

APRIL 17 2007

FILED  
PATRICIA A. NOLAND  
CLERK, SUPERIOR COURT

ARIZONA SUPERIOR COURT, PIMA COUNTY

JUDGE PRO TEMPORE: HONORABLE \_\_\_\_\_ CASE NO. C R - 2006 3524

DATE: April 16, 2007

STATE OF ARIZONA

vs.

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### RULING

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**UNDER ADVISEMENT RULING ON DEFENDANT S's MOTION TO SUPPRESS NO REASONABLE SUSPICION/NO CONSENT TO SEARCH; ILLEGAL SEIZURE OF DEFENDANT'S PERSON AND PAPERS AND DEFENDANT BD's MOTION TOSEVER:**

Both Defendants Mr. BD and Mr. S have been indicted for Conspiracy to Commit Transportation of Marijuana for Sale, Transportation of Marijuana for Sale, Possession of Drug Paraphernalia and Defendant Mr. S is individually indicted for Aggravated Assault of a Police Officer. The Indictment arose out of a set of circumstances that occurred on Interstate 10 between Tucson, Arizona, and Phoenix, Arizona, on or about September 11, 2006. The parties have stipulated that the Court could review a DVD that was recorded at the time of the stop of Mr. BD and Mr. S and which contains both audio and visual material. At some points during the DVD, the Court was only able to listen to the audio in view of the fact that some of the circumstances took place outside of the view of the camera that was apparently mounted in the Department of Public Safety vehicle.

A hearing was scheduled to be conducted on April 2, 2007, at 10:30 a.m., however, because certain witnesses were not subpoenaed by either party, the hearing was continued. At that time, Defendant Mr. S gave the Court permission to view the DVD as it related to him, but Defendant

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BD was not so inclined. Later, however, Defendant BD also agreed, through counsel, that the Court could review the DVD as it related to his alleged participation in the activity and rule without any further hearing.

Since the DVD speaks for itself and has been admitted into evidence as Defendant Mr. S's Exhibit A, the Court does not intend to recite all of the facts surrounding the stop on the freeway or the interaction that the police officers had with both Mr. BD and Mr. S.

Defendant BD was the driver of the vehicle and Defendant S was the passenger. The Fourth Amendment does not require an officer to tell lawfully-seized defendants when they are free to go before asking for consent to search. *Ohio v. Robinette*, 519 U.S. 33 (1996). Also, an officer need not tell a defendant that he has a right to refuse consent. *State v. Acinelli*, 191 Ariz. 66, 952 P.2d. 302 (App. 1997). When an officer returns the suspect's documents to him and hands him a written warning, the suspect having been told that he was free to leave, an officer is equally free to ask a suspect additional questions unrelated to the traffic stop. *State v. Box*, 205 Ariz. 492, 73 P.3d. 623 (App. 2003). This is precisely the situation that occurred in the instant case. Mr. BD was stopped, he produced appropriate documentation, he was ultimately, although after some period of time, told that he was going to be given a warning and was told that he could leave. However, before he returned to his vehicle the police officer did ask him questions concerning whether or not there was any contraband in the vehicle and asked for a consent to search, which Mr. BD signed.

**THE COURT FINDS** no violations of any of the Defendants' constitutional rights to that point. Shortly thereafter the trunk of the vehicle was opened, but before it was searched Officer Telles approached the passenger, Mr. S, and asked him to step out of the car and told him to empty his pockets and turn them inside out. *At* that point, the Officer found what he believed might be incriminating evidence and an investigation ensued. The Officer also told Mr. S to produce his wallet, in which, after searching it, was found further information that indicated to the Officer that, at

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least Mr. S, might be engaged in criminal activity involving the shipping of illegal substances through the United Parcel Service.

**THE COURT FURTHER FINDS** that Officer Telles's request that Mr. S empty his pockets, turn them inside out, and produce his wallet, which he subsequently searched, was done without articulable suspicion, without probable cause, and violated the Defendant's constitutional rights. Mr. S was merely a passenger in the vehicle at that time and Officer Telles had no legally-founded right to execute a search and seize items without an articulable suspicion or probable cause. The Fourth Amendment to the United States Constitution provides that "the right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized." It appears that Officer Telles had little regard for Mr. Samuel's constitutional rights. Therefore,

**IT IS ORDERED** suppressing all evidence seized from Mr. S by the State, including, but not limited to, the UPS shipping form and the tracking information. The State is precluded from introducing that evidence in any continued prosecution of Mr. S or Mr. b. However, the State is, should they choose to do so, not prohibited from proceeding with the prosecution should they find a way to do so without using the fruits of the illegally seized evidence, nor is the State precluded from proceeding with the Aggravated Assault count that Mr. S has been accused of.

**IT IS FURTHER ORDERED** that Defendant Beckford's Motion to Sever is denied at this time.

**IT IS FURTHER ORDERED** setting a Status Conference on April 23, 2007, at 9:00 a.m., to determine how and if the State wishes to proceed.

  
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HON. HOWARD FELL

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