No. _____

IN THE

Supreme Court of the United States

RAUL AMBRIZ-VILLA,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

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PETITIONER'S APPENDIX TO PETITION FOR CERTIORARI

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28 F.4th 786
United States Court of Appeals, Seventh Circuit.

UNITED STATES of America, Plaintiff-Appellee,
v.
Raul AMBRIZ-VILLA, Jr., Defendant-Appellant.

No. 21-1362
|
Argued October 26, 2021
|
Decided March 14, 2022

Synopsis

Background: In prosecution for possession with intent to distribute at least 500 grams of methamphetamine, the United States District Court for the Southern District of Illinois, J. Phil Gilbert, District Judge, 482 F.Supp.3d 777, denied defendant's motion to suppress, and defendant entered a guilty plea. Defendant appealed.

Holdings: The Court of Appeals, Kirsch, Circuit Judge, held that:

defendant voluntary consented to search of his vehicle after traffic stop had been completed, and

168-month sentence was substantively reasonable.

Affirmed.

Procedural Posture(s): Appellate Review; Pre-Trial Hearing Motion; Sentencing or Penalty Phase Motion or Objection.

***788** Appeal from the United States District Court for the Southern District of Illinois. No. 4:19-cr-40095 — **J. Phil Gilbert**, *Judge.*

Attorneys and Law Firms

James M. Cutchin, George A. Norwood, Attorneys, Office of the United States Attorney, Benton, IL, for Plaintiff-Appellee.

David Brengle, Attorney, OFFICE OF THE FEDERAL PUBLIC DEFENDER, East St. Louis, IL, for Defendant-Appellant.

Before Flaum, St. Eve, and Kirsch, Circuit Judges.

Opinion

Kirsch, Circuit Judge.

Following a traffic stop, Raul Ambriz-Villa, Jr., was arrested after he agreed to a search of his car that turned up nearly 13 kilograms of methamphetamine. Ambriz-Villa moved to suppress the drugs; the district court denied his motion and, following his guilty plea, sentenced him to 168 months' imprisonment. Ambriz-Villa preserved the right to appeal the denial of his suppression motion and the sentence imposed.

On appeal, Ambriz-Villa argues that both the traffic stop and the subsequent search of his car violated his Fourth Amendment rights. First, he argues that the scope and manner of the stop was unreasonable, and thus unlawful under the Fourth Amendment. Second, he contends that the search was unlawful, either because his consent to search was tainted by an unlawful stop or, even if the stop was lawful, his consent was not voluntary. He also argues that his resulting sentence was both procedurally erroneous and substantively unreasonable.

We disagree. The stop was not unlawful, and Ambriz-Villa voluntarily consented to the search, which was not tainted by the stop. Further, we find no procedural error with the district court's sentencing decision and conclude that Ambriz-Villa's sentence is substantively reasonable. Finding no error, we affirm.

I

A grand jury indicted Raul Ambriz-Villa, Jr., for possession with intent to distribute at least 500 grams of methamphetamine in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(A). Ambriz-Villa moved to suppress the drugs. The district court conducted a hearing during which it watched the dash-cam video footage of the events and heard testimony from the Illinois state trooper who executed the traffic stop and search of Ambriz-Villa's car, then found the facts as follows.

Ambriz-Villa drove past Illinois State Trooper John Payton on I-57, where Trooper Payton was parked in his patrol car. Trooper Payton, who is specially trained in drug interdiction, made several observations about Ambriz-Villa's car which led him to suspect potential drug trafficking activity. When Ambriz-Villa's ***789** car crossed the solid white line on the shoulder of the road, Trooper Payton executed a pretextual traffic stop. As was his custom, Trooper Payton asked Ambriz-Villa to sit in the front seat of the patrol car as a safety measure for the duration of the traffic stop. While processing a warning for the traffic violation, Trooper Payton asked Ambriz-Villa about his background and purpose for traveling. Ambriz-Villa said he owned a tire shop in Nebraska and was driving to Georgia for his nephew's birthday and that the rest of his family had flown down. When asked why he chose to drive alone, Ambriz-Villa "floundered nonresponsive," and then when asked again, stated that it was because he liked to drive. Still processing the warning, Trooper Payton asked more questions. Throughout this conversation, Ambriz-Villa's unusual responses and excessively nervous and evasive reactions raised Trooper Payton's suspicion that Ambriz-Villa was involved in criminal activity.

After processing the warning, Trooper Payton handed it to Ambriz-Villa, who then opened the door and began to exit the patrol car. When Ambriz-Villa was "halfway out the door," Trooper Payton asked, "Do you mind if I ask you a few more questions?" Ambriz-Villa agreed, and Trooper Payton then asked whether he was involved in any drug activity (which Ambriz-Villa denied) and if he would consent to a search of his car. Ambriz-Villa said yes. Trooper Payton asked again "for clarification", and Ambriz-Villa again confirmed that he consented to the search of his car. The search uncovered 13 packages (roughly one kilogram each) of methamphetamine.

