

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

**UNITED STATES OF AMERICA**

**v.**

**FELIX IGNACIO LEMAS-  
GUEVARA,**

**Defendant.**

**CRIMINAL INDICTMENT**

**NO. 1:09-CR-511-JEC-GGB**

**FINAL REPORT AND RECOMMENDATION**

Defendant Felix Ignacio Lemas-Guevara (“Defendant”) is charged with his co-defendant<sup>1</sup> in a conspiracy to distribute and distribution of cocaine, in violation of Title 21, United States Code, Sections 846, 841(a)(1) and 841(b)(1)(A)(ii). Pending before this court are Defendant’s Motions to Suppress Evidence and Statements [Docs. 37 and 38]. An evidentiary hearing on these motions was held before me on January 11, 2010, and the parties filed post-hearing briefs. The transcript of the January 11, 2010 hearing will be cited as “T1.” An additional evidentiary hearing and oral argument was held before me on May 4, 2010 in response to an order that I issued on March 12, 2010. In that order, I gave the parties an opportunity to develop the facts surrounding the

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<sup>1</sup>I held a separate evidentiary hearing on the motion filed by the co-defendant Lara-Lopez and made my recommendation on his motion in a separate Report & Recommendation.

movement of Defendant's vehicle and to argue the significance, if any, of those facts. The transcript of the May 4, 2010 hearing will be cited as "T2."

**I. FACTS**

Throughout 2008 and 2009, the Drug Enforcement Administration ("DEA") was conducting an investigation into a drug trafficking organization known as La Familia. (T1 at 20-1). Wiretaps and surveillance led agents to conclude that two individuals in this organization, known as "Ivan" and "Panda," were involved in the sale of cocaine and the exchange of drug proceeds in June of 2008 and March of 2009. In June of 2008, Panda had detected law enforcement surveillance of a drug transaction. He abandoned a car that was then seized by agents. During a search of the vehicle, agents found a suspected drug ledger. (T1 at 21-2).

Ivan was frequently seen driving a burgundy BMW during his drug-related activities. Ivan and the BMW had been tracked to a house on Treehouse Lane. In June or July of 2009, Task Force Officer ("TFO") Kevin Krueger learned that Ivan had abandoned the Treehouse Lane address. However, agents were able to track Ivan through his BMW to a suspected drug stash house at 3570 Knoll Crest Trail in Buford, Georgia. While conducting surveillance of the house on Knoll Crest Trail, TFO Krueger observed vehicles with Wisconsin license plates, which increased his suspicion

that drugs were being distributed from that location to customers from other states. (T1 at 21-4).

In the early morning hours of October 21, 2009, the DEA conducted a national “take-down” of La Familia. They planned to search and arrest numerous individuals on that day. As part of the “take-down,” agents positioned themselves at 3570 Knoll Crest Trail. They were planning to conduct a warrantless “knock and talk” and hoped to arrest Ivan at that location.<sup>2</sup> (T1 at 25).

TFO Miguel Henao was assigned to conduct the surveillance at the Knoll Crest Trail location. He arrived there at approximately 5:40 a.m. (T1 at 6). At approximately 6:00 a.m. agents informed TFO Henao that search warrants at other locations had been executed. Shortly thereafter, TFO Henao noticed a white pick-up truck with a North Carolina license plate leaving the Knoll Crest Trail house. The driver of the vehicle, later identified as Defendant, drove up to the gate, got out to unlock the gate, “slammed the gate open,” and quickly got back into his vehicle and drove away from the residence. (T1 at 6-7). Agents had no prior information about this vehicle or its driver. (T1 at 32).

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<sup>2</sup>The “knock and talk” that was conducted and the events in the house following the “knock and talk” are described in the non-final report and recommendation as to co-defendant Luis Alberto Lara-Lopez [Doc. 56].

