

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 19-CR-151

FRANCISCO MARTINEZ,

Defendant.

GOVERNMENT BRIEF IN SUPPORT OF TRAFFIC STOPS

The United States of America, by its attorneys, Mathew D. Krueger, United States Attorney for the Eastern District of Wisconsin, and William J. Roach, Assistant United States Attorney, provides this response following testimony taken on September 4, 2020, concerning two traffic stops of Francisco Martinez. At the hearing, law enforcement testified that they stopped Martinez's vehicle after identifying at least one traffic violation. As to the first stop, after receiving consent to search from Martinez, Arizona law enforcement seized approximately \$77,745 from the trap compartment of his vehicle. In the second case, a drug dog hit on Martinez's car resulting in law enforcement searching the car and locating a trap compartment as well as approximately \$1000. For the forgoing reasons, both motions to suppress should be denied.

I. Legal authority for stop and search.

The government bears the burden of proving by preponderance of evidence that a warrantless search or seizure falls within an exception to the warrant requirement. *United States v. Matlock*, 415 U.S. 164, 177 (1974). One exception to the warrant requirement is the automobile

exception which allows an officer to conduct a search if there is probable cause to believe it contains contraband. *Arizona v. Gant*, 556 U.S. 332 (2009).

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 Cir. 2011). Probable cause is an objective standard, determined 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.* Additionally, the subjective motivation of law enforcement for stopping and detaining a suspect is not relevant to the reasonableness inquiry. *United States v. Bullock*, 632 F.3d 1004, 1012 (7th Cir. 2013). The Constitution simply requires the officer and the entire process be reasonable. *United States v. Childs*, 277 F.3d 947, 954 (7th Cir. 2002).

b. Unreasonably prolonged traffic stop.

A lawful traffic stop can become unlawful if it is unreasonably prolonged, meaning it exceeds “the time reasonably required to complete th[e]mission” of issuing a warning ticket. *Rodriguez v. United States* 575 US 348, 354-355. (2015) (other citations omitted). As part of a lawful traffic stop, law enforcement may order the driver and passenger out of the car because of “weighty interest in officer safety” and inherent dangers of traffic stops. *Maryland v. Wilson* 519

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 in the first place.” *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.*

U.S. 408 (1997). When police stop a car, they are also entitled to demand the driver's identification, check the driver's record for active warrants, driving history, and criminal history. *Rodriguez*, 575 U.S. at 355. Officers may also 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); *Childs*, 277 F.3d at 954 ("Officer asking one question about marijuana after conclusion of the traffic stop did not unreasonably prolong the stop. What happened here must occur thousands of time daily across the nation....That is not an unreasonable law-enforcement strategy...").

Traffic stops taking in excess of 10 minutes for the officer to write the traffic ticket or warning are not unreasonable. *United States v. Bueno* 703 F.3d 1053 (7th Cir. 2013) (11 minute traffic stop reasonable); *United States v. Johnson* 331 Fed. Appx 408 (7th Cir. 2009) (27 minute total traffic stop with first 12 minutes including background questions and ticket preparation); *United States v. Street*, 917 F.3d 586, 597 (7th Cir. 2019)(stop lasting ten to fifteen minutes was reasonable under the circumstances); *United States v. Olivera-Mendez*, 484 F.3d 505, 508 (8th Cir. 2007) (fifteen minute wait for dispatcher to respond to results of name check was reasonable); *United States v. Purcell*, 236 F.3d 1274, 1279 (11th Cir. 2001) (approving of a fourteen minute stop); *United States v. Muriel*, 418 F.3d 720 (7th Cir. 2005) (thirteen minute time period between traffic stop and requesting consent was reasonable).

c. If prolonged, reasonable suspicion of criminal activity must exist.

