

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

DARRELL L. LOGAN,

Defendant.

REPORT AND
RECOMMENDATION

06-CR-064-S

REPORT

Before the court for report and recommendation is defendant Darrell Logan's motion to suppress evidence. Logan contends that the Beloit police unreasonably extended the length of a traffic stop in order to obtain incriminating evidence, then subjected him to an unconstitutional strip search at the police station. For the reasons stated below, I am recommending that this court deny Logan's motion.

At the May 18, 2006 pretrial motion hearing, the parties presented stipulated exhibits and the testimony of Beloit Police Officer Roel Benavides. Having considered the exhibits and the testimony, I find the following facts:

FACTS

Roel Benavides is an eight-year veteran of the Beloit Police Department. His most recent assignment has been with the drug and gang unit. Based on his experience as an officer both on and off the drug and gang unit, and based on his participation in the

Wisconsin Department of Justice's basic drug training program, Officer Benavides is familiar with the aroma of burning marijuana.

On February 3, 2006, drug unit officers were assigned to a traffic detail in the Merrill neighborhood, issuing traffic citations to vehicles that police suspected might yield evidence of other crimes. Officer Benavides's role was to perform traffic stops on vehicles after being advised by fellow officers that they had observed a traffic violation.

Just past 9:00 p.m., a fellow officer radioed Officer Benavides to report that a white Pontiac had run a stop sign. Officer Benavides tracked down the vehicle and pulled it over at 9:09 p.m. Officer Benavides approached the stopped vehicle while the driver remained inside. As he approached the Pontiac, Officer Benavides smelled the aroma of burnt marijuana and the aroma of a car air freshener. Officer Benavides recognized the driver as Darrell "Pudge" Logan, with whom Officer Benavides had had many professional contacts. Officer Benavides also was aware that Logan was a target of an ongoing drug investigation and that Logan was alleged to have sold drugs to an undercover agent during this investigation. Officer Benavides did not see any marijuana, any smoking paraphernalia, or any other physical evidence of marijuana in the car.

Logan had no driver's license or identification card with him, but Officer Benavides was able to run Logan's information past the dispatcher for a license check. Within a minute or so, Sergeant Dan Tilley, a drug and gang unit supervisor, arrived to assist. Sergeant Tilley kept an eye on Logan while Officer Benavides ran Logan's information past the dispatcher. Officer Benavides learned that Logan's drivers license had been suspended. He began to

write two traffic citations arising out of Logan's failure to stop at the sign and driving while suspended. While writing the tickets, Officer Benavides also asked dispatch to send Officer Brian Haase and his canine drug detection partner "Mike" to the scene. Officer Haase and Mike arrived at 9:16 p.m. Officer Benavides stopped writing Logan's traffic tickets so he could assist Officer Haase and Mike.

Mike alerted to the outside of Logan's car. Because of this, Officer Benavides directed Logan out of the car and placed him in the back of the squad car so that Mike could complete his search without interference. Officer Benavides also wanted to ensure that Logan didn't walk away until Mike completed his car sniff. Usually, a driver receiving a traffic citation is free to depart upon issuance of the ticket; here, Logan would have been free to leave (*without* his car, due to his license status) once Officer Benavides had finished writing the tickets. Since Officer Benavides had set down his ticket book to help Officer Haase, Logan wasn't yet free to leave, but apparently Officer Benavides didn't want Logan getting any ideas.

Mike's search of the car's interior uncovered crack cocaine in a jacket pocket. Officer Benavides formally arrested Logan on a drug charge at 9:26 p.m. A post-arrest search of Logan uncovered marijuana and cash.

At the police station officers subjected Logan to a strip search during which they recovered crack cocaine from Logan's rear end. The Beloit Police Department has a written policy governing when and how to conduct a strip search.

ANALYSIS

“Watch me run a 50-yard dash with my legs cut off!”

– Sidney Falco, “Sweet Smell of Success”

Logan, by counsel, concedes nothing in his briefs, but neither the facts nor the law support his motion. With metronomic efficiency, the government ticks off the cases that counter Logan’s claims. Moving from *capo* to *coda*, the fact that this was a pretextual traffic stop by a drug and gang unit officer is irrelevant to the analysis. *Whren v. United States*, 517 U.S. 806, 813 (1996); *see also Brigham City v. Stuart*, ___ S. Ct. ___, 2006 WL 1374566, *4 (May 22, 2006). Because Officer Benavides smelled the aroma of burning marijuana while approaching the car, he had probable cause to arrest him at that time and search his car. *United States v. Wimbush*, 337 F.3d 947, 950-51 (7th Cir. 2003); *see also United States v. Ross*, 456 U.S. 798, 823 (1982).

Although it would have been constitutionally reasonable for Officer Benavides to arrest Logan at that time, instead, he began writing tickets and called for a canine unit to inspect Logan’s car. Requesting a canine unit, by itself, was not unreasonable; neither was the fact that the dog sniffed about Logan’s car. *Illinois v. Cabales*, 543 U.S. 405, 408 (2005). However, as Logan observes, a lawful stop can become unlawful if its length and purpose become unreasonable, *see id.* If there is reasonable suspicion that contraband will be found in the car, then police may lengthen the stop a bit before it becomes unreasonable. *Id.*; *id.*

at 415 (Souter, J., dissenting); *id.* at 420-21 (Ginsberg & Souter, JJ., dissenting). *See also United States v. Martin*, 422 F.3d 597, 602 (7th Cir. 2005).

