

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 92-5297

Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ROY DALE WAKEFIELD,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Eastern District of Texas  
1:92 CR 46 1

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( August 25, 1993 )

Before KING, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

PER CURIAM:\*

Roy Dale Wakefield pleaded guilty to using and carrying a firearm during and in relation to a drug trafficking crime in violation of 18 U.S.C. § 924(c)(1). He was sentenced to five years of imprisonment and three years of supervised release. The guilty plea was conditional, reserving the right to appeal the district

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\*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

court's denial of his motion to suppress the incriminating evidence. Wakefield appealed and we affirm.

Wakefield moved to suppress evidence of marijuana and a gun seized from his vehicle. After a hearing, the district court denied the motion without stating factual findings or reasons.

On January 20, 1992, at approximately 1:20 p.m., Beaumont police officers LaChance and Froman observed Wakefield make an improper lane change while driving a blue Oldsmobile eastbound on Interstate 10 in Beaumont. According to Wakefield, the officers also stated that they stopped him for tailgating. The officers pulled Wakefield's vehicle over near the parking lot of a restaurant. Officer LaChance approached Wakefield and asked for his driver's license, and Wakefield got out of the vehicle. Meanwhile, Officer Froman looked into the passenger side of the car. Froman observed a radar detector on the dashboard, a black briefcase on the front seat, a road atlas atop the briefcase, and a toilet kit, travel bag with clothes protruding from it, and clothes on a hanger in the back seat. Froman testified at the suppression hearing that he thought it was curious to have so much luggage in the back seat when the mid-sized Oldsmobile had ample trunk space.

The officers questioned Wakefield. Wakefield stated that the car was rented in his wife's name. He stated that he had been in Houston on an overnight business trip. Froman testified that Wakefield appeared very nervous--his hands were visibly shaking and the artery in his neck was visibly throbbing. Froman thought that

this apparent anxiety was more than the ordinary nervousness of someone stopped for a traffic violation and facing a citation.

Froman initiated a warrant identification check. While waiting for the results, LaChance continued speaking to Wakefield. Froman overheard Wakefield state that he lived in Nashville and worked on jewelry. He had traveled to Houston through Little Rock, where he had briefly stopped to attend to business. Wakefield stated that he had gone to Houston to see the owner of a pawn shop and stayed overnight. When he was specifically asked why he had traveled all the way from Nashville to Houston to visit one pawn shop owner, Wakefield did not answer.

At this point, the warrant check was completed and it indicated that Wakefield had several arrests and convictions for marijuana possession and a forgery offense. The officers asked Wakefield if he had been arrested before, and he told them that he had not. According to Froman's testimony, when confronted with the information from his warrant check, Wakefield denied that the criminal history was his and stated that it probably belonged to his son. At the hearing, Wakefield denied that he told the officers that the criminal history belonged to his son. Froman testified that he then asked for Wakefield's social security number in order to cross check the history, and found that the number for the criminal history matched the number that Wakefield gave.

For the following reasons, the officers believed that there might be narcotics in Wakefield's vehicle: Wakefield's apparent extreme nervousness, his evasiveness in answering questions about

his criminal history, the vagueness of his reason for traveling to Houston, and the short duration of his stay in a city known to the officers as a major source location for narcotics. The officers asked Wakefield if he was transporting narcotics; he responded that he was not. Wakefield then refused to consent to a search of his vehicle.

Officer LaChance issued a traffic citation to Wakefield and told him that he was free to go, but that the vehicle would be detained until a narcotics-detection dog could come to check it. Wakefield indicated that he would go into the nearby restaurant to eat while they were waiting.

An investigator arrived with two dogs. The dogs sniffed the outside of the car, and both alerted on the trunk. Froman then removed the keys from the ignition where Wakefield had left them and opened the trunk. The trunk contained a blue canvas bag revealing the outline of a large square object. Froman opened the bag and found a square object wrapped in white plastic, which later tested positive for marijuana. Approximately ten to fifteen minutes had elapsed from the time the officers told Wakefield that they were going to detain his car, until the dogs arrived and the resulting search was completed.

Wakefield was then arrested outside the restaurant without incident. LaChance transported Wakefield to jail and Froman drove the Oldsmobile to the Beaumont Narcotics Office and conducted an inventory search. Froman found a .38 caliber pistol loaded with

three rounds of ammunition in the briefcase located on the front seat.

Wakefield argues that the district court committed reversible error in denying his motion to suppress the marijuana and handgun seized from the car he was driving. He contends that the officers had no probable cause to detain the vehicle or to conduct the search of the vehicle or the containers therein.

In reviewing the denial of a motion to suppress, we review the district court's findings of fact for clear error. United States v. Colin, 928 F.2d 676, 677 (5th Cir. 1991). We review the ultimate determination of Fourth Amendment reasonableness de novo. Id. at 677-78. The evidence must be viewed most favorably to the party prevailing below, unless such a view is inconsistent with the district court's findings or is clearly erroneous considering the evidence as a whole. United States v. Shabazz, 993 F.2d 431, 434 (5th Cir. 1993).

