

July 21, 2004

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 03-51332  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DAVID WAYNE KANE,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. P-03-CR-219-ALL  
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Before SMITH, DeMOSS, and STEWART, Circuit Judges.

PER CURIAM:\*

David Wayne Kane entered a conditional guilty plea to possession with intent to distribute marijuana, reserving the right to appeal the district court's denial of his motion to suppress evidence. He argues that district court erred in determining that he voluntarily stopped his vehicle, rendering his initial encounter with Border Patrol agents a consensual one, and argues that the encounter was instead a seizure unsupported by reasonable suspicion. He contends that because the district court's

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

determination whether a seizure occurred was influenced by an incorrect view of the law, this court's review is de novo, rather than for clear error. See United States v. Mask, 330 F.3d 330, 335 (5th Cir. 2003).

The district court's determination that Kane's initial encounter with agents was a consensual one, rather than a seizure, was not "influenced by an incorrect view of the law." See Mask, 330 F.3d at 337. The district court did not err in finding the encounter consensual in the light of the evidence that Agent Grajeda's hand gesture toward Kane's vehicle was a signal for Kane to slow down, rather than for him stop, but that Kane nonetheless stopped his vehicle. See United States v. Cooper, 43 F.3d 140, 145-46 (5th Cir. 1995). Therefore, the district court's judgment is AFFIRMED.

AFFIRMED.