at the hearing, the Court hereby enters the following findings of fact. In finding these facts, the Court expressly credits Officer Gene Hise's statement of events and rejects the conflicting testimony of Mr. Blackburn as not credible.

1. Officer Gene Hise has been a patrol trooper employed by the Oklahoma Highway Patrol for 11 years. On May 12, 2000, Officer Hise was assigned to the Will Rogers Turnpike as a traffic trooper.

2. At approximately 10:00 a.m., Officer Hise was monitoring the speed of passing vehicles from his patrol unit in a construction zone on the turnpike. At that time, there were barrels throughout the construction zone funneling the traffic into one lane. There were also workers on the highway in that area.

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3. Officer Hise's unit was positioned approximately one mile past a sign indicating that the speed limit was 45 miles per hour. The speed limit sign was a black and white, metal steel sign. The front of the sign on which the posted speed limit appeared was identified in all respects as any other speed limit sign similarly placed along any highway in Oklahoma.

4. At approximately 10:00 a.m., Officer Hise clocked a pickup truck coming toward him, traveling at 52 miles per hour. Based on the posted speed limit of 45 miles per hour, Officer Hise reasonably believed that the vehicle was exceeding the speed limit.

5. Officer Hise stopped the pickup truck because it was exceeding the posted speed limit. The driver of the truck was Thomas L. Blackburn.

6. Officer Hise asked Mr. Blackburn to step back to his unit. Officer Hise talked with Mr. Blackburn about his speed and wrote him a courtesy warning. Officer Hise also made conversation with Mr. Blackburn about his trip. Mr. Blackburn informed Officer Hise that the truck he was driving did not belong to him.

7. While Mr. Blackburn was in his unit, Officer Hise called Trooper Buddy Lambert, who had been parked nearby, to the location.

8. After giving Mr. Blackburn his copy of the courtesy warning, Officer Hise told him to be careful on his trip home and that he was free to go. Mr. Blackburn started walking back to the truck.

9. Before Mr. Blackburn got back inside the truck, Officer Hise asked him whether he had time to stay for some additional questions. In so doing, Officer Hise did not create any atmosphere of duress. Mr. Blackburn voluntarily agreed to stay and talk with Officer Hise.

10. Officer Hise asked Mr. Blackburn for permission to search the truck, and Mr. Blackburn voluntarily consented, saying, "Go ahead."

11. Officer Hise first searched the cab area of the truck. After searching the cab, Officer Hise went to the rear of the truck. The truck had a camper shell with a single key-hole latch handle. Officer Hise tried the handle of the camper shell and realized it was locked.

12. Mr. Blackburn witnessed the search of his vehicle. During the search, Mr. Blackburn was standing in front of Officer Hise's unit, approximately six feet behind the truck. At no time did Mr. Blackburn suggest that the bed area of the truck should not be searched or otherwise object to the scope of the search.

13. After trying the handle of the camper shell, Officer Hise asked Mr. Blackburn for the key. In response, Mr. Blackburn stated that he did not have the key. Mr. Blackburn did not indicate that he was withdrawing his prior consent to a search of the truck or otherwise limiting the scope of the original consent to search the truck.

14. At that point, Officer Hise tried the tailgate handle and pulled down the tailgate. Officer Hise did not use any tools or special force to open the tailgate. The pulling down of the tailgate did not damage the camper shell or any other part of the truck.

15. When Officer Hise opened the tailgate, a baby's mattress slid out, and he detected a strong odor of raw marijuana. At that point, Officer Hise advised Mr. Blackburn he was under arrest. He placed Mr. Blackburn in handcuffs, placed him in the front seat of his unit, and advised him of his rights.