The district court denied Ambriz-Villa's motion to suppress, finding that the scope of the stop was not unreasonable and thus did not violate Ambriz-Villa's Fourth Amendment rights. The district court also found that Trooper Payton's tone and behavior did not suggest coercion and that Ambriz-Villa's consent was voluntary because "a reasonable person in Ambriz-Villa's position—with one foot out the door and a warning ticket in hand—would feel at liberty to disregard the questions and walk away."

At his sentencing hearing, Ambriz-Villa requested a departure from the Sentencing Guidelines range, arguing that his drug trafficking was aberrant behavior. The judge rejected this argument, saying "even assuming this was the first time you did this, it does not amount in my mind under the [G]uidelines as aberrant behavior." The district court also considered the sentencing factors listed in 18 U.S.C. § 3553(a) but concluded none warranted a variance below the Guidelines range and thus imposed a within-Guidelines prison sentence of 168 months.

II

On appeal, Ambriz-Villa challenges the lawfulness of the stop, the search, and his sentence. We take each argument in turn.

A

Ambriz-Villa contends that the scope and manner of the traffic stop exceeded the bounds of reasonableness, in violation of his Fourth Amendment rights. Separately, he argues that the warrantless search of his car was unreasonable because his consent to search it was invalid. As a result, he argues, the drugs found in his car should be suppressed. When reviewing a motion to suppress, we review the district court's factual determinations for clear error and the district court's legal conclusions, including the reasonableness of a stop, de novo. *United States v. Cole*, 21 F.4th 421, 427 (7th Cir. 2021); *United States v. Gholston*, 1 F.4th 492, 496 (7th Cir. 2021).

***790** 1

Ambriz-Villa concedes that Trooper Payton was permitted to stop him based on the traffic violation but argues that the scope and manner of the stop was unreasonable because Trooper Payton asked him repetitive and persistent questions not tailored to the reason for the initial stop while he was in the confines of the patrol car. But Trooper Payton was permitted to ask Ambriz-Villa questions unrelated to the reason for the stop without reasonable suspicion of other criminal activity, even if the questioning was repetitive and persistent, so long as the questioning did not prolong the duration of the stop, which Ambriz-Villa does not contest on appeal. See *Cole*, 21 F.4th at 429 ("[A]n officer may ask questions unrelated to the stop ... if doing so does not prolong the traffic stop."). And it makes no difference that Ambriz-Villa was in the patrol car during the questioning. Trooper Payton was permitted to ask Ambriz-Villa to sit in the patrol car while he wrote the warning. See *United States v. Lewis*, 920 F.3d 483, 492 (7th Cir. 2019) (an officer may ask a driver to sit in his patrol car during a valid traffic stop, without any particularized suspicion). Ambriz-Villa provides no authority for the proposition that the legality of an officer's questioning differs whether it is done while the traffic offender is outside the patrol car or in it, and we could find none. Ambriz-Villa was free to respond to the questions, or not, and he makes no argument that he felt coerced into answering these questions. See *Berkemer v. McCarty*, 468 U.S. 420, 439–40, 104 S.Ct. 3138, 82 L.Ed.2d 317 (1984) (stating that at a traffic stop, "the detainee is not obliged to respond"). What matters is that Trooper Payton's questioning did not prolong the duration of the traffic stop. We agree with the district court that the scope and manner of the stop did not violate Ambriz-Villa's Fourth Amendment rights.

2

Ambriz-Villa next argues that his verbal consent to search his car was tainted because the scope and manner of the stop was overly intrusive and expansive. But as we discussed above, the traffic stop was lawful so his consent to search was not tainted by an unlawful stop. And there was no impermissible extension of the stop because the traffic stop concluded when he received the warning. See *United States v. Rivera*, 906 F.2d 319, 323 (7th Cir. 1990) (finding defendant was not in custody after he was given his written warning, "had all his identification, he was told that the investigation was over, he was free to leave at his pleasure and, indeed, was leaving when the trooper popped the question of consensual search").

Ambriz-Villa also argues that his consent was not voluntarily given. To evaluate voluntariness of consent to a search, we look to the totality of the circumstances, considering the following factors: "(1) the person's age, intelligence, and education; (2) whether he was advised of his constitutional rights; (3) how long he was detained before he gave his consent; (4) whether his consent was immediate, or was prompted by repeated requests by the authorities; (5) whether any physical coercion was used; and (6) whether the individual was in police custody when he gave his consent." *United States v. Figueroa-Espana*, 511 F.3d 696, 704–05 (7th Cir. 2007).

