



# DPS Legal Review

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## ***U.S. District Court – Northern District of Georgia***

### **PROBABLE CAUSE TO STOP VEHICLE BASED ON “COLLECTIVE KNOWLEDGE” DOCTRINE**

In the months leading up to October 26, 2019, United States Drug Enforcement Administration (“DEA”) agents applied for three phone wiretap applications (Title III intercept orders pursuant to the Federal Wiretap Act, 18 U.S.C. § 2510 – 2522). All three applications were approved by United States District Court Judges. Based on information learned via the wiretaps, DEA agents made “[c]ontrolled purchases of heroin” from defendants Villanueva-Rios (“Villanueva”) and Gonzalez-Lopez (“Gonzalez”).

The DEA’s intercepted communications included conversations between Villanueva and an unidentified male called “Big”, during which Villanueva discussed supplying “Big” with a sample of drugs. The DEA also obtained a court order to place a tracer on Villanueva’s vehicle, a blue Nissan Sentra. The tracer “led them to a barber shop, a location referenced in wiretap conversations where the sample of the drug product would be held. Further discussions revealed that “Big” would purchase the drugs on October 26, 2019.”

**The DEA alerted Georgia State Patrol (“GSP”) troopers, including Trooper Michael Bailey (“Bailey” or “Trooper Bailey”) so that GSP could assist in apprehending “Big” after the deal at the barbershop. Villanueva and Gonzalez drove the blue Nissan Sentra to the barbershop. Defendant Gant, who was driving a Nissan Rogue, then arrived at the barbershop. Gant was toting a black backpack.**

Upon Gant’s leaving the barbershop, the DEA notified GSP, relaying a description of Gant’s vehicle. Trooper Bailey “was instructed to follow Gant’s vehicle, establish probable cause, and pull Gant over.” When Trooper Bailey initiated a traffic stop on Gant’s vehicle, the vehicle smelled strongly of air freshener. Bailey noted that the vehicle’s cupholder contained a canister of air freshener labelled “Blunt spray.” As the scent of the air freshener began to fade, “Bailey noticed a faint odor of marijuana emanating from the car and asked Gant to step outside the vehicle.”

Trooper Bailey requested permission to search the vehicle, but Gant refused. When another GSP trooper and his K-9 arrived on the scene, “[t]he dog alerted the troopers on the vehicle and Gant tried to run away.” The troopers apprehended Gant and handcuffed him. During a pat down of Gant, the troopers uncovered a handgun and “a large amount of money” on his person. During a search of the vehicle, a GSP trooper located both a cell phone and “a backpack containing illegal narcotics.”

Defendants Villanueva, Gonzalez and Gant were indicted on federal charges of conspiracy to possess heroin with the intent to distribute and possession with the intent to distribute heroin. Gant was also charged with possession of a firearm in furtherance of a drug trafficking crime and felon in possession of a firearm. (Villanueva was also charged with money laundering and possession of a firearm in furtherance of a drug trafficking crime.)

**All three defendants filed motions to suppress evidence from the phone wiretaps. Gant also filed a motion to suppress the evidence found by a GSP**

**trooper during the warrantless search of his vehicle on October 26, 2019. This summary focuses on Gant’s motion to suppress the evidence discovered during the vehicle search.**

The United States Magistrate Judge’s Final Report and Recommendation (“R&R”) recommended denying Gant’s motion to suppress the evidence collected during the warrantless search of his Nissan Rogue: “Judge Salinas found that the automobile exception justified the warrantless search of Gant’s vehicle because the vehicle was mobile and probable cause to search the vehicle was established by the ‘collective knowledge’ doctrine.”

In its review of Judge Salinas’s R&R, the U.S. District Court for the Northern District of Georgia (“District Court”) looked to the Eleventh Circuit Court of Appeals’ 2020 decision in *United States v. Andres*, which quoted the Eleventh Circuit’s 1985 decision in *United States v. Willis*: “In deciding whether a search or seizure was justified, this Court may look to the collective knowledge of the law enforcement officials involved in an investigation ‘if they maintained at least a minimal level of communication during their investigation.’ ” (Citations omitted.)

**The District Court reached the same conclusion as Magistrate Judge Salinas, i.e., “that the collective knowledge of the agents involved in the DEA investigation, combined with the level of communication between Bailey and the DEA agents on the day of the search of Gant’s vehicle, resulted in the existence of probable cause to believe Gant’s car contained contraband.” In her R&R, Judge Salinas reasoned:**

With respect to Trooper Bailey’s connection to the investigation, the undisputed evidence showed that he was an active part of the team, having been involved in the investigation for at least ten hours on the day that he pulled Gant over.

Earlier that morning, TFO Waithe informed the GSP troopers (including both Troopers Bailey and Young) that an ongoing drug investigation revealed that there was likely to be a heroin transaction at some point that day, and that the DEA agents might need the GSP troopers to assist with apprehending the unknown subjects. Trooper Bailey was added to the WhatsApp chat around 10:00 a.m. that day. And, later that evening, after the agents observed Gant leave the barber shop, they advised Trooper Bailey of the description of Gant’s vehicle and instructed him to make the stop. It is clear that Trooper Bailey had more than “a minimal level of communication” with the DEA agents throughout the day on October 26 prior to pulling over Gant’s vehicle and searching the car.

