

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF WYOMING

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 DALE KELLOGG, a/k/a "JOHN DOE", )  
 )  
 Defendant. )

FILED  
DISTRICT OF WYOMING  
U.S. DISTRICT COURT  
NOV 20 2009  
Case Number 2:08-M-6513  
U.S. MAGISTRATE JUDGE

Violation Nos. F3690801,  
F3690803 and F3690804

JUDGMENT AND SENTENCE

The above captioned matter came on for trial on the 9<sup>th</sup> day of November 2009. The defendant, Dale Kellogg, was present with his appointed defense attorney, James T. Whiting, and the United States was represented by Assistant United States Attorney, Jason Conder.

The events and circumstances of this case took place on July 2, 2008 in the Bridger-Teton National Forest during a period of time there was a gathering of "Rainbow" people. It was estimated over a period of weeks in June and July of 2008 there were approximately 7,000 members of the Rainbow Family at the Wyoming gathering.

On November 9, 2009, the Court heard several hours of testimony from two (2) government witnesses, four (4) defense witnesses and the defendant. There were conflicting and disputed accounts of certain facts and other facts were not disputed. The testimony and evidence presented revealed the following:

UNITED STATES WITNESS OFFICER KNORR:

Officer Knorr, now a retired forest service officer with thirty-five (35) years of experience, had stopped a trash truck to investigate a possible reported driving under the influence charge. Officer Knorr described the location of the trash truck stop as occurring at a place called "Bus Village" where numerous vehicles, vans, buses and cars were parked. Officer Knorr described the traffic situation as "congested" with vehicles moving "incrementally" over a two track road. Traffic behind the trash truck was held up while the stop occurred and since the road was narrow with several vehicles parked all around, cars behind the trash truck could not advance. Officer Knorr recalled the trash truck he stopped, another vehicle and the vehicle driven by the defendant which was a black Matrix. While attempting to ascertain whether the trash truck driver was under the influence, Officer Knorr testified he heard a horn being honked emitting short beeps and then a long horn noise as if the driver was agitated and wanted his attention. Knorr said

he did not smell alcohol on the trash truck driver and turned his attention to the driver of the black Matrix who was honking. Knorr yelled to the driver of the Matrix to stop. He said he also made a hand gesture to the Defendant signaling him to stop. According to Officer Knorr, the defendant saw and heard him, but did not stop and continued to drive ahead. Knorr testified there were other officers in the area of the Matrix and named several officers including Officers Lampe, Bennett and Chavez. Knorr said he heard Officer Chavez yell at the defendant to stop as he continued to move. When the defendant did not stop and continued to move ahead, the officers who had heard and observed what was happening, began to approach the Matrix vehicle.

The vehicle eventually did come to a stop. Officer Knorr testified he told the defendant he needed to be patient and was questioning him about what the problem was and was asking why he was honking. Officer Knorr testified the defendant's horn honking distracted him from his investigative stop of the trash truck. He testified he asked the driver of the Matrix for his license and registration and other documents, but the driver had no identification and refused to identify himself. By this time, other officers had arrived at the Matrix and began giving directives to the driver. Officer Lampe, one of the officers who arrived to assist Officer Knorr, was located on the driver's side of the vehicle and told the driver to exit the car. Knorr testified the defendant then locked the doors to the vehicle and fastened his seat belt. Knorr said the defendant stated "if you want me out, you need to take me out" or words to that effect. Officer Knorr testified it was clear to him the defendant was refusing to comply with law enforcement directives. He testified that Officer Bennett, who was positioned on the passenger side of the vehicle, managed to unlock the car and had the passenger get out of the vehicle which the passenger did. Knorr testified Officers Lampe and Chavez had to physically remove the defendant from the vehicle and the defendant was "actively resisting them." Knorr's testimony was that the defendant "cold cocked" Officer Lampe in the face and from that point on, it turned into a "fight." Knorr stated he heard "taser," which he knew to be a warning, and he observed Officer Chavez who had draw his taser and removed the cartridge so it could be used as a stun gun. Knorr testified the defendant was tased and the defendant kicked Officer Chavez multiple times. Knorr said he saw the defendant punch Officer Lampe another couple times and kick Chavez in the chest while Chavez was trying to get control of his legs. Knorr testified initially he yelled to the defendant to stop twice, had eye contact with him and the windows of the Matrix were open. Knorr indicated he thought the defendant was acting "irrationally." When questioned by defense about the status of the "road" where this incident occurred, Knorr indicated he did not think it was an "official road" but a "dirt track road" that was being used by traffic to access the trails, parking and camping areas. He indicated in his home district of Washington, citations would have been issued for driving on this "road" because of resource damage, but citations were not being issued in Wyoming as this was the "road" people were traveling on and were using for access.