16. On May 12, 2000, the Oklahoma Turnpike Authority was responsible for setting speed limits on Oklahoma turnpikes, including construction zones. The Oklahoma Turnpike Authority had not officially changed the speed limit in this particular area to 45 miles per hour at the time the stop was made. Accordingly, notwithstanding the posted speed limit, the legal minimum speed was 50 miles per hour and the legal maximum speed was 75 miles per hour at

the time Mr. Blackburn was stopped for speeding. The posted 45 miles per hour speed limit did not accurately reflect the legal speed limit established by the Oklahoma Turnpike Authority in accordance with applicable legal procedure.

17. On May 12, 2000, Officer Hise mistakenly believed that the legal speed limit established by the Oklahoma Turnpike Authority in the construction zone in question was 45 miles per hour, based on the speed limit sign so indicating. This was a mistake of fact, due to the posting of the 45 miles per hour speed limit on a standard speed limit sign. This belief was reasonable.

II

In the Tenth Circuit, the standard for determining the constitutionality of a traffic stop under the Fourth Amendment is as follows: “[A] traffic stop is valid under the Fourth Amendment if the stop is based on an observed traffic violation or if the police officer has reasonable articulable suspicion that a traffic or equipment violation has occurred or is occurring.” United States v. Callarman, 273 F.3d 1284, 1286 (10th Cir. 2001) (quoting United States v. Botero-Ospina, 71 F.3d 783, 787 (10th Cir. 1995)). The initial stop of the vehicle must be objectively justified. See Botero-Ospina, 71 F.3d at 788. The proper inquiry is whether this particular officer had reasonable suspicion that this particular motorist violated any one of the multitude of applicable traffic and equipment regulations of the jurisdiction. See Callarman, 273 F.3d at 1287.

Officer Hise believed, based on his eleven years of experience and training, that by exceeding the posted speed limit, Mr. Blackburn committed a traffic violation.¹ The Court finds

¹The Court notes that even if Mr. Blackburn did not exceed the speed limit established by the Oklahoma Turnpike Authority, it is uncontroverted that he did, at the very least, violate title

that the testimony of Officer Hise, which was highly credible, established that he had a reasonable articulable suspicion that a traffic violation had occurred.

Defendant argues that because the mandatory procedure for reducing the speed limit on an Oklahoma turnpike established by title 47, section 11-1401(I) of the Oklahoma Statutes had not been followed, the legal speed limit at the time and place of the stop was 75 miles per hour; therefore, Defendant reasons, he committed no violation of the traffic laws at the time he was stopped. Defendant argues that without an actual violation of the law, a traffic stop is unconstitutional, relying on United States v. Gregory, 79 F.3d 973 (10th Cir. 1996), and United States v. Miller, 146 F.3d 274 (5th Cir. 1998).

In United States v. Gregory, the defendant was stopped based on a single occurrence of his truck crossing two feet into the right shoulder emergency lane of the interstate. The incident happened as the defendant was being passed by the officer who was in pursuit of another vehicle for speeding. The officer testified that crossing into the emergency lane of a roadway is a violation of Utah law, which requires that a vehicle be operated as nearly as practical entirely within a single lane and may not be moved from the lane until the operator has determined the movement can be made safely. 79 F.3d at 975-76. The court found that an isolated incident of a vehicle crossing into the emergency lane of a roadway was not a violation of state law. The court reasoned:

[I]f failure to follow a perfect vector down the highway or keeping one's eyes on the road were sufficient reasons to suspect a person of driving while impaired, a substantial portion of the public would be subject each day to an invasion of their privacy. . . . The totality of the circumstances suggests that the stop did not meet

47, section 11-1401(k) of the Oklahoma Statutes, which provides as follows: "(k) All vehicles traveling on a turnpike shall comply at all times with signs placed on the turnpike regulating traffic thereon."

the reasonableness test of the Fourth Amendment which protects the security of one's privacy against arbitrary intrusion by the police.

