

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-10171

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JAMAR EUGENE BIRKS,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
(4:99-CR-171-G)

February 12, 2001

Before WIENER, BARKSDALE, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Plaintiff-Appellant Jamar Eugene Birks appeals his conviction for possession of cocaine base with intent to distribute, in violation of 21 U.S.C. § 844(a) on the ground that the district court erroneously denied his motion to suppress the cocaine base discovered in his car. Specifically, Birks contends that the manner in which he was seized, which ultimately led to the search of his

*Pursuant to 5th Cir. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. Rule 47.5.4.

car and the discovery of the evidence at issue here,¹ was unreasonable, as defined by the Fourth Amendment. We cannot agree. Assuming that the police "seized" Birks when they rushed his car, they clearly had probable cause based on a violation of the Texas traffic law proscribing the parking of a vehicle more than 18 inches from the curb.² Their "seizure" was not executed "in an extraordinary manner, unusually harmful to an individual's privacy or even physical interests,"³ so we conclude that it comports with the strictures of the Fourth Amendment. His conviction is therefore
AFFIRMED.

¹ To summarize, seven or eight uniformed members of the Fort Worth Police Department, who were investigating drug and prostitution complaints, were patrolling a high-crime area in which such activities were common at night when they noticed that a car later found to belong to Birks was parked more than 18 inches from the curb in violation of Texas traffic law. They also noticed that the person in the driver seat (Birks) was conversing with another man who was leaning into the driver's side window. Suspecting drug activity, the police parked their van at an angle to Birks's car so that their headlights would illuminate his car. The uniformed officers exited the van and rapidly approached Birks's car, ordering the two men to show their hands. When questioned, Birks fled but was quickly apprehended. His car was then searched incident to his arrest for evading detention and a bag of crack cocaine was discovered.

² Whren v. United States 517 U.S. 806, 813 (1996).

³ Id. at 817.