TFO Henao believed that Defendant may have been tipped off by co-conspirators at the other locations that were searched. TFO Henao informed the other officers of his observations. TFOs Krueger and Henao and Special Agent (“SA”) Nesbitt collectively decided to stop the vehicle. (T1 at 15, T2 at 7). TFO Krueger knew that search warrants had been served in the North Carolina area, and targets of the investigation frequently went to “the Carolinas” to pick up proceeds or transport drugs. (T1 at 31). TFO Henao followed the truck until TFO Krueger and SA Nesbitt were able to stop it. The officers had Defendant pull over into a parking space at a strip shopping center. TFO Henao, who is fluent in Spanish, acted as interpreter. (T1 at 7, 17, 29; T2 at 7).

TFO Krueger asked Defendant where he was coming from. Defendant stated that he was coming from his girlfriend’s house at Exit 213. The officers knew that this was untrue because they were at Exit 115 on the other side of town. (T1 at 7, 17, 28).

TFO Krueger asked Defendant to get out of his vehicle and provide identification. Defendant provided a North Carolina driver’s license. TFO Krueger conducted a pat-down of Defendant for weapons. He noticed that there was a strong odor of cologne coming from Defendant and the driver’s area of the truck. He knew

from his experience that fragrances are often used to mask the odor of drugs. The heavy scent of cologne increased his suspicion. (T1 at 29-31).

TFO Krueger called for the Georgia State Patrol to come to the scene to conduct a trained canine detection sniff of Defendant's vehicle and to assist in "running the information" on Defendant's driver's license. TFO Krueger was informed that there would be an "extended E.T.A."<sup>3</sup> for the Georgia State Patrol. (T1 at 29). TFO Krueger, TFO Henao, and SA Nesbitt then decided to go back to the Knoll Crest house to do the "knock and talk." (T1 at 17; T2 at 8). SAs Lavelle Kinney and Sullivan remained with Defendant at the shopping center waiting for the state patrol officer and for further instructions from the other agents who had gone back to the house. (T2 at 8-9). They first had Defendant sit on the curb, but then they put him in SA Kinney's car. (T2 at 9-10).

After waiting about fifteen or twenty minutes at the shopping center, SAs Kinney and Sullivan were instructed by one of the agents at the house to take Defendant back to the house. SAs Kinney and Sullivan decided that SA Kinney would drive Defendant's truck to the house. At first, Defendant thought that he would be able to drive his own truck, but SA Kinney told him that he would not be allowed to drive his

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<sup>3</sup>I assume this means extended estimated time of arrival.

truck. SA Kinney obtained the keys to the truck from Defendant and told him to get into the truck as a passenger. SA Kinney then drove Defendant's truck to the house.<sup>4</sup> SA Sullivan followed behind in his vehicle. Defendant was not handcuffed. (T2 at 10).

Once they got to the house, SA Kinney walked Defendant into the house and told him to have a seat with the other people who had been gathered in the middle of the house. (T2 at 12).

Georgia State Patrol Officer Stanley Kent arrived at the house with his drug detection canine ("Misty") about thirty to forty minutes after he was called. (T1 at 34, 42). Agents initially requested Officer Kent to go to the shopping center where Defendant had been stopped, but while Officer Kent was en route, agents diverted him to the Knoll Crest Trail house. (T1 at 35).

When Officer Kent arrived at the house, he met with the agents. The agents told him that they had stopped a vehicle and brought it back to the house. They also told him that they had obtained consent from the residents of the house to do a search of the house. The agents told Officer Kent that they wanted him to use Misty to conduct a

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<sup>4</sup>The record does not contain evidence of the distance between the house and the location of the stop of Defendant's truck.

canine search of the house, Defendant's truck, and the other vehicles that were at the residence. (T1 at 36).