UNITED STATES WITNESS OFFICER GRETCHEN LAMPE:

Officer Gretchen Lampe testified she volunteered to patrol the Rainbow Gathering event in Wyoming and she currently works in Cordova, Alaska. Her experience is military, firefighting, and she has a degree in fire science. She now works as forest service law enforcement. She described the incident of July 2, 2008 as occurring on a "small two track road driving across a meadow." She was in the area where the incident occurred, but she was not involved with the stop of the trash truck. She was with another officer when she heard Officer Knorr order the defendant to stop his vehicle and she saw the defendant was not stopping. She testified she heard Officer Chavez order the defendant to stop without success. She then pursued the vehicle, caught up with it, and approached the driver's side. Officers Bennett and Chavez had also reached the Matrix by this time. Officer Lampe testified the defendant was shouting words to the effect that "you don't have probable cause to stop me." Officer Lampe told the defendant to get out of the car. Lampe said the defendant replied "you'll have to get me out" and buckled his seat belt. Officer Bennett was able to unlock the doors to the vehicle from the passenger side and Officers Chavez and Lampe were trying to remove the defendant from the car. Officer Lampe testified as they were attempting to get the defendant out of the vehicle, he began screaming and yelling and the defendant intentionally struck her with a closed fist on the left side of her face. She indicated the defendant was told repeatedly to stop resisting. Officer Lampe stated while she was trying to get the defendant on his stomach, he was kicking, screaming, and flailing around and he struck her again. She said the defendant was warned he was going to be tased if he continued to resist and fight. She testified she saw the defendant kick Officer Chavez in the chest and the knee and said the defendant took another swing at her with a closed fist. Lampe testified she struck the defendant twice in the face. The defendant was finally cuffed and escorted to a nearby law enforcement vehicle. Officer Lampe said she struck the defendant in an effort to subdue him. She felt he was acting irrationally and kept yelling about probable cause. She said she had personally witnessed his failure to obey the orders of Officers Chavez and Knorr to stop the vehicle he was driving.

On cross examination by defense counsel, Officer Lampe testified Officer Knorr was very calm and she was more forceful in her verbal tone with the defendant once the vehicle stopped. She said she was focused on the defendant because he had been ordered to stop twice and he continued driving forward. At the time she heard the orders for the defendant to stop, she did not know why Knorr had ordered him to stop. Based on what she saw and heard, she believed the defendant had disobeyed a lawful order and she came to assist the officers who were trying to stop his car. Defense counsel inquired how many times she had used her taser. She testified she carries a taser, but she has never used it. She stated the defendant was asked numerous times to get out of the vehicle and was asked several times for identification and documentation, which he failed to produce.

DEFENSE WITNESS SHAARYA WITT:

Mr. Witt testified via telephone from Jerusalem. He testified he attended the Rainbow Gathering and he met the defendant at the gathering. He said he was the passenger in the black Matrix and they were moving it from one lot to another. The defendant was driving Witt's car because Witt did not have a driver's license. Witt said the defendant saw the traffic obstruction in front of him and he didn't know if they could get by. Mr. Witt remembered the defendant using the horn but did not remember if it was a long or short beep or beeps. Mr. Witt testified he was directed to exit the vehicle and he did so "right away." Mr. Witt then described the events of the defendant being removed from the car by the officers, being tased, and falling down. Witt said the defendant was struck by a police lady. Mr. Witt indicated there were lots of cars parked around the area. Mr. Witt testified the officers told the defendant to stop multiple times and he "stopped slowly."

