

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 19-CR-04035-SRB-7
)	
)	
CHRISTOPHER LEE LOETHEN,)	
)	
)	
Defendant.)	

REPORT AND RECOMMENDATION

Pending before the Court is Defendant Christopher Lee Loethen’s Motion to Suppress Evidence. (Doc. 136). The Government has filed suggestions in opposition. (Doc. 137). The motion is now ripe for consideration. For the reasons that follow, it is recommended Defendant’s motion be denied.

I. Background

This case arises out of multiple suspected drug transactions involving Mr. Loethen and co-Defendant Jerome Rainey. A task force of agents from the Drug Enforcement Agency, the Bureau of Alcohol, Tobacco, Firearms and Explosives, and other law enforcement agencies began investigating Mr. Rainey in June 2016 after receiving information from confidential sources that he was selling methamphetamine. (Tr. 13:8-13). Law enforcement was able to confirm Mr. Rainey was selling methamphetamine through two controlled purchases conducted in February and March, 2018. (Tr. 13:11-24). Subsequently, law enforcement obtained authorization to intercept Mr. Rainey’s electronic communications, including phone calls and text messages. (Tr. 14:4-13). Between July 30, 2018, and September 27, 2018, agents intercepted numerous conversations and placed Mr. Rainey’s residence under surveillance. (Tr. 17:3-8).

During that period, agents intercepted communications from Mr. Loethen and observed behavior that lead them to believe Defendant was a regular customer of Mr. Rainey’s drug operation. (Tr. 35:16-17). Agents identified six conversations, described below, where they believed Mr. Loethen used innuendo and code to discuss purchasing drugs.

The first conversation, a series of text messages on July 30, 2018, lasted between 6:59 p.m. and 9:40 p.m. (Tr. 23:9-16). Since his phone number was in the Jefferson City Police Department's database of known drug dealers, agents were able to identify Mr. Loethen as the person communicating with Mr. Rainey. (Tr. 23:1-4). Subsequent to these text messages, law enforcement observed a Toyota 4-Runner registered to Mr. Loethen park at the health department across from Mr. Rainey's residency. (Tr. 23:22-25; 24:12-13). The vehicle arrived around 9:47 p.m. and departed less than thirty minutes later. (Tr. 23:22; 24:19). Agents noted that, throughout the investigation, Mr. Rainey's customers had been seen parking in both the health department parking lot and Mr. Rainey's driveway. (Tr. 24:4-9).

Agents intercepted a second series of text messages and phone calls on August 3, 2018 and August 4, 2018. At 6:15 p.m. on August 3, 2018, Mr. Loethen texted "Whats up cuzzo was wanting to make dinner reservations for 3." (Tr. 25:2-3). Subsequently, at 6:17 p.m., Mr. Loethen called Mr. Rainey and reiterated his inquiry about "reservations for three." (Tr. 26:24). Based on the totality of the circumstances, including other interceptions and stops of Mr. Rainey's customers, agents concluded that "dinner reservations" was code for purchasing methamphetamine. (Tr. 25:21-24; 27:1-3; 38:1-4). Following this phone call, however, Mr. Rainey postponed the transaction, texting "I'm gd I got my kids right now [b]etter for me in the morning." (Tr. 27:9-10, 16-21).

The next day, August 4, 2018, Mr. Loethen again texted Mr. Rainey. This conversation, which lasted from 6:34 p.m. until 9:04 p.m., included the following:

Loethen: Whats up cuzzo dinner reservations all good.
Rainey: Yep
Rainey: Yep
Rainey: Shopping with the kids just about done I hit you up
Rainey: 475
Loethen: Is it different
Rainey: Yep
Loethen: Bet 3
Rainey: Wya
Loethen: Golden corral getting a bite to eat
Loethen: See you in a few. Health dept?
Loethen: Pullin up on ya

(Gov't Ex. 1, Tab E).