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. *Ohio v. Robinette*, 519 U.S. 33 (1996). Reasonable suspicion is a low threshold and requires only some minimal level

of objective justification for making the stop. *United States. Sokolow*, 490 U.S. 1, 7 (1989). Reasonable suspicion does not ask what is plausible. *Navarette v. California*, 572 U.S. 393, 403 (2014). Rather, the inquiry is based on commonsense judgments and inferences about human behavior. *Kansas v. Glover*, 140 S.Ct. 1183, 1188 (2020). Because reasonable suspicion is a less demanding standard than probable cause, it can arise from information that is less reliable. *Alabama v. White*, 496 U.S. 325, 330 (1990).

To meet the reasonable suspicion requirement, the officer must have a particularized and objective basis for suspecting the person detained has violated the law. *Heien v. North Carolina*, 574 U.S. 54, 61 (2014). This assessment is based on the totality of circumstances. A divide and conquer analysis examining each factor in isolation is prohibited. *District of Columbia v. Wesby*, 138 S.Ct 577, 588 (2018). Although there may be an innocent explanation for each individual factor considered by an officer to support the search, when considered together, given the officers experience, and specialized knowledge, the factors can arise to reasonable suspicion. *United States v. Finke* 85 F.3d 1275, 1280 (7th Cir.1996).

When making the reasonable suspicion determination, officers can rely on a wide range of circumstances. Officers can call on their specialized training which allows them to make inferences from and deductions about cumulative information available which could easily elude an untrained person. *United States v. Arvizu* 534 U.S. 266 (2002); *United States v. Zambrana*, 428 F.3d 670, 675 (7th Cir. 2005). In fact, deference is to be accorded a law enforcement officers ability to distinguish between innocent and suspicious actions. *United States v. Wood*, 106 F.3d 942 (10th Cir.1997); *United States v. McHugh*, 639 F.3d 1250, 1256 (10th Cir. 2011). Officers can also consider the anxiety and nervousness of a driver. *United States v. Brown*, 188 F.3d 860 (7th Cir.

1999). With drug related traffic stops, courts have upheld officers factoring in common routes for drug-trafficking. *United States v. Bueno*, 703 F.3d 1053, 1063 (7th Cir 2013); *See also United States v. Cervantes*, 797 F.3d 326, 336 (5th Cir. 2015) (the highway's reputation as a smuggling route weighs in favor of reasonable suspicion); *United States v. Pack* 612 F.3d 341, 350 (5th Cir. 2010) (Reasonable suspicion existed where officer testified as to defendant and passengers nervousness, driver and defendant's conflicting stories, and fact that traveling on a known drug corridor). Officers can also rely on unusual travel plans. *Sokolow*, 490 U.S. at 9 (Supreme Court found "probative significance" in fact that the defendant traveled from Honolulu for 20 hours to spend 48 hours in Miami in the month of July).

II. Traffic stops of Martinez

a. Arizona stop

On January 30, 2019, Arizona State Trooper Callister was patrolling Interstate 15 as he has done for the previous twelve years. Trooper Callister said that in his experience, I15 is a drug corridor typically used to transport money south into southern California and drugs north from that area. Trooper Callister has made hundreds of vehicle stops resulting in the recovery of drugs or money proceeds. This year alone, he seized 400 pounds of methamphetamine, 350 pounds of marijuana, cocaine, heroin, and several hundred thousand dollars cash proceeds.

At approximately 4:15 p.m. that day, Trooper Callister stopped a car driven by Francisco Martinez after observing a violation of Arizona traffic law 28-959.01(B). That statute 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. Trooper Callister has stopped others for this same

violation and one of these stops was affirmed on appeal. *See State v. Rigoberto Meza-Contreras*, 2016 WL 3021977 (Ct. App. Arizona, 2016) (Officer Callister's stop of car for the GPS device attached to windshield was lawful and request for consent to search did not "measurably" delay the stop).

After stopping the car, Trooper Callister advised Martinez of the reason for the stop and requested his driver's license and registration. Martinez appeared "very nervous" and his hand was shaking as he provided the documents. Martinez said the vehicle was registered to his brother-in-law.

