

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 19-CR-151

FRANCISCO MARTINEZ,

Defendant.

GOVERNMENT RESPONSE TO MOTIONS TO SUPPRESS EVIDENCE

The United States of America, by its attorneys, Matthew D. Krueger, United States Attorney for the Eastern District of Wisconsin, and William J. Roach, Assistant United States Attorney, provides the following response to Francisco Martinez's motions to suppress evidence seized as a result of traffic stops on January 30, 2019, in Arizona, and May 24, 2019, in Fond du Lac County.

The government agrees that an evidentiary hearing will be necessary and anticipates testimony from three or four law enforcement witnesses. The estimated length of the motion hearing is two hours.

In sum, Martinez was stopped driving his car on both occasions by law enforcement after observing him commit traffic law violations. During the Fond du Lac County stop, a deputy sheriff and his drug detection dog arrived at the same time that Martinez was stopped by Wisconsin State Patrol. The drug detection dog alerted on the car within approximately three minutes of Martinez being stopped. During the Arizona stop, Martinez initially declined consent to search but agreed

to a dog sniff of his car. After being told it would take up to 30 minutes for the dog and handler to arrive, Martinez consented to a search of the car. In both instances, law enforcement observed a trap compartment built into the rear portion of the cars. Arizona law enforcement seized approximately \$77,745 from the trap compartment. Fond du Lac law enforcement did not locate anything in the trap compartment but did observe that Martinez possessed approximately \$1000. For the forgoing reasons, both motions to suppress should be denied.

I. Arizona stop.

On January 30, 2019, at approximately 4:14 p.m., Arizona State Trooper Callister stopped a car driven by Francisco Martinez after observing a violation of Arizona traffic law 28-959.01(B) which prohibits the operation of a car with an object that obstructs or reduces a driver's clear view through the windshield. Trooper Callister observed both a radar detector and large GPS device affixed to the front wind shield obstructing the driver's view. After stopping the car, Trooper Callister spoke with Martinez and observed he appeared increasingly nervous as they discussed his travel. Further, Martinez provided inconsistent answers to questions posed. Trooper Callister asked Martinez for consent to search to search and he declined. Martinez consented, however, to allowing a drug dog sniff of the exterior of the car. When told the drug dog would take five to thirty minutes for arrival, Martinez told Trooper Callister to search the car because he didn't want to wait for the dog. Trooper Callister located a trap compartment in the rear of the car where a spare tire would be placed. At approximately 4:44 p.m., Trooper Callister asked Martinez about the spare tire compartment. Martinez stated he did not know where the spare time was at which point he was detained. Trooper Callister then searched the trap compartment and seized approximately \$77,745. Martinez was arrested at approximately 4:53 p.m.

II. Fond du Lac stop.

On May 24, 2019, at approximately 7:16 p.m., Wisconsin State Patrol Trooper Ackley stopped Francisco Martinez after observing violations of the following traffic statutes: (1) Wis. Stats. Section 341.15(2) - illegal license plate bracket; and (2) Wis. Stats. Section 346.05(3) - failure of slower vehicle to keep right. Fond du Lac County Sheriff Deputy Weisbecker and his drug detection dog arrived at the same time. Upon making contact with Martinez, who was driving the car, Trooper Ackley observed that he was nervous. Within approximately three minutes of the stop, Deputy Weisbecker used his drug detection dog to conduct an exterior sniff of the car. The dog alerted on the car, Martinez was removed from the car, and it was then searched. After officers located what appeared to be a trap used for transporting illegal substances, the drug detection dog again alerted in the area of the trap. Martinez's car was towed to the Fond du Lac County Sheriff's Office where a warrant was obtained and the car further searched. Officers confirmed the car had a trap compartment affixed to the rear area where the spare tire would have been located. The trap compartment was empty when searched but Martinez was found to have approximately \$1000 on him.

III. Legal authority for stop and search.

a. Probable cause to stop.

When a police officer reasonably believes that a driver has committed even a minor traffic offense, probable cause supports the stop.¹ *United States v. Garcia-Garcia*, 633 F.3d 608, 613 (7th

¹ A traffic stop can also be justified by the lesser standard of reasonable suspicion. *Rodriguez v. United States*, 575 U.S. 348, 365 (2015) (other citations omitted). These "Terry" type stops must be "justified at its inception" and reasonably related in scope to the circumstances which justified the interference." *Id.* In contrast, probable cause stops offer a law enforcement officer greater leeway including the warrantless arrest and search incident to arrest of the driver. *Id.*

