

Sub/ma

SUPERIOR COURT, STATE OF ARIZONA, IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA, Plaintiff, vs. PATRICIA M. FALKENBURRY, Defendant.	Case No. P1300CR200901255 UNDER ADVISEMENT RULING/ORDER RE: DEFENDANT'S MOTION TO SUPPRESS	FILED DATE: <u>NOV 16 2012</u> <u>4:54</u> O'Clock <u>P</u> .M. SANDRA K. MARKHAM, CLERK BY: <u>B. Chamberlain</u> Deputy
--	---	--

HONORABLE TINA R. AINLEY DIVISION 3	BY: Dawn Paul, Judicial Assistant DATE: November 13, 2012
--	--

The Court has reviewed Defendant's motions to suppress (including the Co-Defendant's original Motion), the State's Response and the testimony of witnesses at the hearing on the motions. The Court has also considered the interview of Co-Defendant Jessica Thorpe and the additional evidence filed in support of the motion dated August 9, 2012. Counsel submitted written arguments to the Court, which have been read and considered as well.

Defendant is charged with transportation of methamphetamine for sale, possession of methamphetamine, possession of methamphetamine drug paraphernalia, and possession of a weapon during a drug offense. The motions to suppress challenge the stop of the vehicle driven by Defendant and the subsequent dog sniff.

As to the stop, the Court has considered the testimony of witnesses, the police report (which was submitted) and the grand jury transcript. The Court finds that Sgt. Rouselle has reasonable, articulable suspicion for the stop of the vehicle. According to his testimony, the vehicle was stopped for crossing the gore point and failing to signal. The crossing of the gore point during exit is a traffic violation that supports the stop. See *State v. Sweeney*, 224 Ariz. 107, 112, 227 P.3d 868, 873 (App. 2010).

The fact that the officer had additional information that the car was transporting drugs does not invalidate or taint the valid reasons for the stop. *State v. Swanson*, 172 Ariz. 579, 582, 838 P.2d 1340, 1343 (App. 1992) ("Regardless of the officer's underlying motives, a stop is not invalid if there exists a valid, objective reason to make the stop.")

While the Defendant has pointed out some discrepancies in Sgt. Rouselle's testimony, his basis for the stop has not varied. On the other hand, the Defendant's testimony did not persuade this Court that the stop was without articulable suspicion.

Additionally, the Court finds no credible evidence that Defendant was unreasonably detained prior to the dog sniff. See *State v. Box*, 205 Ariz. 492, 73 P.3d 623 (App. 2003). All witnesses except the Defendant agree that the stop was not concluded before Deputy Shrum arrived to conduct the exterior dog sniff. The fact that the officers suspected that the vehicle contained drugs does not convert the sniff into an unlawful search. *Id.*

Finally, the Court finds that officers had probable cause to search the vehicle following the dog sniff. Defendant challenged the reliability of the dog based on the testimony and statistics provided by expert Nicely. The State countered with Detective Green of the Phoenix Police Department.

In determining the credibility of the evidence, the Court finds expert Nicely's testimony to be problematic. First, Nicely refuses to consider the certification processes of most, if not all, national certification agencies, including the National Police Canine Association ("NPCA"). While his suggestions for improvement may be well-taken, this Court cannot blithely ignore the fact that the NPCA, along with other agencies, currently set the standards for training and certification in the United States. As pointed out by the State, if the Court considered Nicely's criteria for certification, few if any dogs currently working for law enforcement would be considered reliable.

The Court agrees with the Defendant that certification alone may not be enough to establish the reliability of the dog. However, the officer testified that after certain issues were brought to his attention, he improved his training records and took other steps to ensure the reliability, including the improvement of his field activity records. Detective Green, based on his review of those records, was able to form an opinion that the dog Aros was a properly trained and reliable dog.

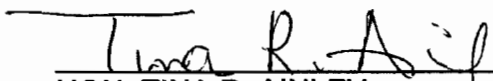
In contrast, Nicely attempted a statistical analysis of the dog's reliability by considering only those alerts that were later confirmed by a lab as being usable amounts of an illegal substance. By his own admission these numbers failed to take into account the dog's ability to find odors that may be related to trace amounts of drugs, including paraphernalia and currency. Under those circumstances, Nicely's statistical analysis is flawed. See *United States v. Johnson*, 660 F.2d 21, 22-23 (2nd Cir. 1981).

When asked to include paraphernalia and currency in his analysis, the defense expert indicated that Aros' accuracy was between eighty and eighty-five percent. The Court finds that these statistics support the reliability of the dog in this case.

IT IS ORDERED Denying the Defendant's motions to suppress.

IT IS FURTHER ORDERED setting a Pretrial Conference/Status Conference on Monday, December 17, 2012 at 1:30 p.m.

DONE IN OPEN COURT this 16 day of November, 2012.



HON. TINA R. AINLEY
Judge of the Superior Court

cc:

- * Scott W. Blake, Esq., Deputy County Attorney, Yavapai County Attorney's Office, Counsel for State
- * Cynthia Brubaker, Attorney at Law, 608 E. Missouri Ave., Phoenix, AZ. 85012, Counsel for Defendant