Agents interpreted this exchange as confirming the purchase of methamphetamine. (Tr. 28:18-15; 29:1-2). They believed "475" was the price (\$475) per ounce for methamphetamine. *Id.*

At 9:06 p.m., agents observed a silver Chevrolet Silverado registered to Mr. Loethen arrive at the health department parking lot. (Tr. 29:15-19; 30:1-2; 50:13-17). Task Force Officer (TFO) Brandon Weber witnessed a man matching Mr. Loethen's description exit the vehicle and walk across the street. (Tr. 50:15-19). The Silverado left Mr. Rainey's home approximately twenty minutes later. (Tr. 29:21-24; 50:23-24).

Mr. Loethen subsequently called Mr. Rainey on August 9, 2019, to discuss the quality of a previously purchased batch of methamphetamine. (Tr. 30:11-21). During the call, Mr. Loethen identified himself, saying, "[t]his Chris." *Id.* The subsequent exchange included Mr. Rainey stating, "[t]hat shit went like hotcakes, man." *Id.* To which Mr. Loethen responded, "[y]eah. That was be – that was better than the last time around." *Id.* Mr. Rainey then indicated he would contact Mr. Loethen when he got more methamphetamine, saying, "[o]kay. Uh, I'll let you know, I'll let you know when I touch." *Id.*

On August 20, 2018, agents intercepted the following text exchange between Mr. Loethen and Mr. Rainey:

Rainey: What's up
Loethen: Shit whats up with you. Fixing to get out and about I suppose. You gonna be around this evening
Rainey: Yep
Rainey: Got [tree emoji]
Rainey: Hello u ok
Loethen: Got funny pages. Man you say you got or you askin. I got carried away in the garage really some landscaping shrubs would be awesome. Really my only need to be in como isnt for dinner reservations at the moment. It be to just square up. You want to meet up somewhere.
Rainey: I'm at home
Loethen: Yeah im cool man I got to fucking with some of these tractors in the garage and time got away from me. Also ive got a cousin whos boyfriend is trying to get into the lawn mowing business and has a zero turn that he hit a pot hole or some shit and its not running now id say its an easy fix. Hes asking 500 for it you want me to inquire more about it.
Rainey: I got the [tree emoji]
Loethen: Supposedly 2500.00 mower
Rainey: Send pics
Loethen: Im waiting on pics. Hey bro Im trying to kill two birds with one stone I need that though.
Rainey: Yep
Loethen: Im gonna just put together everything I can and come up in the A.m. for breakfast
Rainey: [thumbs up emoji]

(Gov't Ex. 1, Tab J).

Agents believed Mr. Rainey was offering to sell marijuana to Mr. Loethen. (34:16-25; 35:1-12). The tree emoji was interpreted as a reference to marijuana. (Tr. 34:20-21). Moreover, Mr. Loethen's statement that he was "trying to kill two birds with one stone" was thought to mean either that he wanted to purchase both marijuana and methamphetamine or that he wanted to purchase drugs and pay off his existing debt. (Tr. 35:9-12).

Mr. Loethen texted Mr. Rainey the following day, August 21, 2018. The exchange occurred between 8:01 p.m. and 9:36 p.m. and contained the following:

Loethen: Im coming to see you here directly. See you here before long whats the ticket on the landscaping shrubs
Rainey: You talking about the tree it's 175 i
Loethen: Like 4 of them to line the driveway. Any better?
Loethen: Say 600
Rainey: 650
Loethen: almost local
Loethen: Should I just pull up on you.
Rainey: Yep
Rainey: How long
Loethen: Less then 15
Rainey: Yep
Loethen: Breathing down your neck

(Gov't Ex. 1, Tab K).

This conversation was interpreted as a continuation from the previous day. (Tr. 36:22-24). Specifically, that Mr. Loethen wanted to purchase marijuana. *Id.* The statements regarding four "landscaping shrubs" was thought to be code for purchasing four ounces of marijuana. (Tr. 51:16-21). While Mr. Loethen attempted to haggle for a better price, "[s]ay 600," Mr. Rainey countered that the price for four ounces was "650." (Tr. 37:1-3). TFO Weber, the surveillance team leader, was advised of these text messages. (Tr. 51:16-25). Subsequently, agents observed Mr. Loethen's Silverado arrive at Mr. Rainey's home and followed the vehicle as it left. (Tr. 52:4-5). A short time later, law enforcement positively identified the driver as Mr. Loethen at 10:08 p.m. when Defendant exited the truck to purchase gas. (Tr. 52:14-23).