Cir 2011). The subjective motivation of law enforcement for stopping and detaining a suspect are not relevant to the reasonableness inquiry. *United States v. Bullock*, 632 F.3d 1004, 1012 (7th Cir 2013). Rather, probable cause is an objective standard, based on the totality of circumstances leading to the traffic stop. *United States v. Lewis*, 920 F.3d 483 489 (7th Cir 2019). “Whether the driver actually committed a traffic infraction is irrelevant for Fourth Amendment purposes so long as there was an objective basis for a reasonable belief he did. *Id.*”

When police conduct the stop, they are entitled to demand the driver’s identification, check the driver’s record for active warrants, as well as driving and criminal history. *Rodriguez*, 575 U.S. at 355. Officers do not need reasonable suspicion to ask questions unrelated to the traffic stop as long as the unrelated questions do not unreasonably prolong the stop. *Arizona v. Johnson*, 555 U.S. 323, 328 (2009). A traffic stop is unreasonably prolonged if it exceeds “the time reasonably required to complete th[e]mission” of issuing a warning ticket. *Rodriguez*, 575 at 354-355 (other citations omitted). Once the officer has addressed the traffic violation, the driver must be permitted to leave unless (1) the encounter between the driver and officer becomes consensual; or (2) the officer gains an independent reasonable suspicion that the driver is engaged in illegal activity. *Id.*; *Ohio v. Robinette*, 519 U.S. 33 (1996).

b. Dog sniff

A dog’s alert on a car during a lawful stop for a traffic violation does not infringe Fourth Amendment rights, even absent reasonable suspicion of drug. *Illinois v. Caballes*, 543 U.S. 405, 407 (2005). Thus, calling a drug detection dog to the scene of a traffic stop does not “unlawfully extend the stop as long as the normal process for pursuing a traffic ticket is ongoing.” *United States v. Simon*, 937 F.3d 820, 832 (7th Cir 2019). However, as noted above, a seizure of a driver during

a traffic stop turns unlawful if it is prolonged in order to conduct a dog sniff without reasonable suspicion that there are illegal drugs secreted in the stopped car. *Rodriguez* 575 U.S. at 357. Put another way, with independent reasonable suspicion, the officer may constitutionally detain the suspect for the dog sniff even if it adds time to the total stop. In determining whether reasonable suspicion exists to continue the detention, courts consider the totality of circumstances including the defendants conduct and officers training and experience. *United States v. Cortez* 449 U.S. 411, 418 (1981). A drug dog alert to drugs in a car provides probable cause to search the entire car. *Simon*, 937 F.3d at 833.

Turning to the two traffic stops challenged in this case, law enforcement had probable cause that Martinez violated a traffic law justifying each of the initial stops. In the Fond du Lac case, the traffic stop was not unreasonably prolonged because the drug dog was present and utilized within minutes of Martinez pulling over to the side of the road. Courts have upheld much longer detentions while law enforcement await the arrival of the drug do. *United States v. Sanford* 806 F.3d 954 (7th Cir 2015) (8 minute wait for drug dog upheld) *United States v. Johnson* 331 Fed. Appx 408 (7th Cir 2009) (27 minute total traffic stop with first 12 minutes constituting background questions and ticket preparation before dog arrived) *United States v. Muriel*, 418 F.3d 720 (7th Cir 2005) (traffic stop to arrest took 18 minutes including consent to search leading to drug seizure) *Simon* 937 F.3d at 820 (beginning of stop to dog alert was about 7 minutes).

In the Arizona case, Trooper Callister reasonably extended the length of the traffic stop based on the totality of circumstances. Based on Trooper Callister's training and experience, these circumstances included the following: (1) a long solo trip by car from Chicago to California, a known state for drug smuggling; (2) Martinez was excessively nervous and his hands shook; (3)

Inconsistent statements such as Martinez claimed he did not travel to California on a regular basis but also stated this was the second trip in two weeks to visit the same family; (4) Martinez stated his wife and children remained at home in Chicago where it was approximately -25 degrees while he enjoyed (another) vacation to California to visit family. Although there may be an innocent explanation for each individual factor considered by an officer to support probable cause to search, when considered together given officers experience, the factors can arise to reasonable suspicion. *United States v. Finke*, 85 F.3d 1275, 1280 (7th Cir. 1996). These circumstances certainly supported Trooper Callister's decision to ask for consent to search. Martinez was told he did not have to consent. The government will establish at the evidentiary hearing that his consent was voluntary. *See Ohio v. Robinette* 519 U.S. 33 (1996). After receiving consent to search the car, Trooper Callister located the trap compartment and ultimately seized a large amount of money hidden within the compartment.

For these reasons and others that will be presented at the evidentiary hearing, the government will respectfully request the Court deny the defense motions.

Dated this 19th day of March, 2020.

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