DEFENSE WITNESS GLENN ALLEN:

Mr. Glenn Allen testified for the defense. He was attending the Rainbow Gathering and he testified he witnessed the events of July 2, 2008. He testified he helped prepare a diagram of the scene which was used by the defense witnesses in court. Mr. Allen indicated he traveled from Kansas City to Wyoming with Mr. Addison for the trial on November 9, 2009.

Mr. Allen stated he was sorting trash on July 2, 2008, was on foot in a location behind the stopped trash truck, and close to where the incident occurred with the defendant. He said the car being driven by the defendant was a short distance behind the trash truck. Mr. Allen law enforcement had stopped the trash truck, but he did know the trash truck was stopped. He stated "the truck had stopped, I know that, but I couldn't see the driver's side." Mr. Allen said traffic was not too congested in the area until the trash truck and law enforcement vehicles came into the area. Mr. Allen heard what he characterized as a "slight toot of a horn." Allen heard someone yell stop and when he heard the command to stop, he himself stopped. Mr. Allen testified he saw the defendant's car "creeping" along and he testified the "LEO's" (law enforcement officers) were shouting and all talking at once. Mr. Allen said the officers were asking the defendant why he didn't stop. He said the defendant looked frustrated and he heard the defendant say "I don't consent." Mr. Allen's view of the defendant was at times obstructed. He said there was some "snafu" going on about trying to get the doors of the defendant's vehicle open. Allen testified that the defendant's arms were up, about shoulder high and fairly close to his body, from his demonstration. He said the officers were "grabbing" him out of the car. He described the officers involved as an African American, a Hispanic, and a white female. Allen stated at some point Officer Lampe had the defendant's wrist and that her hand "slipped" off his wrist and she seemed to be perturbed by this. Allen testified the officers were trying to get the defendant on the ground and he witnessed the defendant being tased. He also witnessed Officer Lampe strike the defendant in the temple area. Mr. Allen testified that he told Officer Knorr "he

(Allen) was a witness to this” and he (Knorr) should do something. Mr. Allen indicated while the defendant was on the ground the officers handcuffed him. Mr. Allen volunteered to move Mr. Witt’s car since he was a licensed driver. Mr. Allen testified that about five (5) days after the incident, he spoke with law enforcement who asked him if he had witnessed law enforcement being struck by the defendant. Mr. Allen testified he did hear law enforcement officers say “stop” several times and he heard them ask the driver for a license. Allen also testified that he heard the defendant say “I need a camera”.

**DEFENSE WITNESS ROBERT BRENNAN:**

Mr. Brennan testified he worked with the “other guys” and was driving a trash truck on July 2, 2008. His recollection was the trash truck was stopped because “Dr. Woodstock” was doing his “naked” routine or words to that effect. Brennan said he heard someone yell “probable cause” and he observed a white female officer working to remove the defendant from the vehicle he was driving. Mr. Brennan testified he heard warnings being given with regard to the use of tasers and characterized the warning as the officers “saying all the right stuff they were supposed to say.” Brennan testified that, about ninety (90) minutes after the incident, Officer Chavez asked him if he would come to court as a witness. Brennan said he traveled to Wyoming for the trial with defense witness, Glenn Allen. He testified he, the defendant, Mr. Allen and Mr. Addison had discussed the case prior to the trial and “everybody heard everybody’s story.” Mr. Brennan testified he heard the defendant’s horn and he heard it “loud.” He said he shut his trash truck off and got out. He explained he could hear things but he could not see anything until he moved around the truck. He said, “I saw him trying to get “not tasered” and trying to get the person installing it away.” Mr. Brennan did not recall being stopped for a DUI investigative stop on July 2, 2008. He testified he had been stopped by law enforcement, but his recollection was law enforcement had talked to him ninety (90) minutes after the incident with the defendant.

**DEFENSE WITNESS SHEILA SHURTEL:**

Ms. Shurtel attended the Rainbow Gathering in Wyoming in 2008. She testified via telephone. She was a medical volunteer for the Rainbow Gathering and was initially about thirty (30) feet from the incident involving the defendant on July 2, 2008. She indicated she had been to Rainbow Gatherings in the past. She could not describe the car involved but she testified there was a “quiet little beep, one time.” She heard officers yell stop and she heard the directive to “unlock the car.” She heard the defendant say he didn’t have any “ ID” on him. She testified regarding the defendant’s removal from the car and indicated the officers finally handcuffed one hand. She said she observed officers kneeling on the defendant and she observed a female officer punch the defendant. She also testified a male officer kicked the defendant in the kidney area. She knew the defendant from previous Rainbow Gatherings. It was her opinion that U.S. Forest Service officers “don’t care if there are trees or squirrels.”