Ambriz-Villa argues that when he was exiting the patrol car to return to his car with the warning violation in his possession, no reasonable person would have felt free to ignore the trooper's question and simply walk away. But under the totality of the circumstances, Ambriz-Villa's consent was freely given. Ambriz-Villa was in fact leaving: it is undisputed that Trooper ***791** Payton had handed him the warning ticket and that Ambriz-Villa was exiting the police car at the time the consent to search was sought. As noted above, in *Rivera*, a case with very similar facts, we found that a reasonable person in a comparable position would have felt free to leave at this point of the interaction. 906 F.2d at 323. Furthermore, the interaction took place on a public interstate highway during the day; Trooper Payton showed no weapons or other physical force; and the language and tone were limited to a series of targeted questions and confirmed whether a search would be allowed.

B

Next, Ambriz-Villa challenges his sentence, both for procedural error and as substantively unreasonable. We review the district court's sentencing decision for procedural error de novo and the substantive reasonableness of the sentence for abuse of discretion. *United States v. Patel*, 921 F.3d 663, 669 (7th Cir. 2019).

1

Ambriz-Villa argues that his criminal behavior was aberrant and that the district court committed procedural error by considering only the Sentencing Guidelines' definition of aberrant behavior in policy statement § 5K2.20 in deciding that Ambriz-Villa's behavior did not warrant a departure from the applicable Guidelines range. But there's no indication that the judge believed he was confined to the Guidelines' definition of aberrant behavior in deciding Ambriz-Villa's sentence.

It is perfectly acceptable for a district judge to use the Guidelines as a reference when deciding whether to depart from the Guidelines range so long as the judge does not treat the Guidelines as mandatory. See *United States v. Townsend*, 724 F.3d 749, 751–52 (7th Cir. 2013). There is no indication here—and Ambriz-Villa points to none—that the district judge concluded that he was forbidden from considering Ambriz-Villa's argument or circumstances due to a Guidelines definition or policy statement. True enough, the judge concluded that Ambriz-Villa's conduct did not satisfy § 5K2.20. But that was not the end of the judge's consideration of Ambriz-Villa's circumstances. Rather, in weighing the 18 U.S.C. § 3553(a) factors, the judge considered his argument that his behavior was aberrant and rejected it. *Id.* at 752 ("The sentencing transcript shows that the judge gave thoughtful consideration not only to § 5K2.20 but also to the possibility, independent of § 5K2.20, that [the defendant's] crimes were aberrational."). The judge acknowledged that Ambriz-Villa was "not a bad person, but [had] made a bad choice" and knew what he was doing. The judge weighed heavily that "even assuming this was the first time" Ambriz-Villa had transported drugs, the quantity of drugs was not only high, but the distance traveled was also substantial and reflected the calculated nature of the crime. As in *Townsend*, the judge's approach was free from legal error.

2

Finally, we turn to Ambriz-Villa's argument that the term of his sentence—though within-Guidelines for his offense—was outside the bounds of a reasonable balancing of the § 3553(a) factors. A within-Guidelines sentence is presumptively reasonable. See *Patel*, 921 F.3d at 672. Ambriz-Villa may rebut this presumption only by showing that his sentence does not comport with the § 3553(a) factors. *Id.* To this end, Ambriz-Villa stresses to us that he has strong factors in favor of mitigation. But we do not re-weigh the ***792** factors on appeal. Rather, our review is limited to ensuring the sentence is "logical and consistent" with the factors. *United States v. Bonk*, 967 F.3d 643, 650 (7th Cir. 2020). Here, the district court considered the § 3553(a) factors, concluding the facts did not "warrant a variance below the Guidelines range." The judge

noted that Ambriz-Villa was moving a considerable quantity of drugs—nearly three times the amount required to establish a baseline offense—and that prior community supervision had not successfully deterred his criminal conduct. The district court logically applied the factors, and to hold otherwise would require us to first weigh the facts differently. That we will not do.

AFFIRMED

All Citations

28 F.4th 786

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2022 WL 1094627
Only the Westlaw citation is currently available.
United States Court of Appeals, Seventh Circuit.

UNITED STATES of America, Plaintiff-Appellee,
v.
Raul AMBRIZ-VILLA, Jr., Defendant-Appellant.

No. 21-1362
|
April 12, 2022

Appeal from the United States District Court for the Southern District of Illinois. No. 4:19-cr-40095, J. Phil Gilbert, Judge.

Attorneys and Law Firms

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David Brengle, Attorney, Office of the Federal Public Defender, East St. Louis, IL, for Defendant-Appellant.

Before JOEL M. FLAUM, Circuit Judge, AMY J. ST. EVE, Circuit Judge, THOMAS L. KIRSCH II, Circuit Judge

ORDER

***1** Petitioner filed a petition for rehearing and rehearing en banc on March 28, 2022. No judge in regular active service has requested a vote on the petition for rehearing en banc, and all judges on the original panel have voted to deny the petition for rehearing.