Here, the dog arrived seven minutes after the initial stop while Officer Benavides was writing Logan's traffic tickets. Although Logan characterizes this period as a delay, it was not: Logan would not have been free to leave until Officer Benavides finished writing the tickets. Even if, as Logan suggests, writing the tickets was itself a subterfuge to kill time until the dog arrived, this was not an unreasonable ploy because Officer Benavides had probable cause to issue the citations and seven minutes is not an unreasonably long time span for completing the paperwork for two tickets.

Within ten minutes more, the dog had alerted, drugs were recovered, and Logan was arrested. A delay this short did not transform this into an unreasonable stop. *Cf. United States v. Martin*, 422 F.3d at 602 (twenty minute delay during traffic stop while *waiting* for drug-detecting dog was not unreasonable).¹ Bear in mind that Officer Benavides's wish to find drugs was more than an inchoate hunch: he had smelled the aroma of burning marijuana while approaching Logan's car. A ten-minute canine search to rule in/rule out the presence of marijuana in the car was a direct and efficient investigation of this reasonable suspicion that did not violate Logan's Fourth Amendment rights.

¹ The government's citation to *United States v. Fiala*, 929 F.2d 285 (7th Cir. 1991) is inapposite because the trooper intended to arrest the driver anyway, so the 90 minute wait for the dog didn't interfere with the driver's rights. *Id.* at 288. Here, Officer Benavides did not intend to arrest Logan if no contraband was found.

Down at the jail, officers strip-searched Logan and recovered more contraband. Logan challenges the constitutional reasonableness of this search notwithstanding the government's claim that the search complied with jail policy. Reasonableness is determined by balancing the government's need to conduct the search against the invasion of Logan's personal interests. Relevant factors are the scope of the intrusion, the manner in which it was conducted, the justification for initiating it and the place in which it was conducted. *United States v. Brack*, 188 F.3d 748, 758 (7th Cr. 1999).

It is well established that officials have a legitimate and substantial need to prevent arrestees from bringing contraband into a detention facility; so long as it was reasonable for the officers at the jail to suspect that Logan might be carrying contraband, then it was reasonable for them to strip-search him in their efforts to confirm or dispel their suspicions. *Id.*; see also *Kraushaar v. Flanigan*, 45 F.3d 1040, 1045 (7th Cir. 1995); *Mary Beth G. v. City of Chicago*, 723 F.2d 1263, 1272-73 (7th Cir. 1983)(unlike minor traffic offenses, crimes such as prostitution, assault, and narcotics might give rise to a reasonable belief that the arrestee was concealing an item in a body cavity). Having already recovered a baggie of crack cocaine from a jacket in Logan's car and two bags of marijuana from Logan's person, it was not unreasonable for the officers to suspect that Logan might have secreted contraband elsewhere on his person.² Therefore, it was not unreasonable to strip-search Logan before admitting him into the jail.

² I am using a litotes intentionally. "Not unreasonable" is the legal threshold, and it is lower than "reasonable."

Although the language that Logan quotes from *Kelly v. Foti*, 77 F.3d 819, 822 (5th Cir. 1996) seems to disapprove of any policy that allows strip searches based on a generalized fear of a category of arrestees, the category at issue was tourist drivers in New Orleans arrested on minor traffic offenses who could not post bond and then were strip-searched (twice), deloused, and showered naked in front of other prisoners. It is not clear that the court meant its observation to include *all* categories of offenses. Regardless what the Fifth Circuit had in mind, the Seventh Circuit addressed a similar group of arrestees in *Mary Beth G.*, *supra*, and ruled more broadly: certain categories of offenses *could* give rise to a reasonable belief that the arrestee was secreting contraband. 723 F.2d at 1272-73. Here, Logan had secreted drugs in his coat and in his clothes; it was not unreasonable to ensure that he also wasn't secreting drugs in his body cavities.

RECOMMENDATION

Pursuant to 28 U.S.C. § 636(b)(1)(B) and for the reasons stated above, I recommend that this court deny defendant Darrell Logan's motion to suppress evidence.

Entered this 8th day of June, 2006.

BY THE COURT:
/s/
STEPHEN L. CROCKER
Magistrate Judge

June 9, 2006

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Re: ___ U.S. v. Logan
Case No. 06-CR-064-S

Dear Counsel:

The attached Report and Recommendation has been filed with the court by the United States Magistrate Judge.

The court will delay consideration of the Report in order to give the parties an opportunity to comment on the magistrate judge's recommendations.

In accordance with the provisions set forth in the memorandum of the Clerk of Court for this district which is also enclosed, objections to any portion of the report may be raised by either party on or before June 19, 2006, by filing a memorandum with the court with a copy to opposing counsel.

If no memorandum is received by June 19, 2006, the court will proceed to consider the magistrate judge's Report and Recommendation.

Sincerely,

/s/ S. Vogel for
Connie A. Korth
Secretary to Magistrate Judge Crocker

Enclosures

cc: Honorable John C. Shabaz, District Judge