79 F.3d at 978-79 (internal quotations and citations omitted).

In United States v. Miller, the defendant was stopped for having a turn signal on without turning or changing lanes. The prosecution argued that a flashing turn signal violated the following section of the Texas Transportation Code: "A person may not operate a motor vehicle equipped with a red, white, or blue beacon, flashing, or alternating light unless the equipment is (1) used as specifically authorized by this chapter; or (2) a running lamp, headlamp, backup lamp, or turn signal that is used as authorized by law." Id. at 277. The prosecution argued that flashing a light without turning or changing lanes is not "specifically authorized by law." The defendant argued that the statute did not provide sufficient notice of such a violation. The court agreed, stating that a plain reading of the Code provisions did not support the view that having a turn light on without turning or changing lanes is a violation of state law. Id. at 278.

Defendant also relies on Judge Murphy's dissent in United States v. Ramstad, 219 F.3d 1263 (10th Cir. 2000). Judge Murphy argued that a police officer's mistaken view of state law such that he believed the defendant had committed a traffic violation, when he in fact had not, did not provide the reasonable suspicion for a traffic stop required by the Fourth Amendment. Id. at 1267-68. Judge Murphy stated that "failure to understand the law by the very person charged with enforcing the law is not objectively reasonable," and that "if officers are allowed to stop vehicles based upon their subjective belief that traffic laws have been violated even where no such violation has, in fact, occurred, the potential for abuse of traffic infractions as pretext for effecting stops seems boundless and the costs to privacy rights excessive." Id. at 1268.

The present case is distinguishable from Gregory, Miller, and Judge Murphy's dissent in Ramstad. In this case, those concerns about arbitrary intrusion into privacy rights and those problems with lack of notice of a violation simply are not present. Clearly, Mr. Blackburn was on notice that he could be stopped for speeding if he traveled faster than 45 miles per hour because there was a speed limit sign so indicating. Officer Hise did not arbitrarily stop Mr. Blackburn based on a mistaken understanding of the traffic laws; rather, he stopped Mr. Blackburn for failing to comply with the posted speed limit. When a police officer stops a motorist for exceeding the posted speed limit, there is no excessive intrusion into privacy rights. Officer Hise believed that the posted speed limit accurately reflected the legal speed limit established by the Oklahoma Turnpike Authority in the area. This was a mistake of fact. Officer Hise did not know that the mandatory procedure for reducing the speed limit had not been followed. This was a mistake of fact.

Moreover, the standard for judging the reasonableness of the stop is not whether Mr. Blackburn in fact exceeded the legal speed limit. The standard is whether Officer Hise had a reasonable articulable suspicion that a traffic or equipment violation had occurred or was occurring. Under the present facts, Officer Hise clearly had a reasonable articulable suspicion that a traffic violation had occurred or was occurring.

III

Having determined that the stop was constitutional, the Court must next consider whether Officer Hise impermissibly detained Mr. Blackburn beyond what was necessary to issue the courtesy warning. The Court credits the testimony of Officer Hise and does not credit the description of events given by Mr. Blackburn in this regard. Crediting such testimony, the Court finds as a matter of fact that Officer Hise asked Mr. Blackburn whether he had time to stay for

some additional questions and moved to the front of his unit to engage in that conversation, and in so doing did not extend the stop longer than necessary to effect legitimate law enforcement purposes.

IV

The Court must next consider the validity of Mr. Blackburn's consent to the search of the truck. Mr. Blackburn argues that his consent to the search was not voluntary. Whether a consent to search is voluntary or was a product of duress or coercion is a question of fact to be determined from the totality of the circumstances. See United States v. Benitez, 899 F.2d 995, 998 (10th Cir. 1990) (citing United States v. Mendenhall, 446 U.S. 544, 557 (1980)).