Accordingly, the petition for rehearing and rehearing en banc is **DENIED**.

All Citations

Not Reported in Fed. Rptr., 2022 WL 1094627

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,
Plaintiff,

v.

RAUL AMBRIZ-VILLA, JR.,
Defendant.

Case No. 19–CR–40095–JPG

MEMORANDUM & ORDER

Before the Court is Defendant Raul Ambriz-Villa, Jr.'s Motion to Suppress. (ECF No. 44). The Government responded, (ECF No. 47); and the Court conducted a hearing on August 18, 2020, (ECF No. 51). For the reasons below, the Court **DENIES** Ambriz-Villa's Motion to Suppress.

I. PROCEDURAL & FACTUAL HISTORY

On October 30, 2019, Illinois State Trooper John Payton ("Trooper Payton") was parked in his law-enforcement vehicle on I-57 near Mt. Vernon, Illinois.[1] Trooper Payton is a member of the Criminal Patrol Team and is specially trained in interdiction: to stop and apprehend those traveling along interstate highways suspected of criminal activity. He has 11 years of experience, which includes over 70 successful contraband seizures since 2015 and the rescue of an abducted child. He stops three-to-four drivers per day. And although he is authorized to issue traffic tickets, his focus is on interdiction. Along with fieldwork, Trooper Payton conducts in-class instruction and ride-alongs to pass his experience on to rookies.

Ambriz-Villa drove past Trooper Payton while driving south on I-57. He was driving a 2009 Chevy Suburban with a Nebraska license plate. In Trooper Payton's experience, large vehicles (like Suburbans) are preferred by drug traffickers because they can haul more contraband.

[1] The facts are drawn from the Indictment, the parties' briefs, the hearing testimony, and the dash-cam recording.

Trooper Payton also found the vehicle's dirty exterior and foreign plates as signs of long-distance interstate travel, consistent with trafficking.

Trooper Payton briefly followed Ambriz-Villa on I-57, during which time Ambriz-Villa's vehicle crossed the solid white line on the right-hand shoulder. Trooper Payton then conducted a traffic stop. He asked Ambriz-Villa for his license and registration. It took Ambriz-Villa near 90 seconds to produce his registration. That struck Trooper Payton as suspect—in his experience, drug traffickers often drive rentals and do not know where to find the vehicle's registration. Trooper Payton also noticed a "masking odor," like that of an air freshener or cologne, sometimes used to conceal the tracks of contraband; and two cell phones, sometimes used by traffickers as "dope phones." Trooper Payton then asked Ambriz-Villa if he would be willing to continue the inquiry from his law-enforcement vehicle.[2] Ambriz-Villa agreed.

When Ambriz-Villa sat down, Trooper Payton informed him that he was only receiving a warning ticket. In Trooper Payton's experience, innocent drivers relax when they learn that they are not receiving a moving violation. But Trooper Payton noticed that the news had little effect on Ambriz-Villa. The dash-cam recording showed Ambriz-Villa's eyes pacing out the window and through the mirrors; and Trooper Payton purportedly saw belly breathing and a prominent carotid artery, which sometimes conveys nervousness.

Several uneasy statements made by Ambriz-Villa also alerted Trooper Payton of the possibility of criminal activity. While processing Ambriz-Villa's license, Trooper Payton casually asked about his background and purpose for traveling.[3] Ambriz-Villa stated that he owned a tire shop in Nebraska and was traveling to Georgia for his nephew's birthday. He said that his family

[2] Trooper Payton testified that it is the Criminal Patrol Team's custom to invite suspects to their law-enforcement vehicles as a safety measure.

[3] Trooper Payton testified that out-of-state licenses take longer for Illinois police vehicles to retrieve information.

was going to Georgia too, but they flew instead. Trooper Payton asked why he decided to drive alone, and Ambriz-Villa floundered nonresponsive.[4] When asked again, he stated that he liked to drive. After further conversation, Trooper Payton concluded that Ambriz-Villa's evasiveness and excessive nervousness were signs of criminal activity.

By the time Trooper Payton printed the warning ticket, Ambriz-Villa was poised to leave. He took it and got halfway out the door when Trooper Payton interjected—"Do you mind if I ask you a few more questions?" Ambriz-Villa agreed. Trooper Payton then asked whether he was involved in any drug or criminal activity, which he denied. Finally, Trooper Payton asked Ambriz-Villa if he would consent to a search of his vehicle—he consented. Trooper Payton asked once again for clarification, and Ambriz-Villa confirmed his consent.

Two other troopers arrived moments earlier in a separate law-enforcement vehicle; Trooper Payton messaged them while processing Ambriz-Villa's license. Together, they searched Ambriz-Villa's Suburban. Hidden in the third row, beneath the tray and cupholder and above the rear driver-side tire, they found around 13 kilograms of methamphetamine.

