

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION

UNITED STATES OF AMERICA,
Plaintiff,
v.

Case No. 19-CR-151

FRANCISCO MARTINEZ,
Defendant.

**MOTION TO SUPPRESS EVIDENCE RECOVERED FROM STOP, SEARCH
OF FRANCISCO MARTINEZ'S PERSON AND SEARCH OF VEHICLE IN
MOHAVE COUNTY, ARIZONA**

INTRODUCTION

Francisco Martinez, by his Attorney, Edward J. Hunt, Hunt Law Group, S.C., hereby moves the Court to suppress evidence because of law enforcement action in which Martinez was stopped, detained, seized and a car he was operating was searched in violation of the Fourth Amendment to the United States Constitution. The stop, detention, seizure, search of Martinez's person and search of a vehicle, a 2018 Dodge, he was operating on January 30, 2019 led to recovery of \$77,745 and a Mirandized interview of Martinez as well as a later drug

dog sniff of some of the money recovered. Martinez wants all evidence arising from the stop, including, but not limited to, observations of law enforcement and testimony of law enforcement flowing from the encounter with Martinez and his car, as well as all questions put to Martinez by law enforcement and all answers he gave in response to questions by law enforcement.

On February 28, 2020, pursuant to United States District Court for the Eastern District of Wisconsin Criminal Local Rule 12 (c), the government, by Assistant United States Attorney William J. Roach, and defendant, by Attorney Edward J. Hunt, have conferred regarding this motion. The government disagrees with Martinez's arguments and his legal conclusions. The disputed facts are as follows: (1) whether the defendant was seized by law enforcement, (2) whether law enforcement had reasonable suspicion to initially seize the defendant for a traffic violation, (3) whether law enforcement unreasonably seized Martinez by prolonging the seizure for a traffic matter beyond the time reasonably required to issue citations for traffic infractions, (4) whether law enforcement

officers acted reasonably in seizing and searching the defendant and the vehicle following a purported traffic stop. The government opposes the granting of suppression of evidence sought by this motion. The parties are unable to reach an accord. And so the Court will have to decide this motion by way of an evidentiary hearing. The evidentiary hearing is not anticipated to exceed one hour and thirty minutes of court time. No more than four witnesses may be called.

STATEMENT AS TO STANDING

Francisco Martinez has a legitimate expectation of privacy in terms of his person and personal effects. "[T]his Court uniformly has held that the application of the Fourth Amendment depends on whether the person invoking its protection can claim a justifiable, a reasonable, or a legitimate expectation of privacy that has been invaded by government action. . . This inquiry. . . normally embraces two discrete questions. The first is whether the individual, by his conduct, has exhibited an actual (subjective) expectation of privacy. . . The second question is whether the individual's subjective

expectation of privacy is one that society is prepared to recognize as reasonable,. . . whether . . . the individual's expectation, viewed objectively, is justifiable under the circumstances." *Smith v. Maryland*, 442 U.S. 735, 740 (1979). The Fourth Amendment "protects people from unreasonable government intrusions into their legitimate expectation of privacy." *United States v. Chadwick*, 433 U.S. 1, 7 (1977). "The Fourth Amendment protects people, not places." *Katz v. United States*, 389 U.S. 347, 351 (1967). Martinez therefore contends that he has standing to challenge the stop of his person, the seizure of his person, and the search of his person and personal effects and the search of the automobile he was operating.

BACKGROUND

On January 30, 2019, Arizona Department of Public Safety Trooper Thomas Callister stopped a vehicle operated by the defendant on Interstate 15 in Mojave County, Arizona. The Trooper claimed he was stopping the 2018 Dodge because he believed that the positioning of the GPS Unit and radar detector obscured the driver's

view of the road through the front windshield. The Trooper identified the driver as Francisco Martinez. He believed Martinez to be "nervous". The Trooper took Martinez's driver's license and told Martinez to sit in the passenger side of the vehicle. While issuing a warning ticket, the Trooper claims he engaged in casual conversation. However, the questions do not appear to be casual and the detention prolonged beyond the time necessary to issue any citation. Then the Trooper continued to detain Martinez in the front passenger side of the patrol car for an extended period while the Trooper engaged in a lengthy series of questions. At one point, the officer asked if the car could be searched and if a drug dog could run around the vehicle. Eventually Martinez consented to a search of the vehicle. According to the Trooper, Martinez did not want to wait for a drug dog. After a search of the vehicle and compartments, \$77,745.00 was recovered and seized.