TESTIMONY OF DEFENDANT, DALE KELLOGG:

Prior to his testimony, the Defendant was advised he had the right to remain silent and he was not obligated to testify; he was advised if he chose to testify any statements he made could be used against him and he would be subject to cross examination. The Defendant acknowledged his rights and indicated his voluntary desire to testify and was sworn by affirmation.

The defendant testified that on July 2, 2008 when stopped behind the trash truck, he honked the horn and gestured to get the attention of law enforcement as he was in a hurry to get back to his camp to prepare for an event. He was driving a car for Mr. Witt, who was his passenger. The defendant said he was going to get diapers from another vehicle. He said at the time of this incident, he was frustrated and agitated with forest service law enforcement. He explained he had heard stories around the campfires about law enforcement and it was his perception that forest service law enforcement engaged in harassment of Rainbow people. The defendant confirmed it was Officer Knorr who first had contact with him.

He testified he was a licensed driver but he did not have his license with him. He said it was in his tent. He said he backed out of a parking space and waited 30-45 seconds and then decided to "toot" the horn and gesture. He explained that he was trying to get attention to see if there was a way around what was obviously a blockage in the road. The defendant said he saw Officer Knorr indicate for him to stop and the defendant said he did stop. He testified Officer Knorr told him "he needed to be more patient," to which the defendant responded "you need to learn more about probable cause." The defendant said he became more frustrated when Officer Knorr told him to be more patient. The defendant stated he just decided to roll forward and he then heard yelling and someone "thumping on the car." He testified Officer Chavez almost landed in the car trying to get it stopped. The defendant acknowledged he was told to exit the vehicle he was driving by Officer Lampe. He said he told Officer Lampe "I don't consent." The defendant said she replied "this is not a search." The defendant testified he said, "I'm not going to resist but I'm not going to voluntarily comply." He testified he refastened his seat belt and told the officers he didn't have any ID on him. The defendant proceeded to describe the events which transpired while being removed from the vehicle. He stated he continued to question the officers about "probable cause" and yelled out "witnesses, bring cameras." He said he pulled his arms forward and the officers were pushing him, tripping him and landing on him. He said Officer Lampe had a hold on his wrist and "her grip came off." He testified that he heard an officer say, "I'm going to tase you" and the defendant again said, "witnesses, bring cameras." The defendant was tased. The defendant testified he was trying to avoid being injured. He described at one point, he raised his foot up, arched and pushed away from Officer Chavez. He also described this as extending his foot when he felt it come in contact with Officer Chavez's chest. The defendant testified he was "agitated" and "frustrated" and he pulled away from the grip of

Officer Lampe approximately three (3) times. At one point he described twisting his wrist out of her grip and pulling it in under himself.

The defense presented a video tape, which was admitted as Defense Exhibit "1". The tape essentially shows law enforcement and the defendant, after the defendant was already on the ground, and shows him taken to a law enforcement vehicle. During his testimony, the defendant identified Ms. Shurtel as being the woman on the video who said among other things that "he was not resisting the whole time."

Toward the end of his testimony, the defendant described what he called an "irritation in his heart." He indicated he was sorry he had contributed to such an explosive incident. He also said once there was a hand cuff on him, he invoked his right to remain silent and did not give the officers his name.

### ANALYSIS

The only decision for the Court in this case is whether the United States proved beyond a reasonable doubt the defendant was guilty of the three offenses for which he received citations. The Court does find the defendant guilty on all three counts.

Violation Number F3690803: The offense charged was a violation of CFR 261.54(d), No Drivers License in Possession. This code section provides that "When provided by an Order, the following are prohibited: Operating a vehicle in violation of the speed, load, weight, height, length, width, or other limitations specified by the order."

The Order which applies in this case is Order Number 04-03-208 dated April 25, 2002, entitled UNITED STATES DEPARTMENT OF AGRICULTURE FOREST SERVICE BRIDGER TETON NATIONAL FOREST the purpose of which is public health and safety.