On November 5, a grand jury in the Southern District of Illinois charged Ambriz-Villa with Possession with Intent to Distribute Methamphetamine. Ambriz-Villa then moved to suppress the drug evidence under the Fourth Amendment. The Government responded; and the Court conducted an in-person hearing, during which it heard testimony from Trooper Payton, examined the dash-cam recording, and heard oral arguments.

[4] The extent of Ambriz-Villa's ability to understand the English language remains unclear. Ambriz-Villa's native tongue is Spanish. During the traffic stop, he informed Trooper Payton that he immigrated to the United States from Mexico sometime in the last 20 to 25 years. And he appeared at the August 18 hearing with help from an interpreter, during which he informed the Court that he does not understand any English. The dash-cam recording, however, reflects otherwise.

II. LAW & ANALYSIS

The Fourth Amendment guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures . . . ." U.S. Const. amend. IV. "No right is held more sacred, or is more carefully guarded, by the common law, then the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law." *Union Pac. Ry. Co. v. Botsford*, 141 U.S. 250, 251 (1891). "Wherever an individual may harbor a reasonable 'expectation of privacy,' he is entitled to be free from governmental intrusion." *Terry v. Ohio*, 392 U.S. 1, 10 (1968); *Katz v. United States*, 389 U.S. 347, 360–61 (1967) (Harlan, J., dissenting). So "[in] cases where the securing of a warrant is reasonably practicable, it must be used . . . ." *Carrol v. United States*, 267 U.S. 132, 156 (1925).

"A 'search' occurs when an expectation of privacy that society is prepared to consider reasonable is infringed." *United States v. Jacobsen*, 466 U.S. 109, 113 (1984). And "[a] 'seizure' of property occurs when there is some meaningful interference with an individual's possessory interests in that property." *Id.* That said, "what the Constitution forbids is not all searches and seizures, but unreasonable searches and seizures." *Elkins v. United States*, 364 U.S. 206, 222 (1960).

If the Government violates the Fourth Amendment by conducting an unreasonable search or seizure, then the *exclusionary rule* "compel[s] respect for the constitutional guarantee in the only effectively available way—by removing the incentive to disregard it." *Id.* "Under this rule, evidence obtained in violation of the Fourth Amendment cannot be used in a criminal proceeding against the victim of the illegal search and seizure." *United States v. Calandra*, 414 U.S. 338, 347 (1974).

But "[g]iven the nature of an automobile in transit, the [Supreme] Court recognized that an immediate intrusion" is not unreasonable "in cases involving the transportation of contraband goods." *United States v. Ross*, 456 U.S. 798, 806–807 (1982).

> An investigatory stop complies with the Fourth Amendment if the brief detention is based on reasonable suspicion that the detained individual has committed or is about to commit a crime. An officer initiating an investigatory stop must be able to point to "specific and articulable facts" that suggest criminality so that he is not basing his actions on a mere hunch.

United States v. Uribe, 709 F.3d 646, 649–50 (7th Cir. 2013) (quoting *Terry*, 392 U.S. at 21–22).

"The government bears the burden of establishing reasonable suspicion by a preponderance of the evidence." *Id.* at 650. But *reasonable suspicion* itself "is a lower threshold than probable cause" and "considerably less than preponderance of the evidence." *United States v. Bullock*, 632 F.3d 1004, 1011 (7th Cir. 2011).

> Reasonable suspicion is a less demanding standard than probable cause not only in the sense that reasonable suspicion can be established with information that is different in quantity or content than that required to establish probable cause, but also in the sense that reasonable suspicion can arise from information that is less reliable than that required to show probable cause.

Alabama v. White, 496 U.S. 325, 330 (1990).

It is now well established "that the Fourth Amendment tolerate[s] certain unrelated investigations that [do] not lengthen the roadside detention." *Rodriguez v. United States*, 575 U.S. 348, 354 (2015) (citing *Arizona v. Johnson*, 555 U.S. 323, 333 (2009) ("An officer's inquiries into matters unrelated to the justification for the traffic stop, this Court has made plain, do not convert the encounter into something other than a lawful seizure, so long as those inquiries do not measurably extend the duration of the stop.")). And the Supreme Court has "held repeatedly that

mere police questioning does not constitute a seizure." *Florida v. Bostick*, 501 U.S. 429, 434 (1991).