In this case, because the district court made no express factual findings and stated no legal analysis supporting its decision,<sup>1</sup> "we must independently review the record to determine whether any reasonable view of the evidence supports admissibility" of the challenged evidence. United States v. Yeagin, 927 F.2d 798, 800 (5th Cir. 1991); see also United States v. Montos, 421 F.2d 215, 219 n.1 (5th Cir.) (in the absence of findings, "we uphold the ruling of the Trial Court if there is any reasonable view of the

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<sup>1</sup>Wakefield did not challenge the district court's lack of express findings.

evidence to support it"), cert. denied, 397 U.S. 1022 (1970). Officer Froman's and Wakefield's testimonies at the suppression hearing conflicted on some points, although most of them were not pertinent to the reasonableness of the detention or search. The one relevant conflict concerned whether or not Wakefield claimed that the criminal history probably belonged to his son. Having reviewed the record, we conclude that the district court could reasonably have found that Froman's testimony was more credible. As developed below, the evidence viewed in this light--the light most favorable to the party that prevailed below--supports admissibility.

Wakefield does not challenge the initial stop of his vehicle for a traffic violation. He also does not contend that the officers' questions while waiting on the warrant check exceeded the scope of the stop's original purpose. Cf. United States v. Kelley, 981 F.2d 1464, 1467 (5th Cir.), cert. denied, 113 S. Ct. 2427 (1993); Shabazz, 993 F.2d at 435. He does maintain, however, that once the warrant check was completed and the officers gave him a traffic citation, telling him that he was free to go, they had no probable cause to detain his vehicle.

The officers did not need probable cause to detain the vehicle. Traffic stops are analyzed under the standards for investigative detention announced in Terry v. Ohio, 392 U.S. 1 (1968). See Shabazz, 993 F.2d at 434. The proper inquiry is not concerned with probable cause, but whether the officers had an articulable and reasonable suspicion that the vehicle contained

contraband justifying detention for further investigation. United States v. Sharpe, 470 U.S. 675, 682-83 (1985). In evaluating the reasonableness of the officers' detention of the car pending the narcotics dogs' arrival, we consider (1) whether the officers' actions were justified at the inception and (2) whether their actions were reasonably related in scope to the circumstances which justified the interference in the first place. Terry, 392 U.S. at 20.

Froman gave four reasons for the decision to detain the car for further investigation: Wakefield's nervousness, his evasiveness regarding criminal history, his vagueness regarding the purpose of his trip, and the short stay in Houston, a major narcotics source. These reasons suffice to establish a reasonable, articulable suspicion that there might be narcotics in the vehicle. The detention was justified at its inception. The car was detained for no more than fifteen minutes until the narcotics dogs arrived to sniff the outside of the vehicle. These actions were reasonably related in scope to the reason the officers detained the car.

Wakefield argues that the officers should have obtained a warrant before seizing and searching his car. He then exaggerates the effect of the response that no probable cause to support a warrant existed until the dogs alerted on his car. As just stated, probable cause was not required in order to detain the car for further investigation by the dogs. Nor was a warrant required to search the vehicle after the dogs' actions established probable cause to believe that the car contained narcotics. Warrantless

searches of automobiles are permitted if officers have probable cause to believe that the vehicle contains contraband. United States v. Ross, 456 U.S. 798, 809 (1982); see also United States v. Seals, 987 F.2d 1102, 1107 (5th Cir. 1993), petition for cert. filed, No. 92-9137 (June 18, 1993). When the dogs alerted on the trunk of the car, the officers had probable cause to believe that there were drugs in the trunk, and so did not need a warrant to search the trunk. Seals, 987 F.2d at 1107.

Since the officers did not need a warrant, Wakefield's argument regarding the absence of exigent circumstances to justify a warrantless search is unavailing.

As a fallback position, Wakefield maintains that even if the officers were permitted to open the trunk, they had no authority to search the closed canvas bag therein. To support this argument, he relies upon Robbins v. California, 453 U.S. 420 (1981). We note, however, that Robbins was overruled by the Supreme Court a year later. See Ross, 456 U.S. at 824-25; see also United States v. Rivera, 684 F.2d 308, 309 (5th Cir. 1982) (recognizing overruling). In Ross, the Court held that "[i]f probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search." 456 U.S. at 825. Therefore, because the officers had probable cause to search the trunk for drugs, they had the authority to search the canvas bag within the trunk. Seals, 987 F.2d at 1107.



Finally, Wakefield argues that the inventory search of the car after his arrest, which resulted in the discovery of the gun, was the illegal result of the initial illegal search and seizure. We have rejected the basic premise of this argument by finding that the search and seizure were legal. Moreover, the discovery of the gun resulted from an inventory search of the seized vehicle, which is valid if conducted according to established procedures. See id. Wakefield does not assert that Froman did not follow established procedures for the inventory search.

AFFIRMED.