Based on the foregoing, the District Court adopted Judge Salinas’s R&R issued on March 31, 2021 and denied Defendant Gant’s motion to suppress. *U.S. v. Villanueva-Rios et al.*, No. 1:20-CR-0073-MHC-CMS, 2021 WL 3509555 (N.D. Ga., Aug. 10, 2021).

### **COURT DENIES DEFENDANT’S MOTIONS TO SUPPRESS EVIDENCE SEIZED DURING WARRANTLESS AUTOMOBILE SEARCH**

Like the other case summary in this issue of the Legal Review, this case involves a traffic stop made by a GSP trooper working in tandem with DEA agents.

The DEA alerted Trooper Forrester by phone regarding a Honda vehicle belonging to defendant Brendle. While conducting surveillance, DEA agents witnessed what appeared to be “drugs being transferred to and within Brendle’s vehicle that was

parked in a Walmart lot and also witnessed the car's departure from the lot." The DEA requested Trooper Forrester's assistance in stopping the Honda, which the DEA said was transporting between one and two kilograms of methamphetamine. Trooper Forrester's fellow GSP colleagues, who were also working with the DEA, instructed him "to independently develop a probable cause basis for the search of the vehicle."

**Trooper Forrester pulled over Brendle's Honda, and both evidence and cell phones were seized during a warrantless search of the vehicle. Subsequently, a warrant was obtained to search the cell phones. Defendant Brendle filed motions to suppress the evidence gathered during the vehicle search and evidence obtained from the cell phones found in the Honda. Brendle argued that Trooper Forrester "neither had a legitimate law enforcement basis for stopping the vehicle nor a probable cause basis for searching the vehicle."**

Brendle also contended that the evidence obtained from the cell phones should be suppressed as "fruit of the poison[ous] tree", the legal theory that the "tree" (in this case, the unlawful search of Brendle's vehicle) taints what grows from it (i.e., the evidence discovered via the cell phone warrant).

Brendle argued that Trooper Forrester "possessed insufficient personal knowledge regarding salient essential factual details relating to Brendle's or Ortiz's [another suspected drug trafficker being surveilled by the DEA] alleged related offense conduct, the DEA investigation, or other knowledge sufficient for the "collective knowledge" doctrine to be properly relied upon as the basis for a finding of probable cause."

The Magistrate Judge ruled that Brendle's motions to suppress should be denied "because the Government showed that State Trooper Forrester possessed imputed knowledge of Brendle's transportation of methamphetamine based on communications from a lead DEA agent engaged with other agents in a drug trafficking investigation."

**The District Court, tasked with reviewing Brendle's objections to the Report and Recommendation ("R&R") of the Magistrate Judge, did not give short shrift to Brendle's arguments. Rather, the District Court acknowledged "that the collective knowledge doctrine can degenerate to a rubber stamp chain of communication where the constitutional protection of probable cause is diminished and any 'independent' police effort to develop probable cause becomes an artificial back-up feint."**

However, the District Court reasoned that it must follow Eleventh Circuit Court of Appeals' precedent regarding the "collective knowledge" of the law enforcement officers involved in the case to determine whether there was probable cause for Trooper Forrester to initiate a traffic stop of Brendle's Honda.

**The District Court's analysis included the Eleventh Circuit Court of Appeals' 1984 decision in *U.S. v. Esle* (citation omitted) regarding the "collective knowledge" doctrine:**

[I]n *Esle*, the Eleventh Circuit found that because the primary investigating officer had sufficient personal knowledge of investigative facts to establish probable cause, the arresting officer's reliance on what another agent told him about cocaine being in the suspect car was sufficient to establish 'collective knowledge' and provided a probable cause basis for the arresting officer's conducting the warrantless search. Brendle's case is indistinguishable from *Esle*. Thus, governing Eleventh Circuit Fourth Amendment precedent clearly supports the Magistrate Judge's R&R conclusion that both the search and the seizure of the phones that were the fruit of that search were lawful.

For these reasons, the District Court adopted the Magistrate Judge's R&R and denied Brendle's motions to suppress. *U.S. v. Brendle, 1:19-CR-0326-AT-1*, 2021 WL 4129487 (N.D. Ga., Sept. 10, 2021).

**ALS REMINDER**

If you are unavailable for an ALS Hearing and need assistance with an ALS continuance motion, email both Dee ([dbrophy@gsp.net](mailto:dbrophy@gsp.net)) and Grace ([gmatthews@gsp.net](mailto:gmatthews@gsp.net)) and provide the court date, location, and case name in your email. A written continuance motion must be filed with the Court at least ten days prior to the ALS Hearing date so please notify us before the ten-day deadline to allow sufficient time for the motion to be filed.

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