While pursuing the Silverado, TFO Weber contacted Callaway County Sheriff's Deputy Blake Atkins and directed him to stop the Silverado. (Tr. 53:22). TFO Weber informed Deputy Atkins that he was monitoring a wiretap and, based on intercepted communications and surveillance, believed Mr. Loethen currently possessed marijuana. (Tr. 53:24-25; 54:1, 19-21).

Additionally, TFO Weber told Deputy Atkins that the Silverado was traveling in the direction of Callaway County. (Tr. 60:16-19). Deputy Atkins relayed TFO Weber's request to Sergeant Donald Dame and Deputy Alan LeBel. (Tr. 61:2-3). Sergeant Dame initiated a stop off U.S. Highway 54 on East Center Street in Holts Summit, Missouri. (Tr. 65:19). Deputy LeBel then deployed his drug canine, Iro, who alerted to the presence of narcotics at the driver's side window. (Tr. 6:10-16). As a result of the stop, law enforcement recovered nearly 150 grams of marijuana and 38 grams of methamphetamine. (Doc. 137).

Subsequently, Mr. Loethen was charged with conspiracy to distribute 500 grams or more of a mixture or substance containing a detectable amount of methamphetamine and marijuana, possession with intent to distribute marijuana, possession with intent to distribute methamphetamine, and the use of a communications facility to facilitate a drug trafficking conspiracy. (Doc. 1).

II. Discussion

Mr. Loethen argues that evidence discovered during the search of the Silverado should be suppressed because deputies lacked probable cause to initiate a stop.¹ The Government asserts in response that deputies had reasonable suspicion to stop Mr. Loethen and investigate possible drug trafficking. For the reasons stated below, the Court recommends Mr. Loethen's motion be denied.

It is well established that a law enforcement officer can stop and briefly detain a person for investigatory purposes if the officer has reasonable suspicion that criminal activity "may be afoot." *Terry v. Ohio*, 392 U.S. 1, 25-31 (1968); *United States v. Lewis*, 864 F.3d 937, 946 (8th Cir. 2017); *see also United States v. Mosley*, 878 F.3d 246, 251 (8th Cir. 2017) ("[T]he Fourth Amendment permits investigative traffic stops when law enforcement has reasonable suspicion of criminal activity."). Reasonable suspicion requires officers "to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant [an] intrusion." *Terry*, 392 U.S. at 30. In other words, the presence of adequate reasonable suspicion to justify a Terry stop is determined by the "totality of the circumstances." *United States v. Wheat*, 278 F.3d 722, 731 (8th Cir. 2001) (quoting *Alabama v. White*, 496 U.S. 325, 330 (1990)). Reasonable suspicion requires "considerably less than proof of wrongdoing by a preponderance of the evidence" and "obviously less" than what is necessary to establish probable cause. *United States v. Sokolow*, 490

¹ Additionally, Mr. Loethen contends that the stop was an unreasonable pretextual stop. However, the instant stop cannot be pretextual, as the purpose and justification for the stop were the same.

U.S. 1, 7 (1989) (citation omitted); *Williams v. Decker*, 767 F.3d 734, 739 (8th Cir. 2014) (citation omitted).

When an investigation is performed by a team of officers, “the issue is whether all the information known to the team,” cumulatively, created reasonable suspicion to justify a stop. *United States v. Winters*, 491 F.3d 918, 921 (8th Cir. 2007) (quoting *United States v. Robinson*, 119 F.3d 663, 666 (8th Cir. 1997)). While there must be some degree of communication, officers need not have communicated “all the relevant collective knowledge of the team” to the officer making the stop. *United States v. Robinson*, 664 F.3d 701, 703-04 (8th Cir. 2011) (statement by a detective merely directing a patrol officer to stop a vehicle was enough to give the stopping officer probable cause).

