

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2012-152179-001 DT

06/12/2013

HONORABLE JO LYNN GENTRY

CLERK OF THE COURT
A. Beery
Deputy

STATE OF ARIZONA

JESSI WADE

v.

REYNALDO CELAYA LEON (001)

RAY ANTHONY YBARRA

RULING

The Defendant Reynaldo Celaya Leon (“Leon”) moves to suppress all evidence seized by the government and statements obtained by the government resulting from the stop, search, and seizure conducted by law enforcement authorities. The Defendant claims that the stop, search and seizure were unlawful and violated the Fourth Amendment. After reviewing the critical legal facts and applicable authority, the Court denies the Defendant’s Motion to Suppress Evidence.

BACKGROUND

On October 03, 2012, Officer Zabatka Colbert (“Colbert”) of the South Mountain Precinct Neighborhood Enforcement Team conducted a traffic stop on Leon after a moving violation was observed.

Prior to the stop, law enforcement officers were conducting surveillance at 2012 E. AltaVista Road, Phoenix, Arizona. Surveillance of the named residence was a result of a neighborhood narcotics complaint. Leon arrived in a silver Honda and parked his vehicle out front at the named location. David Ibarra (“Ibarra”) appeared from inside the named residence and accessed the automobile from the passenger side of the silver Honda driven by Leon. Officers conducting the surveillance observed Ibarra hand a folded stack of money to Leon.

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Ibarra returned to the residence and subsequently returned to Leon's automobile, carrying two gray plastic grocery bags, which were stowed on the right rear floorboard of Leon's automobile.

Upon departure from the residence, Officer Richard Lamberto ("Lamberto") began to follow Leon. After losing sight of Leon, Officer Jason Smith ("Smith") was following Leon in an unmarked police unit. Officer Smith observed that Leon failed to use a turning signal when turning onto S. 7th Street from E. Baseline Road. Officer Smith relayed his observation to Officer Zabatka Colbert ("Colbert"), who subsequently conducted the traffic stop.

Upon the commencement of the traffic stop, Officer Colbert asked Leon for his license, registration and insurance and Leon moved as if to comply with the request for the items. Officer Colbert then asked Leon if he possessed any weapons or if any weapons were present inside of the vehicle. Leon did not respond. Officer Colbert asked a second time. Leon did not adequately respond to the officer's initial request, and subsequently responded that he did not speak English. Officer Colbert instructed Leon to step out of the vehicle. Officer Colbert stated his intention was to perform an investigatory detention in order to ensure his safety as an officer of the law, and to wait for the arrival of a Spanish-speaking officer.

After Leon exited the vehicle, Officer Colbert observed a chrome-colored pistol wedged between the driver side seat and the center storage console. Officer Colbert arrested Leon and searched the vehicle after smelling what he believed to be marijuana during the retrieval of the pistol. In conducting the search, two bags of marijuana weighing approximately 8 ½ pounds were discovered.

After being transported to the South Mountain Precinct and a subsequent search of Leon's person, officers found six individually wrapped small plastic packages of a white powdery substance in Leon's right front pants' pocket. Officers later confirmed the substance as cocaine.

STANDARD OF REVIEW

"In reviewing a motion to suppress, we may affirm on any basis fairly supported by the record." *United States v. Smith*, 155 F.3d 1051, 1055 n. 5 (9th Cir. 1998).

DISCUSSION

The Defendant Reynaldo Celaya Leon contends that the traffic stop itself did not amount to reasonable suspicion to substantiate a lawful traffic stop. The Court disagrees with the Defendant and notes the following reasoning.

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An officer's subjective motives do not preclude a proper traffic stop, even if the subjective observation is pre-textual. It is required, however, the traffic stop "not be unreasonable under the circumstances." *Whren v. United States*, 517 U.S. 806, 810, 116 S.Ct. 1769, 1772, 135 L.Ed.2d 89 (1996). Furthermore, the Court has found "that the Fourth Amendment requires only reasonable suspicion in the context of investigative traffic stops." *United States v. Lopez Soto*, 205 F.3d 1101, 1105 (9th Cir. 2000). Reasonable suspicion is formed by "specific, articulable facts which, together with objective and reasonable inferences, forms the basis for suspecting that the particular person detained is engaged in criminal activity." *Id.*

I. The surveillance of Ibarra's residence and the intelligence gathered thereafter was enough to reasonable establish probable cause under the Fourth Amendment.