Courts therefore evaluate *reasonable suspicion* by examining "the totality of the circumstances known to the officer at the time of the stop, including the experience of the officer and the behavior and characteristics of the suspect." *Bullock*, 632 F.3d at 1012. "If there is no reasonable suspicion of criminal activity, a traffic stop can only last as long as it takes to 'address the traffic violation that warranted the stop' and 'attend to related safety concerns.' " *United States v. Walton*, 827 F.3d 682, 687 (7th Cir. 2016) (quoting *Rodriguez*, 575 U.S. at 354). In other words, "[a] seizure that is justified solely by the interest in issuing a warning ticket to the driver can become unlawful if it is prolonged beyond the time reasonably required to complete that mission." *Illinois v. Caballes*, 543 U.S. 405, 407 (2005). "Authority for the seizure thus ends when tasks tied to the traffic infraction are—or reasonably should have been—completed." *Rodriguez*, 575 U.S. at 354. "However, information lawfully obtained during that period may provide the officer with reasonable suspicion of criminal conduct that will justify prolonging the stop to permit a reasonable investigation." *United States v. Figueroa-Espana*, 511 F.3d 696, 702 (7th Cir. 2007).

As in *Caballes*, "the initial seizure of [Ambriz-Villa] when he was stopped on the highway was based on probable cause and was concededly lawful." 543 U.S. at 407. (*See* Def.'s Mot. at 5–6). Even so, Ambriz-Villa argues that Trooper Payton violated his constitutional rights in three ways.

First, he argues that "Trooper Peyton's questions to Mr. Ambriz-Villa during the traffic stop about whether there was anything illegal in the car, whether anything would alert his drug dog, and whether there were any specific drugs or guns in the vehicle were outside the mission of the traffic stop" and therefore violated the Fourth Amendment. (*Id.*). The Court disagrees.

Ambriz-Villa's assertion that the scope of police questioning is restricted to "ordinary inquiries" lacks legal support. True enough, "[b]eyond determining whether to issue a traffic ticket, an officer's mission includes 'ordinary inquires incident to [the traffic] stop,'" *Rodriguez*, 575 U.S. at 355 (quoting *Caballes*, 543 U.S. at 408), which typically "involves checking the driver's license, determining whether there are outside warrants against the driver, and inspecting the automobile's registration and proof of insurance," *id.* (citing Wayne R. LaFave, 4 Search and Seizure § 9.3(c) (5th ed. 2019)). But drivers may also be "closely questioned about their identities, the reason for their travels, their intended destinations, and the like, and may be quizzed as to whether they have drugs on their persons or in the vehicle." LaFave, *supra*, § 9.3(c). And in the Seventh Circuit, "[a] traffic stop does not become unreasonable merely because the officer asks questions unrelated to the initial purpose for the stop, provided that those questions do not unreasonably extend the amount of time that the subject is delayed." *United States v. Martin*, 422 F.3d 597, 601–602 (7th Cir. 2005); *see also United States v. Muriel*, 418 F.3d 720, 725 (7th Cir. 2005). *See generally* Amy L. Vasquez, *"Do You Have Any Drugs, Weapons, or Dead Bodies in Your Car?": What Questions Can a Policy Officer Ask During a Traffic Stop?*, 76 Tul. L. Rev. 211, 223–23 (2001) (discussing circuit split). The Court therefore disagrees with Ambriz-Villa's assertion that Trooper Payton—while processing the warning ticket—violated the Fourth Amendment merely by asking questions unrelated to the traffic stop.

Second, Ambriz-Villa argues that Trooper Payton—after processing the warning ticket—lacked a reasonable suspicion to shift the scope of his investigation from the traffic violation to potential criminal activity. (Def.'s Mot. at 5–6). The Court disagrees.

Ambriz-Villa's circumspect behavior and dubious story gave Trooper Payton reasonable suspicion to expand the scope of the traffic stop after the warning ticket was issued. A driver's

"statements and demeanor" can create "reasonable suspicion of criminal conduct." *Figueroa-Espana*, 511 F.3d at 704; *Martin*, 422 F.3d at 602. And in *Terry v. Ohio*, the Supreme Court reiterated that "due weight must be given . . . to the specific reasonable inferences" that a law-enforcement officer is "entitled to draw from the facts *in light of his experience*." 392 U.S. at 27 (emphasis added). Here, Trooper Payton testified to several indicators that, given his experience, were clues of criminal conduct. Any objective viewer of the dash-cam recording would note Ambriz-Villa's particularly skittish behavior, from erratic eye movements to nervous hat adjustments. Trooper Payton also testified about salt grime on Ambriz-Villa's Suburban, suggesting long-distance driving; the Suburban itself, able to haul greater quantities of contraband; and Ambriz-Villa's belly breathing and prominent carotid artery, sometimes signs of nervousness. Taken as a whole, these specific and articulable facts were enough to give Trooper Payton a reasonable suspicion of criminal conduct.

Third, Ambriz-Villa argues that Trooper Paton committed an unreasonable seizure when he continued his questioning after issuing the warning ticket. (Def.'s Mot. at 7–8). He suggests that a reasonable person in his position would not have felt free to leave, and thus "[a]ny consent to stay and talk or search the vehicle by Mr. Ambriz-Villa is tainted by his illegal detainment." (*Id.*). The Court disagrees.

