



The United States District Court for the Northern District of Texas denies a Defendant's motion to suppress, both initially and on reconsideration, after finding that the Defendant's constitutional rights were not violated



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In United States v. Salazar, 2017 WL 1281131 (N.D. Tex. Apr. 6, 2017), the Defendant Arturo Salazar, Jr., was charged with possession with intent to distribute 24 bundles of a substance alleged to be methamphetamine. Salazar moved to suppress the evidence of his drug possession, arguing that his continued detention after the completion of the purpose of his traffic stop was unconstitutional. The United States District Court for the Northern District of Texas held an evidentiary hearing on Salazar's motion to suppress and, thereafter, made the following factual determinations.

Max Honesto ("Trooper Honesto") is a trooper employed by the Texas Department of Public Safety ("DPS"). On November 4, 2016, Trooper Honesto was on patrol on Interstate Highway 40 ("I-40") in Carson County, Texas. I-40 is a known high drug trafficking corridor. Trooper Honesto was traveling westbound on I-40 near mile marker 96 in Carson County when he observed a silver 2012 Nissan Maxima traveling eastbound that appeared to be speeding. The radar in Trooper Honesto's DPS unit clocked the vehicle at 81 m.p.h. when the posted speed limit was 75 m.p.h.

Trooper Honesto did a U-turn and pursued the speeding Maxima which was traveling in the left-hand lane. As Trooper Honesto approached the Maxima, the driver changed from the left-hand lane to the right-hand lane, in

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front of a semi-truck, and then exited the freeway at the first available exit. Trooper Honesto moved in behind the semi in case the driver of the Maxima exited the freeway. When the Maxima did exit, Trooper Honesto took the same exit, activated his emergency lights, and effected a traffic stop based on the speeding violation.

After effecting the traffic stop, Trooper Honesto observed that the Maxima bore an Arizona specialty license plate. He ran the plate and learned that the vehicle was registered to someone named Sylvia Camarillo. Trooper Honesto approached the vehicle from the passenger side, speaking first to the driver (Salazar) and then with the passenger, later identified as Taylor Willoughby ("Willoughby"). After identifying himself, Trooper Honesto told Salazar to "watch your speed, alright?" At that point, Trooper Honesto first noticed that Salazar appeared to be sweaty. Salazar and Willoughby informed Trooper Honesto that Salazar was trying to get to a restroom. Trooper Honesto asked Salazar for his license and proof of insurance. He also asked Salazar to step out of the vehicle. Trooper Honesto asked Salazar in Spanish whom the vehicle belonged to, and Salazar responded that it belonged to his wife. Trooper Honesto informed Salazar that he would try to be quick since Salazar needed to use the restroom.

After Salazar exited the vehicle, Trooper Honesto questioned Willoughby about a radar detector that, based on the presence of a suction cup mark, appeared to have been removed from the windshield. The radar detector was situated on the floorboard and was beeping. At that point, Trooper Honesto considered the driver's decision to take the first exit and to use a radar detector to be suspicious conduct. In response to Trooper Honesto's questions, Willoughby advised that she and Salazar were just friends, that she had known him a couple of months, and that she "thought" he worked with the railroad. She stated that she was a school nurse who had some time off of work because she had just had surgery. Willoughby said that she and Salazar were on their way to Oklahoma because "his friends are over there." When Trooper Honesto mentioned Salazar's wife, Willoughby seemed surprised to learn that he was married.

Trooper Honesto then met separately with Salazar. As Trooper Honesto approached his DPS unit, he

observed that Salazar had left on the right turn signal on the Maxima. Trooper Honesto interpreted this as a sign of a high level of nervousness—an indication that Salazar’s mind was on something else. He also noticed sweat beads on Salazar’s forehead, and he asked Willoughby about that. After Trooper Honesto requested that Salazar have a seat in his DPS unit, he asked Salazar how he was doing and why he was sweating so badly. Salazar responded that he was not sweating and that he was doing fine. Trooper Honesto also asked Salazar where they were traveling to, and Salazar responded that they were going to Kansas City so that he could work for the railroad. Trooper Honesto considered it suspicious that Willoughby had said they were traveling to Oklahoma to visit Salazar’s friends there and that Salazar said they were traveling to Kansas City so that he could work for the railroad without mentioning a visit to friends.