Within several minutes of the stop, Trooper Callister asked Martinez to step out of the car and into his squad so that he could prepare a written warning. He does so for officer safety and to fully capture the encounter on his video camera. After entering his squad, Trooper Callister opened his squad computer, checked for any outstanding warrants, and went about the business of preparing the written warning. Trooper Callister testified that his traffic stops, including those where warnings are issued, last between ten and twenty minutes. In this case, Trooper Callister testified that by approximately 4:24 pm, he had completed writing the warning for Martinez. At that time, Trooper Callister asked Martinez whether he had anything illegal in his car. Martinez responded he did not. Trooper Callister then asked whether there was any cash in the car. Martinez responded he had approximately \$2,000.

Trooper Callister asked these questions because his observations and Martinez's statements were indicative of others he had stopped who were transporting money or drugs. First, Trooper Callister testified that Martinez's travel plans did not make any sense. Martinez said that he was traveling to California for a vacation to visit cousins. He added that in a few weeks he would be

traveling again to California, this time with his family, for a 15 year-olds birthday party. Yet, on the day of the traffic stop, Illinois was in the midst of brutal winter weather and, with his wife and children at home, Martinez was traveling alone, by car (a 30 plus hour trip) on a vacation to see cousins only to do so again several weeks later. That is especially suspicious given Martinez's admission that he only travels to California once a year or every other year. Trooper Callister's more reasonable explanation, per his experience, was that Martinez was trafficking in controlled substances necessitating his cross country drive instead of travel by plane where he would encounter security checkpoints.

Trooper Callister noted other circumstances supporting his belief. Second, he noted that Martinez' hand was shaking and he was very nervous at the time of the stop. This nervousness did not lessen but increased as the stop continued. This is to be distinguished from Trooper Callister's observations of other motorists during non-drug related traffic stops. Third, Trooper Callister noted that Martinez was driving a third person's vehicle which is common for those transporting drug or money. Martinez referred to the owner as his brother-in-law, then step-brother, and never made clear why he was driving the vehicle. And finally, Martinez admitting he possessed approximately \$2,000. In Trooper Callister's experience, few law-abiding people travel with that much cash. Given these circumstances, Trooper Callister believed the funds were "payout money" used by a courier to purchase gas and other items enroute to obtaining drugs.

At approximately 4:26 pm, Trooper Callister asked Martinez for consent to search which he initially agreed to but then 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. This

exchange was captured by Trooper Callister's squad camera and included in the video admitted at the motion hearing. Trooper Callister testified that by this time, he believed that Martinez's driver's license and registration had been returned but could not say so definitively. At approximately 4:29 p.m., just 14 minutes into the traffic stop, Trooper Callister began searching the car. Within five minutes, Trooper Callister observed what he believed to be a trap compartment at the rear of the car where the spare tire is typically located. Martinez said there was "random stuff" in the rear of the vehicle and did not know where the spare tire was located. At approximately 4:43 pm, Trooper Callister pried an edge to the trap and saw a large bag of currency. Martinez was then arrested approximately 30 minutes after the initial stop. The trap compartment contained approximately \$77,745.

There is no reasonable dispute that Trooper Callister had probable cause to stop Martinez for the windshield obstruction violation. Next, Trooper Callister diligently pursued and completed writing the written warning for Martinez, all occurring within approximately 10 minutes of the initial stop. Trooper Callister then extended the stop by only a few seconds when he asked for consent and permission to bring a drug dog to the scene. This happened well within the 10-20 minute range of his typical traffic stops and is comparable to the length of other stops courts have deemed reasonable. This stop was not unreasonably prolonged.