Officer Kent first used Misty for about twenty minutes to conduct a canine search of the house. (T1 at 42). While searching one of the upstairs bedrooms, Misty alerted to a cavity built into one of the closets, and inside that cavity was a large amount of U.S. currency. (T1 at 36). After Misty went through the house, Officer Kent gave Misty a break for about ten or fifteen minutes. Officer Kent then had Misty search Defendant's truck. Officer Kent estimated that, in total, an hour and forty-five minutes to two hours<sup>5</sup> had elapsed between the time that he was called and the time that Misty began the search of Defendant's truck. (T1 at 42).

Misty alerted to the odor of narcotics while searching Defendant's truck. (T1 at 37, 39). Eventually, Officer Kent located a hidden compartment in Defendant's truck that contained five bundles of cocaine. (T1 at 40). Defendant was then arrested. (T1 at 30).

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<sup>5</sup>I accept this estimate rather than the government's calculation of seventy-five minutes at Doc. 5 at 12 n.5. While the specific events that Officer Kent was asked about add up to seventy-five minutes, I believe his testimony that it was an hour forty-five minutes to two hours from the call to the start of the search (T1 at 42) is a more accurate estimate of the time that had elapsed. The specific events that total seventy-five minutes do not account for time that Officer Kent may have spent talking to the officers or doing other things.

## **II. DISCUSSION**

Defendant moves to suppress the statements that he made at the time of the stop and the evidence that was later found in his truck. The government argues that there was reasonable suspicion sufficient to justify the stop of Defendant's vehicle and that the duration and scope of the stop was reasonable. For reasons discussed below, I find that there was reasonable suspicion for the stop of Defendant's vehicle, but that the lengthy detention of Defendant together with the movement of Defendant and his truck for the purposes of investigation constituted an unreasonable seizure.

### **A. There was Reasonable Suspicion for the Stop of Defendant's Truck**

Law enforcement agents may briefly detain individuals for purposes of investigating a crime if they have a reasonable, articulable suspicion based on objective facts that the individual has engaged in, or is about to engage in, criminal activity. Terry v. Ohio, 392 U.S. 1 (1968). Under the Terry rationale, law enforcement agents may also conduct a brief investigatory stop of a vehicle when such stop is "justified by specific, articulable facts sufficient to give rise to a reasonable suspicion of criminal conduct." United States v. Beale, 921 F.2d 1412, 1431 (11th Cir. 1991) (quoting United States v. Smith, 799 F.2d 704, 707 (11th Cir. 1986)). Such brief investigatory stops do not require probable cause, and the determination as to the validity of the stop

is based on a consideration of the totality of the circumstances. United States v. Sokolow, 490 U.S. 1, 7 (1989).

Here, Defendant hurriedly left a known drug location at approximately 6:00 a.m., moments after searches were initiated at related drug locations. Trained officers suspected that Defendant had been tipped off. Officers had information that this and related drug locations supplied drug distributors from other states, including North Carolina. Defendant's car had a North Carolina license plate. The totality of circumstances gave the officers a sufficient basis to briefly stop Defendant's vehicle for further inquiry. See United States v. Powell, 222 F.3d 913, 917 (11th Cir. 2000) (finding reasonable suspicion in part because the defendant was seen leaving a known drug location); United States v. Martinez-Gonzalez, 686 F.2d 93, 99 (2d Cir.1982) ("[I]nformation the agents had when they placed apartment 7F under surveillance created strong suspicions based on their experience that 7F was being used as a 'stash pad' for drugs . . . and therefore justified them in detaining for purposes of a Terry stop any persons seen entering or exiting.") (internal quotation marks and citations omitted).

**B. The Stop Went too Far and Matured into an Arrest Before There was Probable Cause**

Although the investigatory stop of Defendant was justified at its inception by reasonable suspicion, the court must also determine “whether the stop went too far and matured into arrest before there was probable cause.” United States v. Acosta, 363 F.3d 1141, 1144-45 (11th Cir. 2004) (citation omitted). The government does not argue that there was probable cause to arrest Defendant before the drugs were found in his truck.