Officer Hise testified that he asked Mr. Blackburn if he could search the truck, and Mr. Blackburn said, "Go ahead." Officer Hise also testified that neither he nor Trooper Lambert ever attempted to be overbearing; rather, Officer Hise testified that he was extremely courteous to Mr. Blackburn, and Mr. Blackburn was courteous in return. Officer Hise testified that he believed that Mr. Blackburn was able to hear what he was saying. Officer Hise also testified that he suspected Mr. Blackburn of criminal activity and believed he would have had cause to detain Mr. Blackburn and search the truck even if he had not voluntarily consented; however, these measures were unnecessary due to Mr. Blackburn's consent. The Court again finds Officer Hise's testimony to be credible in this regard and rejects the conflicting testimony of Mr. Blackburn as not credible. Based on the totality of the circumstances, the Court finds that the officer did not create an atmosphere of duress or coercion and that Mr. Blackburn's consent to a search of the truck was therefore voluntary.

V

The Court must next consider whether the search of the truck exceeded the scope of Mr. Blackburn's consent. The standard for measuring the scope of a suspect's consent under the Fourth Amendment is that of objective reasonableness—what the typical reasonable person would have understood by the exchange between the officer and the suspect. See United States v. Ramstad, 219 F.3d 1263, 1266 (10th Cir. 2000).

The Court finds that when Mr. Blackburn responded, "Go ahead," to Officer Hise's request to search the truck, the scope of his consent extended to the entire truck, including the bed area. Again, the Court credits the testimony of Officer Hise. The Court finds the testimony of Mr. Blackburn that he consented only to a search of his duffle bag and briefcase in the cab area is not credible. Moreover, Mr. Blackburn witnessed the search of his vehicle from only a few feet away but did not attempt to withdraw consent or otherwise object to a complete search. See United States v. Dewitt, 946 F.2d 1497, 1501 (10th Cir. 1991) ("[I]t would be reasonable to conclude that defendant's acquiescence indicated that the search was within the scope of the consent.").

VI

Finally, the Court must consider whether the exchange between Officer Hise and Mr. Blackburn regarding the key to the camper shell limited the scope of the consent.² Officer Hise

²If Officer Hise had not previously obtained Mr. Blackburn's consent to search the entire vehicle, but had instead simply asked Mr. Blackburn for the key to the camper shell, the inquiry would be quite different. The statement, "I don't have a key" certainly can indicate that no consent to search has been given. See United States v. Patacchia, 602 F.2d 218, 219 (9th Cir. 1979); United States v. Paoloca, 36 F.3d 1099 (7th Cir. 1994) (unpublished table opinion). In this case, however, Officer Hise had already received permission to search the entire truck before he asked for the key to the camper shell. Therefore, the question is whether Mr. Blackburn's statement that he did not have a key withdrew or otherwise limited his consent to

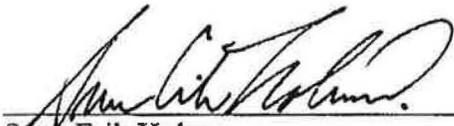
asked Mr. Blackburn for the key to the camper shell when he realized it was locked. In response, Mr. Blackburn stated that he did not have a key. At that point, Officer Hise tried the tailgate handle and pulled down the tailgate. Officer Hise did not use any tools or special force to open the tailgate. There is no evidence in this record that any enhanced measures were taken for purposes of entering the bed area of the truck. Officer Hise simply pulled down the tailgate. This is consistent with the testimony of Officer Hise, but also corroborated by the testimony of Mr. Blackburn, who was not aware of any damage that was done in the course of opening the tailgate, which occurred only a few feet in front of him. Therefore, the Court finds that Mr. Blackburn's statement that he did not have a key did not limit the scope of the original consent to search that was given with respect to the truck.

VII

Based on the above, the Court finds that the initial traffic stop was constitutional, that Mr. Blackburn was not impermissibly detained, that Mr. Blackburn's consent to the search of the truck was knowing and voluntary, and that Mr. Blackburn's statement that he did not have a key to the camper shell did not limit the scope of his consent. Accordingly, Defendant's motion to suppress is hereby denied.

IT IS SO ORDERED.

This 20TH day of February, 2002.


Sven Erik Holmes
United States District Judge

search the bed area of the truck. The Court finds that it did not.