But even if it was prolonged, Trooper Callister can lawfully continue his investigation with either consent or reasonable suspicion. Trooper Callister testified that he never told Martinez he could not leave. In fact, Trooper Callister can be heard on video asking Martinez to step out of the car so he can provide a warning. While in the squad car, Trooper Callister never indicated compliance with his request to search or call for a drug dog was mandatory. Before the questions

were asked, Trooper Callister had completed the warning and believed he had returned the drivers license and registration to Martinez. His encounter with Martinez at this point was consensual and thus no longer a seizure within the purview of Fourth Amendment consideration. *United States v. Williams*, 945 F.2d 192, 195 (7th Cir. 1991).

Even if not consensual, Trooper Callister had reasonable suspicion to prolong this traffic stop. The specific circumstances in support are stated above. In total, when viewed through eyes of an experienced officer like Trooper Callister, the innocent explanations that Martinez offered look less likely and the not-so-innocent explanations begin to look more likely. Trooper Callister was on solid factual and legal ground asking for consent to search the car. *Ohio v. Robinette* 519 US 33 (1996).

Martinez will certainly contend that Trooper Callister was wrong in his belief either as to the facts or the law. That does mean, however, suppression is necessarily the remedy. The Fourth amendment does not demand perfection from police officers. *Heien v. North Carolina* 574 U.S. 54, 61 (2014). As stated in *Heien*, “Reasonable suspicion arises from the combination of an officers understanding of the facts and his understanding of relevant law. The officer may be reasonably mistaken on either ground.” *Id.*

Finally, the record supports Martinez’s consent to search being voluntary. Again, the exchange between Martinez and Trooper Callister was recorded and included as a hearing exhibit. The government bears burden of proving by preponderance of evidence that consent was freely and voluntarily given. *United States v. Sandoval-Vasquez*, 435 F.3d 739 (7th Cir. 2006). The voluntariness of consent is determined by the totality of circumstances including the subjects age, whether advised of rights, how long detained, if consent was immediate or provided after

badgering the subject, whether any physical coercion occurred and if the subject was in police custody. *United States v. Morgan*, 725 F.2d 56 (7th Cir. 1984). The video confirms that Martinez was told he could refuse consent and did do so. In the end, Martinez's decision not to wait for the drug dog but to allow Trooper Callister to search was voluntary and apparently motivated by a desire to appear cooperative and avoid a drug detection dog from arriving on scene.

b. Fond du Lac stop.

In May 2019, Brown County Drug Task Force Investigator Al Wysocki was building a drug case against Ruben Ortiz and others operating in the Green Bay area. Confidential informants advised investigators that Francisco Martinez was assisting Ortiz in the sale of drugs. More specifically, Martinez, who resided in Illinois, was believed to distribute money and supply drugs to members of the conspiracy. Investigator Wysocki was aware of the seizure of money from Martinez in Arizona, which was consistent with information that Martinez was enroute to California to obtain drugs. Investigator Wysocki was further aware Martinez was driving a Cadillac Escalade because on May 9, 2019, he saw the vehicle at a residence associated both with Ortiz and drug dealing. The Escalade was only there for a short time period that day consistent with Martinez either picking up or dropping off money.

On May 24, 2019, at approximately 5:15 pm, Investigator Wysocki again saw the Escalade at the same residence. Once again, the Escalade was there for a short time period before BCDTF investigators followed it south on Highway 41 as they believed a drug transaction or drug business occurred and stopping the vehicle would reveal drugs or money proceeds. However, because the investigation was ongoing and would be compromised if BCDTF members stopped the car, BCDTF contacted Wisconsin State Patrol advising them of the drug investigation and "arranged

for a traffic stop of the vehicle.” Investigator Wysocki testified the WSP stop of the Escalade would be in conjunction with the drug information he had gathered. BCDTF investigators were also in communication with Fond du Lac County Sheriff Deputy Weisbecker and his drug detection dog so they could assist with the traffic stop.

