

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.

**AMENDED AND CORRECTED MOTION TO SUPPRESS EVIDENCE
RECOVERED FROM STOP, SEARCH OF FRANCISCO MARTINEZ'S
PERSON AND PROPERTY AND SEARCH OF VEHICLE IN FOND DU
LAC COUNTY**

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 his car searched in violation of the Fourth Amendment to the United States Constitution. Although the illegal stop, detention, seizure, search of Martinez's person and search of the 2007 Cadillac Escalade on May 24, 2019, discussed in more detail below, resulted in no evidence

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 2007 Cadillac Escalade, 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 May 24, 2019, a Wisconsin State Patrol conducted a traffic stop on a 2007 Cadillac Escalade with IL plate BL85959 on State Highway 26 just north of US highway 151. The Wisconsin State Patrol Officer claims the reason for the stop was "for illegal license plate bracket and failure of slower vehicle to keep right." The trooper

also claims the driver, Francisco Martinez, "appeared nervous." Wisconsin State Patrol utilized a K9 and the K9 indicated on the vehicle. Officers searched the vehicle and located a false compartment under the back portion of the vehicle. The vehicle was towed to the Fond du Lac County Sheriff's Office. Detective Ryan Flood of the Fond du Lac County Sheriff's Department completed a search warrant for the 2007 Cadillac Escalade. Once the Search Warrant for the vehicle was signed by a Judge, Detective Ryan Flood and Officer Vance Henning searched the vehicle, to include the false compartment. The false compartment was empty at this time. The vehicle remained at the Fond du Lac County Sheriff's Office. Francisco Martinez was released.

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).

The defendant asserts that he was seized from the moment the automobile, a 2007 Cadillac Escalade, was stopped by law enforcement. A drug dog arrived. The defendant was further detained. He was not free to leave. He was held for several hours while the automobile was towed from the roadway to the Fond du Lac County Sheriff's Office. Fond du Lac County Sheriff's Department completed a search warrant for the 2007 Cadillac

Escalade. Once the search warrant for the vehicle was signed by a Judge, officers searched the vehicle. A false compartment was found to be empty. The vehicle remained at the Fond du Lac County Sheriff's Office. Throughout the many hours he was held subsequent to the traffic stop including the time of the dog sniff, and while the car was being towed and later searched, Martinez believed he was under arrest and not free to leave.

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 traffic offenses, "illegal license plate bracket and failure of slower vehicle to keep right." But he was detained much longer than is reasonable under the Fourth Amendment and far past the time necessary to issue citations. Here the dog sniff added time to the stop and so did towing the car from the roadway and so did obtaining a warrant. 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.

CONCLUSION

In light of the above, Francisco Martinez requests an evidentiary hearing on this motion. At the conclusion

of the hearing, he will move to suppress evidence including, but not limited to, observations of law enforcement and testimony of law enforcement flowing from the encounter with Martinez and 2007 Cadillac Escalade, as well as all questions put to Martinez by law enforcement and all answers he gave in response to questions by law enforcement on **May 24, 2019** as well as all other "fruit" of the initial unlawful seizure of **Martinez**.

Dated this 28th of February, 2020.

Respectfully submitted,

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Electronically Signed by/s/Edward J. Hunt
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