Nothing suggests that Ambriz-Villa was "seized" when Trooper Payton asked him a new question as he was exiting the vehicle.

> [A] person is 'seized' only when, by means of physical force or a showing of authority, his freedom of movement is restrained. As long as the person to whom questions are put remains free to disregard the questions and walk away, there has been no intrusion upon that person's liberty or privacy as would under the Constitution require some particularized and objective justification.

United States v. Mendenhall, 446 U.S. 544, 553 (1980). Trooper Payton's tone and behavior did not suggest coercion; and the mere presence of a law-enforcement officer, without more, does not presuppose an inability to leave. *Cf. Florida v. Royer*, 460 U.S. 491, 501–502 (finding that although officers' questioning was "no doubt permissible," driver "was effectively seized" when officers identified themselves as narcotics agents "while retaining his ticket and driver's license and without indicating in any way that he was free to depart"). A reasonable person in Ambriz-Villa's position—with one foot out the door and a warning ticket in hand—would feel at liberty to disregard the questions and walk away.

III. CONCLUSION

The Court **DENIES** Defendant Raul Ambriz-Villa, Jr.'s Motion to Suppress.

IT IS SO ORDERED.

Dated: Monday, August 31, 2020

S/J. Phil Gilbert
J. PHIL GILBERT
UNITED STATES DISTRICT JUDGE

AO 245B (SDIL Rev. 10/19) Judgment in a Criminal Case

UNITED STATES DISTRICT COURT

Southern District of Illinois

UNITED STATES OF AMERICA

v.

RAUL AMBRIZ-VILLA, JR

JUDGMENT IN A CRIMINAL CASE

Case Number: **4:19-CR-40095-JPG-1**
USM Number: **14600-025**

DAVID L BRENGLE
Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 1 of the Indictment
☐ pleaded nolo contendere to count(s) which was accepted by the court.
☐ was found guilty on count(s) after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
21 U.S.C. § 841(a)(1)	Possession with Intent to Distribute Methamphetamine	10/30/2019	1

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s)
☐ Count(s) ☐is ☐ are dismissed on the motion of the United States.

☐ No fine ☐ Forfeiture pursuant to order filed , included herein.

☐ Forfeiture pursuant to Order of the Court. See page for specific property details.

It is ordered that the defendant shall notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States attorney of any material change in the defendant's economic circumstances.

Restitution and/or fees may be paid to:
Clerk, U.S. District Court*
750 Missouri Ave.
East St. Louis, IL 62201

*Checks payable to: Clerk, U.S. District Court

February 25, 2021
Date of Imposition of Judgment

Signature of Judge
J. Phil Gilbert, U.S. District Judge
Name and Title of Judge

Date Signed: February 26, 2021

DEFENDANT: Raul Ambriz-Villa, Jr.
CASE NUMBER: 4:19-cr-40095-JPG-1

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of: **168 months as to Count 1 of the Indictment. The term of imprisonment imposed by this judgment shall run concurrently with any term of imprisonment imposed in case number 2019-CF-609 in Jefferson County, Illinois.**

☒ The court makes the following recommendations to the Bureau of Prisons:
The Court asks that Defendant be considered for the RDAP Program. The Court also recommends placement at a facility located closest to his home in Broken Bow, Nebraska so that his family can visit him.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:
☐ at _____ ☐a.m. ☐ p.m. on
☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
☐before 2 p.m. on
☐ as notified by the United States Marshal.
☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Raul Ambriz-Villa, Jr.
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SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of:
5 years as to Count 1 of the Indictment

Other than exceptions noted on the record at sentencing, the Court adopts the presentence report in its current form, including the suggested terms and conditions of supervised release and the explanations and justifications therefor.

MANDATORY CONDITIONS

The following conditions are authorized pursuant to 18 U.S.C. § 3583(d):

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance.

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the Court, not to exceed 52 tests in one year.

The defendant shall cooperate in the collection of DNA as directed by the probation officer.

ADMINISTRATIVE CONDITIONS

The following conditions of supervised release are administrative and applicable whenever supervised release is imposed, regardless of the substantive conditions that may also be imposed. These conditions are basic requirements essential to supervised release.

The defendant must report to the probation office in the district to which the defendant is released within seventy-two hours of release from the custody of the Bureau of Prisons.

The defendant shall not knowingly possess a firearm, ammunition, or destructive device. The defendant shall not knowingly possess a dangerous weapon unless approved by the Court.

The defendant shall not knowingly leave the federal judicial district without the permission of the Court or the probation officer.

The defendant shall report to the probation officer in a reasonable manner and frequency directed by the Court or probation officer.

The defendant shall respond to all inquiries of the probation officer and follow all reasonable instructions of the probation officer.

The defendant shall notify the probation officer prior to an expected change, or within seventy-two hours after an unexpected change, in residence or employment.