Defendant’s false statement after he was stopped about where he had just come from, and the heavy odor of cologne, reasonably increased the officers’ level of suspicion and justified further investigation. However, I find that the detention that followed was not reasonable.

In United States v. Virden, 488 F.3d 1317 (11th Cir. 2007), in circumstances similar to this case, the Eleventh Circuit held that the moving of the Defendant’s vehicle without his permission was a seizure that exceeded the bounds of a stop based on reasonable suspicion. Id. at 1321. At the hearing on May 4, 2010, the government argued that Virden is distinguishable because the suspect there was in handcuffs during the entire detention, whereas, here, Defendant was not handcuffed until after the drugs were found in his truck.

It is true that Defendant, unlike the suspect in Viriden, was not handcuffed. However, there is no dispute that Defendant was detained before he was formally arrested and that he was not free to leave. The salient fact in Viriden was “the taking of [the suspect’s] vehicle to a new location for the purposes of investigation.” Id. The Eleventh Circuit quoted the statement from Hayes v. Florida, 470 U.S. 811, 816 (1985):

our view continues to be that the line is crossed when the police, without probable cause or a warrant, forcibly remove a person from his home or other place in which he is entitled to be and transport him to the police station, where he is detained, although briefly, for investigative purposes.

Id. Thus, I find that the handcuffs distinction is one without a difference in the context of this case.

Moreover, the detention here was more intrusive than that in Viriden because of the length of the detention. The suspect in Viriden was detained only for twenty to thirty minutes. Id. at 1320. Defendant here was detained for at least an hour and forty-five minutes before the search of his truck even began.

The government also cites United States v. Gil, 204 F.3d 1347 (11th Cir. 2000) as authority for its position that the detention in this case was reasonable. (T2 at 17; Doc. 54 at p. 11). However, the detention in Gil was only for seventy-five minutes. Gil, 204 F.3d at 1350. More importantly, the suspect in Gil was not moved from the location of the stop before she was arrested. Id. at 1351.

The government argues that, as in Gil, the officers were diligent in pursuing their investigation and detained Defendant only as long as was necessary to confirm or dispel their suspicions. The government states that the agents' purpose in moving Defendant and his truck to the house was "to actually expedite" the search of the truck. (T2 at 16). It is not clear that this is true, however, because the State Patrol Officer with the canine was on his way to the scene of the traffic stop when he was asked to proceed to the house. The search may have occurred sooner if he had not been diverted.<sup>6</sup> More importantly, there is no evidence or argument as to why the search of the house (which was with consent of the occupants after a "knock and talk") needed to be done before the search of Defendant's truck, which was not consensual.

The government also argues that "the evidence shows that the resources that [law enforcement] had at that point in time were stretched to the limit." (T2 at 16). While it is true that the government presented evidence of a "national takedown," there is no evidence that law enforcement resources were stretched to the limit, or that other reasonable options did not exist.<sup>7</sup>

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<sup>6</sup>There is no evidence of whether the shopping center or the house was closer to the State Patrol Officer.

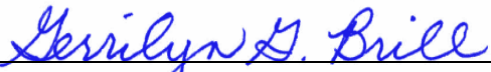
<sup>7</sup>One reasonable option may have been to secure the house and apply for a search warrant.

In sum, the stop went too far and matured into an arrest before there was probable cause.

**III. CONCLUSION**

Because the stop of Defendant was supported by reasonable suspicion, I **RECOMMEND** that Defendant's Motion to Suppress Statements [Doc. 38] be **DENIED**. However, because I find that the detention that followed the stop was unreasonable and resulted in the seizure of evidence from Defendant's truck, I **RECOMMEND** that Defendant's Motions to Suppress Evidence [Doc. 37] be **GRANTED**.

IT IS SO RECOMMENDED this 17th day of May, 2010.

  
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GERRILYN G. BRILL  
UNITED STATES MAGISTRATE JUDGE