Wisconsin State Patrol Trooper Ackley testified that at approximately 7:16 p.m., he was on the look-out for the Escalade after receiving the information on the drug case from BCDTF. At that time, he 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. Deputy Weisbecker and his drug detection dog arrived at the same time. Upon making contact with Martinez, Trooper Ackley observed that he was nervous. Within a minute or so of the traffic stop, Deputy Weisbecker used his drug detection dog to conduct an exterior sniff of the car. The dog alerted by both the drivers side door and passenger side door. This is clearly visible on the video of the stop. This drug dog alert serves as probable cause to search the vehicle, even absent reasonable suspicion of drug. *Illinois v. Caballes*, 543 U.S. 405, 407 (2005); *United States v. Simon*, 937 F.3d 820, 833 (2019). Questions as to where exactly the dog alerted and explanations that the wind and other variables impact where the dog alerts are of no moment provided the dog and handler are certified, as is the case here.

Following the drug dog alert, officers located what appeared to be a trap used for transporting illegal substances. 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 approximately \$1,000 was found in the car.

Trooper Ackley had probable cause to stop Martinez for several reasons. First, Wis. Stats. 341.60 provides that a registration decal must be free of any obstruction that hinders its reading. There is no dispute in the record that this violation occurred. Second, Trooper Ackley observed Martinez operating in the left lane on Highway 26 requiring other faster moving cars to pass him using the right lane. Wis. Stats. 346.05(30) mandates that “any vehicle proceeding upon a roadway at *less than the normal speed of traffic*...drive in the right hand lane.” This is a safety statute designed to lessen the likelihood that accidents will occur when one vehicle passes another. *See Kaufman v. Postle*, 243 Wis. 2d 45 (2001) (Section 346.08 precludes passing another vehicle on the right is a similar safety statute). The statutory language makes clear that irrespective of whether the speed limit is being followed by either car, the slower moving vehicle must move to the right lane. *See also State v. Huth* 133 Ohio App 3d 261 (1999) (Interpreting similar statute to section 346.05 finding primary purpose is to control the lanes of travel and prevent impediment to the flow of traffic irrespective of passing vehicle’s speed).

Of course, Trooper Ackley was on the look-out for the Escalade because he was told by the BCDTF that the driver was suspected as having dropped off drugs or picked up money. This serves as an additional basis for Trooper Ackley to stop Martinez. Trooper Ackley can rely on the collective knowledge gained through this drug investigation to stop, search, or arrest a suspect at the direction of another officer or police agency, even if he does not have firsthand knowledge of facts that amount to the necessary level of suspicion to permit the given action. *United States v. Williams*, 627 F.3d 247 252(7th Cir. 2010). To rely on that doctrine, the government must show that (1) the officer acted in objective reliance on the information received, (2) the officer providing the information or the agency for which the officer works, had facts supporting the level of

suspicion required; and (3) the stop was no more intrusive than would have been permissible for the officer requesting it. *Id.* at 253.

Here, Trooper Ackley did not need to act in complete reliance on the information received from the BCDTF because he observed traffic violations independently and lawfully supporting the arrest. The fact that he had as ulterior motive when making the stop is of no consequence as it is entirely proper to use a traffic infraction to justify the stop. As stated in *Williams*, “the application of the collective knowledge doctrine is unaffected by an officer’s use of a cover story to disguise a stop as a mere traffic stop.” *Id.* The point is that Trooper Ackley also had probable cause to stop Martinez based on the drug case because that is what the BCDTF could have done had there not been the likelihood it would have blown their investigation. At the very least, those facts arise to the level of reasonable suspicion to stop Martinez. And the stop accompanied by the immediate drug dog search that followed was no more intrusive than what Investigator Wysocki would have pursued had he stopped Martinez. In sum, the collective knowledge doctrine as well as the observed traffic violations provided the cause to stop Martinez and subject his car to the drug dog search.

Conclusion

The government respectfully requests the Court deny Martinez’s motions to suppress.

Dated this 15th day of September, 2020.

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