Under PROHIBITIONS, the ORDER indicates that "the following acts or omissions are prohibited on National Forest System Land, Forest Development roads and trails within the Bridger-Teton National Forest".

"Operating any motor vehicle on Forest Development roads in violation of any Wyoming State traffic or motor vehicle law is prohibited 36 CFR 261.54(d)".

The applicable Wyoming State traffic law is Wyoming Statute 31-7-116 which is entitled CARRYING AND DISPLAYING. This statute states that everyone with a license shall have his license in his immediate possession at all times when driving a motor vehicle and shall display the license upon demand of any...officer as defined by 31-5-102 (a)(xxxiii). The statute goes on to say that, if a person is charged with violating this section, he shall not be convicted if he produces in Court a drivers license previously issued to him and "valid at the time of his arrest." (emphasis added)

The Court finds the Defendant, Dale Kellogg, guilty of the charge of No Valid Drivers License in Possession because he was driving a motor vehicle on July 2, 2008 on a road in Bridger-Teton National Forest without a valid driver's license in his possession and he did not produce in Court a drivers license previously issued to him which was valid at the time of his arrest.

The defendant admitted at trial he did not have his license or other identification on his person at the time of the encounter with law enforcement.

Although the defendant testified at trial he had a valid license back in his tent and his license was valid on July 2, 2008, a valid license was never produced to the Court. The Court admitted an exhibit which was a valid license but it was issued in September of 2008, two (2) months after the date of the July 2008 citation. Additionally, the defendant's Utah driving record, which was admitted as part of Defense Exhibit "2", indicated the defendant did not have a valid license during the period in question (July, 2008) as it had been surrendered in 2003.

Defense counsel raised the issue of whether this was a "road" as opposed to a "dirt track" or other type of indentation on the ground made for travel as a defense. The incident occurred on ground clearly being utilized as a "road" in the common use of that term. This was the "road" upon which all vehicles were traveling and the trash truck was stopped. Additionally, the above referenced Order references "roads and trails".

Violation Numbers F3690804 and F369801 are citations for violations of CFR 261.3 (a) for Interference and Resisting Arrest. The court finds the defendant guilty on each of these counts.

This Code section provides in part : "Threatening, resisting, intimidating or interfering with any forest officer engaged in or on account of the performance of his official duties in the protection improvement or administration of the National Forest System is prohibited."

The Court finds the defendant did resist and interfere with forest officers engaged in the performance of their official duties. Part of forest officer's duties are to investigate possible offenses and violations of applicable codes, including but not limited to, DUI and traffic control.

Under the totality of circumstances of this case, the Court finds that officer Knorr had a particularized and objective basis for ordering the defendant to stop his vehicle because he was honking at him during a DUI stop and he was gesturing to him to get his attention. Officer Knorr intended to question the defendant about why he was honking his horn during a DUI stop and also was going to inquire as to whether the defendant had some other problem that required his attention.

This makes sense since the defendant was gesturing at Knorr and honking his horn to get his attention. As a result of the honking and gesturing, Officer Knorr approached the defendant and gave him an order to stop. The defendant did not stop. His vehicle kept advancing. Whether you call it "creeping along," "rolling along," or "stopping slowly," the defendant did not stop. His action of not stopping set in motion the involvement of other officers who heard the command to stop and saw the defendant's vehicle proceeding. This created a reason for Officers Chavez, Lampe and Bennett to stop the defendant.

Apart from the issue of any interference with Officer Knorr, the Court finds that several specific acts of interfering and resisting occurred after Officer Knorr ordered the defendant to stop. Officers Chavez, Lampe, and Bennett were not involved in the initial contact with the defendant. Those officers observed Officer Knorr ordering a car to stop and that the car was not stopping. They did not know why the defendant was being ordered to stop, but they knew a situation had just occurred where a vehicle had just failed to obey an order to stop. Officers had to compete with a moving vehicle trying to get it to stop. The Court finds the defendant's vehicle was moving slowly, but nonetheless, it was moving. Officer Chavez was trying to gain access to the car while it was still moving. Once stopped, the defendant did not open the doors but locked them. The defendant had no license or identification and when asked to get out of the car, he refused and buckled his seat belt. The defendant made statements which any reasonable person would take to mean I am going to resist. Law enforcement was then compelled to remove him from the vehicle. The defendant admitted he pulled away from the officers on at least three (3) occasions twisting his wrist from the grip of one officer and "extending his foot while arching into the chest of another officer."