Additionally, Salazar told Trooper Honesto that Willoughby was a friend of his who had come along for the ride so that he would not fall asleep and that she was a school nurse who was not working because she had been suspended due to an incident with a child. But, Willoughby had said she was on vacation. Salazar said three times that he was going to Kansas City, and he never mentioned Oklahoma or visiting friends.

When Trooper Honesto asked Salazar if he was married, Salazar responded that he was separated. Trooper Honesto found it suspicious that the Maxima was registered to a person whose last name and address were different from Salazar’s. And in response to Trooper Honesto’s question about whether Salazar was married, Salazar volunteered information about the length of his marriage and the number of children and grandchildren he has.

When Trooper Honesto asked Salazar if he had ever been arrested, Salazar responded that he had received another speeding ticket but that he had never been arrested. When Trooper Honesto then contacted Amarillo DPS dispatch to request that they check on Salazar’s criminal history, Salazar became more dramatic in his complaints about his stomach ailment. Trooper Honesto noticed that Salazar was moving around and had a strange expression on his face. Trooper Honesto asked Salazar, “What’s the matter, man,” and Salazar

responded that he had eaten a burrito in Albuquerque and did not feel well. Trooper Honesto found this to be suspicious because, at this point, Salazar was over 200 miles from Albuquerque and had traveled through numerous places where he could have stopped to use the restroom. When Trooper Honesto joked about Willoughby's being a nurse, Salazar laughed loudly and in a way that Trooper Honesto believed was fake. Trooper Honesto then asked Salazar what the passenger's name was. Salazar provided her first name but stated that he did not know her last name and had just met her about two weeks prior. This conflicted with Willoughby's statement that she and Salazar were friends and had known each other for two months. Trooper Honesto found it suspicious that Salazar and Willoughby had not known each other long (and Salazar did not even know Willoughby's last name) because, in his experience, individuals who travel together trafficking narcotics typically do not know a lot about each other.

Amarillo DPS dispatch then informed Trooper Honesto that Salazar had a felony evading arrest offense and issuing a bad check offense on his record. Salazar had previously informed Trooper Honesto that he had never been arrested. Trooper Honesto then asked Salazar whether he had any luggage, to which Salazar responded, in Spanish, "everything's okay." After Salazar's criminal history came back from dispatch, his level of anxiety increased. He started making a noise and moving around, and Trooper Honesto told Salazar to calm down and that he was acting too nervous. Salazar responded that he was not nervous, and he started complaining about his stomach. Salazar then asked, "do you think they'll let me use the restroom here?" which Trooper Honesto interpreted as an attempt to hurry along the traffic stop.

Trooper Honesto then printed and requested that Salazar sign a warning ticket, and he returned Salazar's documents to him. Rather than conclude the traffic stop, however, Trooper Honesto continued talking with Salazar because he had by now developed reasonable suspicion, based on the totality of the circumstances, that Salazar was transporting contraband. Trooper Honesto asked Salazar if there was anything illegal in the car, whether he was transporting drugs, and who was responsible for what was inside the vehicle. After Salazar denied that he was transporting drugs or even used drugs (and stated that he could be given a drug

test), Trooper Honesto asked Salazar for consent to search the vehicle which Salazar refused. Trooper Honesto then told Salazar to sit right there and requested a narcotics detection canine unit because Salazar had refused consent. Salazar then said, "Okay, you guys can search the car." Trooper Honesto explained to Salazar that he had already refused consent. Salazar then informed Trooper Honesto that there was a pipe and "shit" that he took responsibility for located on the driver's side. Trooper Honesto asked "what kind of stuff," and Salazar informed him that he was talking about methamphetamine which he used to stay awake. Trooper Honesto believed at this point that he had developed probable cause to search the Maxima.