ARGUMENT

1.The stop of Martinez not supported by reasonable suspicion.

To justify the stop or seizure of an individual, police must have specific and articulable facts that objectively support reasonable suspicion that the person has engaged in, is engaging in, or is about to engage in criminal activity. *See Terry v. Ohio*, 392 U.S. 1 (1968). The determination of whether a stop is reasonable and based on enough information requires examining the totality of the circumstances. *See United States v. Swift*, 220 F.3d 502, 506 (7th Cir. 2000). A person is considered seized when documents are taken from them that they need to continue on their way, and when given commands by an officer that indicate compliance might be compelled. *See United States v. Noble*, 69 F.3d 172, 181 (7th Cir. 1995). Analysis of a seizure is limited to the moment it occurs and excludes any facts learned later, no matter how compelling they may be. *See United States v. Odum*, 72 F.3d 1279, 1284 (7th Cir. 1995).

Law enforcement reports claim the defendant seeming nervous. Nervousness alone cannot justify a stop. See *Huff v. Reichert*, 744 F.3d 999, 1007 fn. 3 (7th Cir. 2014). Likewise avoiding eye contact and some other “nervous” body shifts or movements do not justify a stop either. See *United States v. Williams*, 731 F.3d 678, 687 (7th Cir. 2013).

The illegal seizure here mandates that all evidence obtained subsequent to the illegal stop and seizure must be suppressed as fruit of the poisonous tree. See *Wong Sun v. United States*, 371 U.S. 471, 487-93 (1963).

II. Law Enforcement Unreasonably Seized Martinez by Prolonging the Seizure for a Traffic Matter Beyond the Time Reasonably Required to Issue Citations for Traffic Infractions.

In *Rodriguez v. United States*, 135 S. Ct. 1609 (2015), the U.S. Supreme Court stressed that a seizure justified only by a police-observed traffic violation becomes unlawful if it is prolonged beyond the time reasonably required to complete the mission of issuing a ticket for the violation. The stop may not exceed the time needed to handle the matter for which the stop was

made. In *Rodriguez*, the issue was raised in the context of whether the police unnecessarily extended the traffic-violation stop to conduct a dog sniff of the exterior of the vehicle for drugs.

The suspect in *Rodriguez* was lawfully stopped for driving on the shoulder of the highway, a violation of the traffic code. *Id.* at 1610. The officer ran his license, and issued him a warning, and then asked permission to conduct a drug sweep of the vehicle. *Id.* The driver declined and the officer called a drug dog who arrived and conducted a sweep of the vehicle *Id.* The Court held that although only seven (7) to eight (8) minutes passed from the issuance of the citation to the dog's alert, the short detention was illegal, and unreasonable under the Fourth Amendment. *Id.* at 1610-11. The *Rodriguez* court clarified that "[t]he critical question is not whether the dog sniff occurs before or after the officer issues a ticket, but whether conducting the sniff adds time to the stop." *Id.* at 1612.

Martinez was allegedly stopped for a traffic offense involving GPS and radar detector obscuring his vision

from his windshield on a highway in Mojave County Arizona. But he was detained much longer than is reasonable under the Fourth Amendment and far past the time necessary to issue traffic citations. Here the extended questioning of Martinez in the police car added time to the stop and prolonged the detention far beyond the time reasonably required to complete the mission of issuing a ticket for the violation of any traffic laws. The police action here violates the Fourth Amendment. The teaching of *Rodriguez* is that everything observed, heard, and recovered by law enforcement must be suppressed following the illegal stop and seizure here.

CONCLUSION

In light of the above, Martinez requests an evidentiary hearing on this motion. At the conclusion of the hearing, he will move to suppress evidence recovered subsequent to the unreasonable and prolonged detention and all other "fruit" of the unlawful and unreasonable seizure of Martinez.

Dated this 28th of February, 2020.

Respectfully submitted,

HUNT LAW GROUP, S.C.

Electronically Signed by/s/Edward J. Hunt
Attorney for
Francisco Martinez
Edward J. Hunt
Attorney at Law
SBN: 1005649
Edhuntlaw@gmail.com

Mailing Address:

THE HUNT LAW GROUP, S.C.

342 North Water Street
Milwaukee, Wisconsin 53202-3910
(414) 225-0111