Here, based on the collective knowledge of law enforcement, deputies had reasonable suspicion to stop Mr. Loethen. Contrary to Mr. Loethen’s claim that police lacked information or knowledge to suggest wrongdoing, the stop was the result of an investigation into drug distribution that spanned months. Mr. Rainey was a known drug dealer. Mr. Loethen’s use of innuendo and numerous short visits to Mr. Rainey’s home fit a pattern of buying drugs. This pattern of behavior led agents to conclude Mr. Loethen was a regular purchaser of narcotics. On the night he was stopped, Mr. Loethen used coded language to arrange the purchase of marijuana and was seen arriving at Mr. Rainey’s home and departing soon thereafter. These facts are enough to give rise to a reasonable suspicion. *See United States v. Collins*, 883 F.3d 1029, 1033 (8th Cir. 2018) (finding reasonable suspicion to stop a vehicle where officers observed a single instance of the vehicle’s driver entering and exiting the home of a known drug dealer). Moreover, Mr. Loethen was stopped by deputies at the direction of TFO Weber. This request imputed deputies with the reasonable suspicion known to the investigative team. *See Robinson*, 664 F.3d, at 704 (concluding that an officer becomes part of the investigative team when directed to make a stop); *United States v. Williams*, 429 F.3d 767, 771-72 (8th Cir. 2005) (holding an officer was imputed with reasonable suspicion where the only information transmitted by the requesting agent was the possible presence of drugs). Accordingly, the Court concludes that the stop of Mr. Loethen’s Silverado was supported by reasonable suspicion.

In his reply brief, Mr. Loethen argues Deputy Dame needed to establish his own set of articulable facts pointing to criminal activity to justify the stop. He cites to a Ninth Circuit case for support. *United States v. Thomas*, 211 F.3d 1186, 1190 (9th Cir. 2000). In *Thomas*, the Ninth

Circuit found that a detective could not base reasonable suspicion on an ambiguous tip from the FBI that lacked the requisite “indicia of reliability.” *Id.* Here, however, deputies stopped Mr. Loethen based on the unambiguous request of TFO Weber. As noted above, TFO Weber had reasonable suspicion that Mr. Loethen was transporting marijuana when he directed deputies to stop the truck. Moreover, the Eighth Circuit has long held that officers may perform an investigatory stop at the direction of another officer with reasonable suspicion. *See, e.g., Winters*, 491 F.3d, at 922 (stop performed by a state trooper at the direction of a state narcotics agent who had been investigating suspected drug trafficking was justified); *Robinson*, 119 F.3d, at 667-68 (officers in a marked squad car were justified in stopping defendants at the direction of anti-gang task force agents who had observed a suspected drug deal). Furthermore, the information conveyed to deputies included a description of Mr. Loethen’s vehicle, his direction of travel, and the fact he had implicated himself over a wire. Accordingly, the Court finds *Thomas* is neither persuasive nor applicable in this matter.

Therefore, the Court concludes that the stop of Mr. Loethen’s Silverado was supported by reasonable suspicion and constitutional under the Fourth Amendment.

III. Conclusion

For the reasons above, Defendant’s arguments regarding evidence suppression in this case are without merit, and the Motion to Suppress Evidence should be denied.

Accordingly, IT IS THEREFORE RECOMMENDED that the Court, after making an independent review of the record and applicable law, enter an order DENYING Defendant Christopher Lee Loethen’s Motion to Suppress Evidence. (Doc. 136).

Counsel are reminded that each party has fourteen (14) days from the date of receipt of a copy of this Report and Recommendation within which to file and serve objections. A failure to file and serve objections by this date shall bar an attack on appeal of the factual findings in the Report and Recommendation which are accepted or adopted by the district judge, except on the grounds of plain error or manifest injustice.

Dated this 14th day of November, 2019, at Jefferson City, Missouri.

Willie J. Epps, Jr.

Willie J. Epps, Jr.
United States Magistrate Judge