

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 01-31086  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

FREDERICK BURKS,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Louisiana  
USDC No. 00-CR-50068-1  
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April 10, 2002

Before SMITH, DeMOSS, and PARKER, Circuit Judges.

PER CURIAM:\*

Frederick Burks appeals his convictions for conspiracy to possess with intent to distribute marijuana and possession with intent to distribute marijuana. He seeks to raise for the first time on appeal several arguments related to the constitutionality of the stop and search of his commercial vehicle. Burks filed a motion to suppress the marijuana seized from the commercial vehicle he was driving, arguing that his consent to the search had been coerced. Burks withdrew his motion to suppress and waived his arguments set out in the motion to suppress subject to

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

a proposed plea agreement. Burks did not reurge his motion to suppress when plea negotiations were unsuccessful.

Burks argues on appeal that his due process rights were violated by the state trooper who stopped his truck at random pursuant to a Louisiana administrative regulation that allows random stops for administrative searches of commercial vehicles. He argues that the regulation is unconstitutional on its face because it dispenses with the Fourth Amendment's requirement of probable cause or at least articulable suspicion. He argues that Supreme Court jurisprudence requires limitations in the language of state regulations on a police officer's discretion to stop a commercial vehicle, and that the absence of background information as in United States v. Fort, 248 F.3d 475 (5th Cir. 2001) renders the state trooper's decision to stop his vehicle arbitrary and unconstitutional.

Burks has waived his right to challenge the stop and search of his vehicle. Burks withdrew the motion to suppress, with counsel specifically stating that he was going to "waive" the motion. Burks' failure to pursue the motion to suppress forecloses him from raising the suppression issue on appeal. United States v. Chavez-Valencia, 116 F.3d 127, 129-33 (5th Cir. 1997); see also United States v. Lampton, 158 F.3d 251, 259 (5th Cir. 1998)(applying Chavez-Valencia). We, therefore, decline to consider his arguments.

AFFIRMED.