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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

COMMONWEALTH OF VIRGINIA,

Plaintiff,

v.

LEROY HILL, JR.,

Defendant.

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CRIM. NO. 90-0056-01-R

MEMORANDUM OPINION

BACKGROUND

This matter comes to the Court on the Commonwealth's Motion to Dismiss Defendant's Petition for Removal, filed pursuant to 28 U.S.C. § 1442(a), and Remand this case to the State court.

Defendant Leroy Hill, Jr., a Deputy United States Marshal, was issued two reckless driving summonses in connection with his driving on May 3, 1990. At the time he received the summonses, Hill was en route to pick up a prisoner, Rayful Edmond, III, from the Federal Correctional Institute at Petersburg, Va. He was to deliver the prisoner to the Alexandria City Jail. Brief in Support of Defendant's Motion to Dismiss Traffic Summons 3 [hereinafter Defendant's Brief].

On the morning of May 3, 1990, United States District Judge Charles R. Richey telephoned Supervisory Deputy Floyd Johnson, and directed that prisoner Edmond be transferred to Washington. Defendant's Brief 3. Defendant Hill was told that he was to transport Edmond to Alexandria and that Judge Richey wanted Edmond

to be available at the end of the day to meet with this attorney.
Defendant's Brief 6.

Hill then drove his automobile down Interstate 95 toward Petersburg. It is uncontested that he exceeded posted speed limits by travelling at least 75-80 miles per hour. It is uncontested that he switched from lane to lane and passed cars on the right. It is uncontested that he swerved partially into the left breakdown lane to avoid a vehicle. Defendant's Brief 8-9. The Commonwealth alleges facts showing significantly more reckless behavior.

Defendant Petitioned this Court for Removal pursuant to 28 U.S.C. § 1442(a), and Moved for Dismissal on the grounds of federal immunity. For the reasons presented below, removal is inappropriate and this case is REMANDED to the State Court.

CONCLUSIONS OF LAW

Defendant claims that Hill's position as a U.S. Marshal, combined with a judicial order to pick up a prisoner, establishes a colorable federal immunity defense that justifies removal. However, the holding of the Supreme Court in Mesa v. California, 109 S.Ct. 959, 103 L.Ed. 2d 99 (1989), as interpreted by this Circuit in North Carolina v. Ivory, 906 F.2d 999 (4th Cir. 1990), requires a remand in this case.

In Mesa, the United States Supreme Court considered the appropriateness of removing cases involving U.S. Postal workers who were in traffic accidents. The Court held that removal is only proper when a federal defense is averred. Mesa, 103 L. Ed. 2d at

116. Both the Supreme Court and the Ninth Circuit explicitly rejected the idea that removal is proper because the defendant was functioning under color of office. California v. Mesa, 813 F.2d 960 (9th Cir. 1987), aff'd 109 S.Ct. 959 (1989). Both Courts also cited important policy arguments in favor of remanding such cases to the State Courts. Chief among these were the crowded federal docket and the frequently inconvenient location of the federal courthouse. Mesa, 103 L. Ed. 2d at 115; California v. Mesa, 813 F.2d at 967. These policy concerns are equally valid here.

The Fourth Circuit specifically addressed the requirement of a "colorable federal defense" in North Carolina v. Ivory, 906 F.2d 999 (4th Cir. 1990). Ivory involved a U.S. Marine who was involved in a traffic accident. In support of removal, the Marine contended that he was "under orders from his military superiors to proceed into the intersection if he saw that it was safe to do so." Ivory, 906 F.2d at 1003. The Defendant Ivory contended that such an order constituted a colorable federal defense, and the dissenting opinion agreed. But, Judge Wilkinson's majority opinion, which is binding upon this Court, found that no such defense was available. Judge Wilkinson concluded that "[t]he kind of routine order relied upon by Ivory ... cannot without more be the basis of federal immunity." Id.

The majority opinion distinguished the cases involving military emergencies or specific orders to ignore state law from those involving general orders. When merely general orders are given, the Fourth Circuit concluded that important state goals

do not justify removal. In words that apply equally well to the case before this Court today, the Fourth Circuit noted that "[t]he rules of the road depend for effect on universal observance immunity ... is a chilling prospect for pedestrians and other drivers who must use the road." Id.

Defendant argues that Judge Richey's order, and the need for speed, create a federal defense. Certainly, if Judge Richey had ordered Hill to exceed posted speed limits; or if he had ordered Hill to reach Petersburg at a specific time, regardless of state traffic laws, this case would be different. Yet despite defendant's dramatic presentation in his brief, there is no allegation that Judge Richey intended for Hill to exceed posted speed limits, or that he imposed a deadline knowing it to be unattainable without exceeding posted speeds. Instead, there is every indication that Judge Richey gave perfectly routine instructions to have a prisoner transferred, and added a desirable time frame. His "order," like the order issued to Ivory, was a general directive to perform a task. His instructions did not contemplate a violation of state law, nor can they be used to establish a colorable federal immunity defense. Hill's subjective inference that Judge Richey ordered him to violate the posted speed limits and other traffic laws was unreasonable as a matter of law. See In Re Neagle, 135 U.S. 1 (1890); Clifton v. Cox, 549 F.2d 722, 728 (9th Cir. 1977).

To rule otherwise would invite the flood of immunity cases which Mesa and Ivory sought to avoid. Orders to travel to specific

locations within general time frames are routinely issued by a host of federal agencies and bodies. Yet those agencies do not anticipate that their instructions sanction violations of state traffic laws. Indeed, the standard instructions to U.S. Marshals is that "the vehicle must be operated in a safe and prudent manner and all traffic laws must be obeyed." U.S. Marshal's Service Manual Section 5.7-4.d.3 page 5-224. Since the only reasonable interpretation of Judge Richey's order is that it would be carried out consistently with state law and the Marshal's Practice Manual, his instructions do not create a colorable federal defense.

Here, defendant seek federal immunity for his James Bond driving technique. No prisoner was in the car, and the only lives in jeopardy were those of the other motorists on Interstate 95. A loose judicial "order" to pick up a prisoner and bring him back during normal business hours is not a license to ignore the law, nor does it provide grounds for removal to federal court.

For the foregoing reasons, the Petition for Removal should be DENIED and this case should be REMANDED to the State Court for trial.

DATE

UNITED STATES DISTRICT JUDGE

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FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

COMMONWEALTH OF VIRGINIA)
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Plaintiff,)
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v.) CRIM. NO. 90-0056-01-R
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LEROY HILL, JR.)
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Defendant.)

FINAL ORDER

This matter comes to the Court on the Commonwealth's Motion to Dismiss Defendant's Petition for Removal, pursuant to 28 U.S.C. § 1442(a), and Remand this case to the State court. For the reasons stated from the bench and in the accompanying Memorandum Opinion, the Commonwealth's Motion is GRANTED and this case is REMANDED to the State Court for trial.

It is so ORDERED.

Let the Clerk send a copy of this Order and the accompanying Memorandum Opinion to all counsel of record.

DATE

UNITED STATES DISTRICT JUDGE