The defendant shall not knowingly meet, communicate, or otherwise interact with a person whom the defendant knows to be engaged, or planning to be engaged, in criminal activity.

The defendant shall permit a probation officer to visit the defendant at a reasonable time at home or at any other reasonable location and shall permit confiscation of any contraband observed in plain view of the probation officer.

The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.

SPECIAL CONDITIONS

Pursuant to the factors in 18 U.S.C. § 3553(a) and 18 U.S.C. § 3583(d), the following special conditions are ordered. While the Court imposes special conditions, pursuant to 18 U.S.C. § 3603(10), the probation officer shall perform any other duty that the Court may designate. The Court directs the probation officer to administer, monitor, and use all suitable methods consistent with the conditions specified by the Court and 18 U.S.C. § 3603 to aid persons on probation/supervised release. Although the probation officer administers the special conditions, final authority over all conditions rests with the Court.

The defendant shall participate in treatment for narcotic addiction, drug dependence, or alcohol dependence, which includes urinalysis and/or other drug detection measures and which may require residence and/or participation in a residential treatment facility, or residential reentry center (halfway house). The number of drug tests shall not exceed 52 tests in a one-year period. Any participation will require complete abstinence from all alcoholic beverages and any other substances for the purpose of intoxication. The defendant shall pay for the costs associated with services rendered, based on a Court approved sliding fee scale and the defendant's ability to pay. The defendant's financial obligation shall never exceed the total cost of services rendered. The Court directs the probation officer to approve the treatment provider and, in consultation with a licensed practitioner, the frequency and duration of counseling sessions, and the duration of treatment, as well as monitor the defendant's participation, and assist in the collection of the defendant's copayment.

The defendant shall not knowingly visit or remain at places where controlled substances are illegally sold, used, distributed, or administered.

While any financial penalties are outstanding, the defendant shall provide the probation officer and the Financial Litigation Unit of the United States Attorney's Office any requested financial information. The defendant is advised that the probation office may share financial information with the Financial Litigation Unit.

While any financial penalties are outstanding, the defendant shall apply some or all monies received, to be determined by the Court, from income tax refunds, lottery winnings, judgments, and/or any other anticipated or unexpected financial gains to any outstanding court-ordered financial obligation. The defendant shall notify the probation officer within 72 hours of the receipt of any indicated monies.

The defendant shall pay any financial penalties imposed which are due and payable immediately. If the defendant is unable to pay them immediately, any amount remaining unpaid when supervised release commences will become a condition of supervised release and be paid in accordance with the Schedule of

DEFENDANT: Raul Ambriz-Villa, Jr.
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Payments sheet of the judgment based on the defendant's ability to pay.

The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.

The defendant's person, residence, real property, place of business, vehicle, and any other property under the defendant's control is subject to a search, conducted by any United States Probation Officer and other such law enforcement personnel as the probation officer may deem advisable and at the direction of the United States Probation Officer, at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release, without a warrant. Failure to submit to such a search may be grounds for revocation. The defendant shall inform any other residents that the premises and other property under the defendant's control may be subject to a search pursuant to this condition.

U.S. Probation Office Use Only

A U.S. Probation Officer has read and explained the conditions ordered by the Court and has provided me with a complete copy of this Judgment. Further information regarding the conditions imposed by the Court can be obtained from the probation officer upon request.

Upon a finding of a violation of a condition(s) of probation or supervised release, I understand that the court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the conditions of supervision.

Defendant's Signature _____ Date _____

U.S. Probation Officer _____ Date _____

DEFENDANT: Raul Ambriz-Villa, Jr.
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CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment**
TOTALS	$100.00	$-0-	$100.00	$-0-	$-0-

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss***	Restitution Ordered	Priority or Percentage

☐ Restitution amount ordered pursuant to plea agreement $_____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☒ the interest requirement is waived for ☒ fine ☐ restitution.

☐ the interest requirement for ☐ fine ☐ restitution is modified as follows:

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299
** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.
*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

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SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A. ☐ Lump sum payment of $_____ due immediately, balance due
☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or

B. ☒ Payment to begin immediately (may be combined with ☐ C, ☐ D or ☒ F below; or

C. ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $_____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after the date of this judgment; or

D. ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $_____ over a period of_____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after release from imprisonment to a term of supervision; or

E. ☐ Payment during the term of supervised release will commence within _____ *(e.g., 30 or 60 days)* after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F. ☒ Special instructions regarding the payment of criminal monetary penalties:
All criminal monetary penalties are due immediately and payable through the Clerk, U.S. District Court. Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be paid in equal monthly installments of $10 or ten percent of his net monthly income, whichever is greater. The defendant shall pay any financial penalty that is imposed by this judgment and that remains unpaid at the commencement of the term of supervised release.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several
Defendant and Co-Defendant Names and Case Numbers *(including defendant number)*, Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.