

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-40617
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

NOE OCAMPO,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 2:99-CR-14-2
- - - - -

March 20, 2001

Before SMITH, BENAVIDES, and DENNIS, Circuit Judges.

PER CURIAM:*

Noe Ocampo appeals his conviction and sentence on the basis that the district court erred in denying his motion to suppress evidence obtained during a search incident to a traffic stop. He argues that the arresting officer, Dusty Flanagan, did not have probable cause for the stop; thus the search was illegal. Flanagan testified at the suppression hearing that on each of three occasions, the vehicle went almost halfway over into the shoulder such that the white line would have "split the vehicle in half." He testified that the vehicle was being driven in an unsafe manner

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

and that he was concerned that the driver was either fatigued, sleepy, or intoxicated. Flanagan stopped the vehicle on the basis of a traffic violation, i.e. improper lane usage, creating sufficient probable cause to support the stop. See Whren v. United States, 517 U.S. 806, 809 (1996); United States v. Jones, 185 F.3d 459, 463-64 (5th Cir. 1999), cert. denied, 121 S. Ct. 125 (2000). Flanagan's stop and subsequent arrest of Ocampo was proper under the Fourth Amendment. Jones, 185 F.3d at 463-64. The district court did not err in denying Ocampo's motion to suppress the evidence obtained during the search incident to the stop of the vehicle.

AFFIRMED.