Trooper Honesto asked Salazar, "do you feel that you had to say that [i.e., give consent to search the vehicle] because I said a dog was coming," and Salazar replied, "yes, sir." Trooper Honesto felt that, although he had already developed probable cause for the search, he wanted the canine unit because he did not want Salazar to feel he had been coerced into giving his consent to the search. Salazar then volunteered that there was stuff in the trunk of the vehicle, too, and that the passenger did not have anything to do with it. Salazar told Trooper Honesto to just take it out and arrest him. He also remarked to Trooper Honesto, "you guys are f—ing good." Trooper Honesto then read Salazar his Miranda rights because of the statements Salazar was making.

About 30 minutes after the traffic stop concluded, DPS Trooper Jerome Ingle ("Trooper Ingle") and his narcotics detection canine arrived on the scene. Trooper Ingle used the canine to conduct a free-air sniff of Salazar's vehicle, and the canine alerted to the presence of narcotics. Based on the canine's alert, Trooper Honesto searched the vehicle. He located a glass pipe and crystal-like substance residue in a bag in the driver's side door. He also located 24 bundles in the trunk of the vehicle. The bundles field tested positive for the presence of methamphetamine and had a gross weight of 25 pounds.

In his motion to suppress, Salazar did not dispute that Trooper Honesto had an initial justification stop him for speeding. Instead, he argued, under the second prong of Terry, that his continued detention after the completion of the purpose of the stop was unconstitutional. Under the second prong of Terry, the District Court

had to ask whether Trooper Honesto's actions after stopping Salazar's vehicle were reasonably related to the circumstances that justified the stop or to dispelling his reasonable suspicion developed during the stop. "An officer's subsequent actions are not reasonably related in scope to the circumstances that caused him to stop the vehicle if he detains its occupants beyond the time needed to investigate the circumstances that caused the stop, unless he develops reasonable suspicion of additional criminal activity in the meantime." *United States v. Pack*, 612 F.3d 341, 350 5th Cir. 2010).

The District Court held that, under the totality of the circumstances, Trooper Honesto had developed reasonable suspicion of additional criminal activity before DPS dispatch returned Salazar's criminal history, Trooper Honesto issued the warning ticket, and he returned Salazar's documents to him. The District Court reached this conclusion based upon Trooper Honesto's experience with drug interdictions (especially along I-40) and based on Salazar's conflicting responses to Trooper Honesto's questions. Ultimately, the District Court concluded that Salazar's confession (that he had methamphetamine in his vehicle) was sufficient to cause an officer of reasonable caution to believe that a criminal offense has been or is being committed. Once Salazar confessed that he had methamphetamine in his vehicle and more drugs in his trunk, Trooper Honesto had probable cause to search the vehicle. Accordingly, the District Court denied Salazar's motion to suppress.

A few months later, Salazar asked the Court reconsider its Order denying his motion to suppress. In his motion to reconsider, Salazar argued that Trooper Honesto had obtained his confession in violation of his Miranda rights. The District Court denied Salazar's motion to reconsider. *United States v. Salazar*, 2017 WL 3704344 (N.D. Tex. Aug. 28, 2017).

In denying Salazar's motion to reconsider, the District Court explained that Salazar did not raise the issue in his initial motion to suppress, and therefore, he could not raise the issue in a later motion to reconsider. Accordingly, the District Court denied Salazar's motion to reconsider and re-affirmed its ruling that the Government could use as evidence at the trial Salazar's drug possession when Trooper Honesto stopped him

in November 2016.

Note: *Court holdings can vary significantly between jurisdictions. As such, it is advisable to seek the advice of a local prosecutor or legal adviser regarding questions on specific cases. This article is not intended to constitute legal advice on a specific case.*

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