First, the location of origin was under surveillance because of a neighborhood narcotics complaint. The officer conducting the surveillance, Mike Fortune, observed what he believed to be a suspicious transaction between Leon and Ibarra. Presumptively, the officer's suspicion was raised because of the monetary exchange between Leon and Ibarra. Furthermore, after the monetary exchange, the officer observed Ibarra returning to the residence and subsequently exiting the residence carrying two gray plastic grocery bags, which he stowed on the right rear floorboard of Leon's automobile.

II. An electronic or a hand signal signifying a turn is **required** at least 100 feet from the intended turn. Merely accessing a lane for turning, without the required electronic or hand signal is not enough to establish a lawful turn, and is designated as a vehicular moving violation.

Next, Ariz.Rev.Stat. § 28-754(A) does prohibit a turn without the appropriate signal in the event any other traffic may be affected by the movement, but on the other hand under Ariz.Rev.Stat. § 28-754(B), a signal of intention to turn right or left shall be given continuously during not less than the last 100 feet traveled by the vehicle before turning.

Here, Leon argues that being in the left hand turn lane is enough of an appropriate signal that one is going to turn. That argument fails, as a matter of law, pursuant to Ariz.Rev.Stat. § 28-754(B) and the ADOT Driver License Manual Pgs. 26 and 27 because ADOT **requires** you to signal at least 100 feet before you turn.

III. It is not unlawful for an officer, pursuant to a lawful traffic stop, to ask a person or persons to exit an automobile.

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The traffic stop by Officer Colbert was legal. After the stop was conducted, Officer Zabotka Colbert asked Leon for his license, registration and insurance. Traditionally, in conducting a traffic stop, an officer usually asks for a license, registration and insurance card. This is permissible because in order to verify the validity of the operator's privilege to operate the motor vehicle, the requested items must be presented and verified by the officer in order to lawfully conduct the traffic stop. Moreover, Officer Colbert asked Leon twice if he possessed any weapons or if any weapons were present inside of the vehicle. The lack of response raised the suspicion of Officer Colbert. Leon eventually informed Officer Colbert that he did not speak English, but by then, Officer Colbert's suspicions were raised so he asked Leon to exit the vehicle.

Under *Mimms*, an officer can order a driver out of the automobile, pursuant to a lawful stop, to conduct a pat-down to check for weapons without violating the person's rights protected under the Fourth Amendment. *Pennsylvania v. Mimms*, 434 U.S. 106, 107 (1977). In *Mimms*, Philadelphia police officers stopped Mimms for an expired license plate and ordered Mimms and another passenger out of the vehicle as a result of a lawful stop. *Id.* After discovering a bulge under the sports coat of Mimms, the officer conducted a pat-down search of Mimms, which produced a .38 caliber revolver with five rounds of ammunition. *Id.* A subsequent search of the passenger produced a .32 caliber revolver. *Id.* Mimms was arrested and subsequently charged for carrying a deadly concealed weapon and unlawfully carrying a firearm without a license. *Id.* *Mimms* is similar to *Leon* because both commenced pursuant a traffic stop. Furthermore, in both instances, Mimms and Leon were ordered out of the vehicle after being lawfully stopped. Lastly, both Mimms and Leon were found to unlawfully possess firearms, which led to their arrest. Officer Colbert was well within the rights provided to officers, when he asked Leon to step out of the vehicle.

The events and occurrences subsequent are permissible due to lawful nature, in which the pistol and the 8 ½ pounds of marijuana that were discovered and possessed by Leon. As in *Mimms*, Officer Colbert discovered Leon to be in possession of a firearm. After Leon exited the automobile, Officer Colbert observed a chrome-colored pistol wedged between the driver side seat and the center storage console. As in *Mimms*, Officer Colbert arrested Leon. Officer Colbert searched the vehicle after smelling what he believed to be marijuana, which further established probable cause, during the retrieval of the pistol. In conducting the search, two bags of marijuana weighing approximately 8 ½ pounds was discovered. According to Officer Colbert's testimony pursuant to the Evidentiary Hearing on Pending Motions Pg. 15 Lines 3-16, the marijuana was subsequently discovered, during the search, in gray grocery bags in the rear passenger floorboard of Leon's automobile, as observed and affirmed by Officer Fortune during the surveillance being conduct at 2012 E. AltaVista Road, Phoenix, Arizona. The firearm and marijuana were subsequently discovered as a result of a lawful traffic stop and supported by the appropriate binding authority.

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CONCLUSION

After reviewing the critical legal facts and applicable authority, the Court denies the Defendant's Motion to Suppress Evidence.

This case is eFiling eligible: <http://www.clerkofcourt.maricopa.gov/efiling/default.asp>. Attorneys are encouraged to review Supreme Court Administrative Order 2011-140 to determine their mandatory participation in eFiling through AZTurboCourt.