The Court considered the demeanor and credibility of all of the witnesses and finds that among the defense witnesses there were credibility issues, issues of bias, sketchy recall or embellishment. Of all the defense witnesses, Mr. Glenn and the defendant himself appeared the most credible but the Court found some of the testimony of each to be non-credible. In resolving the inconsistencies in the testimony and considering all the facts and evidence, the Court finds that Officer Knorr was conducting a DUI investigative stop of a trash truck when the defendant began honking his horn and gesturing to Officer Knorr to get his attention. Officer Knorr ordered the defendant to stop and the defendant did not stop but continued to slowly make his way down what the Court finds to be a "road." The defendant's failure to stop when Knorr ordered him to do so set in motion the actions of other officers who participated in getting the vehicle stopped, gave various orders and ultimately arrested the defendant.

During closing arguments, the defendant attempted to address and introduce information apparently related to other encounters between Rainbow Family members and forest service law enforcement from other districts, times or events. The Court did not allow defense counsel to present this information as it would not have aided the Court in deciding whether the defendant violated the law on July 2, 2008. The decision in this

case is based solely on the facts and evidence presented at trial and the application of the appropriate law to those facts.

SENTENCE

The Court observed that during his testimony the defendant seemed to demonstrate genuine remorse for his actions July 2, 2008 which led to the issuance of the citations in this matter and to the unfortunate cascade of events which culminated in his arrest.

The Court finds that no useful purpose would be accomplished by the imposition of any jail time in this case and thus no jail time will be imposed.

The Court surmises the defendant will have some difficulty accepting the Court's decision that his behavior on July 2, 2008, violated the law. It appears clear the defendant has strongly held but inaccurate notions about certain legal concepts. The Court would encourage the defendant to objectively and carefully review and study case law with regard to traffic stops, "reasonable suspicion", "probable cause" and other constitutional and Fourth Amendment issues.

The Defendant is hereby ordered to pay the following fines and assessments:

- Violation No. F3690801: Interfering With Federal Officer While Engaged in Duties.  
\$475.00 plus \$25.00 fee.
- Violation No. F3690803: No Driver's License in Possession.  
\$200.00 plus \$25.00 fee.
- Violation No. F3690804: Resisting Arrest by Federal Officer.  
\$475.00 plus \$25.00 fee.

**Total Fines and Assessments            \$1,225.00**

The Defendant shall make monthly payments of \$100.00 per month toward his fines and fees commencing the 20<sup>th</sup> day of December, 2009 and shall pay \$100 per month until all fines and fees are paid in full. Payments shall be made to:

Central Violations Bureau  
P.O. Box 70939  
Charlotte, NC 28272-0939

The defendant shall be placed on unsupervised probation for a period of six (6) months from the date of this Judgment and Sentence and shall not violate any federal, state, local or tribal law during his probation period.

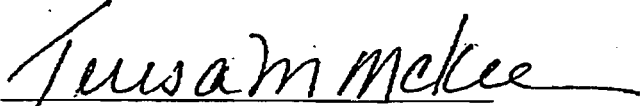
The defendant shall perform forty (40) hours of community service with the community service site to be approved in advance by the court. The defendant shall submit the proposed community service site to the court for approval by December 20, 2009 and he shall provide written proof to the Court that he has completed all community service within 120 days of this Judgment.

The defendant shall complete a traffic course consisting of not less than 4 hours.

The defendant may take the traffic course and perform community service in the State of Utah if desired.

Failure to comply with any of the terms and conditions of this Judgment and Sentence may result in the issuance of an Order requiring defendant to appear in Court to show cause, if any, he has, why he should not be held in Contempt of Court for failing to comply with the terms and conditions of this Judgment and Sentence.

Dated this 20<sup>th</sup> day of Nov, 2009.

  
Teresa M. McKee,  
United States Magistrate Judge