

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-5643

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ROBERT JAMES JENKINS,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
SA 91 CR 487 1

July 2, 1993

Before KING, DAVIS and WEINER, Circuit Judges.

PER CURIAM:*

Robert James Jenkins was indicted for the possession of methamphetamine with the intent to distribute in violation of 21 U.S.C. § 841(a)(1). He was convicted and sentenced to a fifty-seven month prison term to be followed by three years of supervised release. He appeals his conviction on the ground that

*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 Pursuant to that Rule, the court has determined that this opinion should not be published.

the arresting police officer violated his Fourth Amendment rights. Finding no error, we affirm.

I.

The facts in this case are not in dispute. While on routine traffic patrol, Texas Department of Safety Trooper Christopher Knox observed a tractor-trailer going 65 miles per hour on an interstate highway, a speed ten miles over the legal speed limit for trucks traveling at night. Trooper Knox stopped the vehicle and asked the driver, Robert James Jenkins, to produce his driver's license and registration papers. Jenkins produced a Texas driver's license. Knox radioed the license number to a dispatcher and was advised that the license had been suspended for traffic violations. Knox also obtained a criminal history report that Jenkins had prior arrests for weapons and narcotics offenses.

Knox testified that he had originally intended to give Jenkins a warning ticket for speeding, but decided to arrest Jenkins for driving with a suspended license. The record, however, indicates that a full-blown custodial arrest did not occur immediately after Knox was apprised of the status of Jenkins' license. Although Knox asked Jenkins to sit in his police car while he ran the various computer checks, Knox neither pulled his weapon or hand-cuffed Jenkins at this point. The record also indicates that Knox never even informed Jenkins that

Knox intended to effect a formal custodial arrest for Jenkins' suspended license.

Nevertheless, after Know received the information about Jenkins' criminal history, Knox became concerned about his safety.² After obtaining a voluntary consent from Jenkins,³ Knox searched the inside of Jenkins' truck. Knox not only consented to the search, but admitted that he possessed a .45 caliber handgun and directed Knox to a garment bag that contained the weapon. Knox also spotted an ammunition box in the sleeper area of the cab. Knox opened the box and found two pouches, a nasal

² According to Knox, he was further concerned by the fact that Jenkins appeared very nervous. Jenkins was trembling, talking very fast, and sweating profusely even though it was a cool December night.

³ During the suppression hearing, the following colloquy occurred between Trooper Knox and the prosecutor:

Q. Trooper Knox, did you ask him -- did you ask Mr. Jenkins if he minded you looking in the truck?

A. Yes, sir, I did.

Q. Did you ask him if he had any objection to your looking in the truck?

A. Yes, sir.

* * *

Q. Did he tell you that he did not mind you looking in the truck?

A. Yes, sir.

Q. Is that reflected in your report?

A. Yes, sir; it is.

spray bottle, and some empty baggies. Knox noticed the odor of either amphetamine or methamphetamine and opened the zippered pouches. One of the bags contained marijuana, narcotics paraphernalia, a digital scale, and what Knox thought was narcotics. The other bag contained methamphetamine and what appeared to be a drug ledger. At this point, Knox placed Jenkins under arrest for possession of a controlled substance, handcuffed him, placed him in the patrol car, and advised of his Miranda⁴ rights.

Knox then called for assistance. Sergeant Ralph Sramek responded to Knox's call. Sramek determined that Jenkins had been properly advised of his rights and began to question him. In response to these questions, Jenkins stated that he had purchased an ounce of methamphetamine at a truck stop in San Antonio. Another officer, John Langerlaan, arrived next. Langerlaan also determined that Jenkins had been advised of his rights and asked him if he would cooperate. Jenkins admitted to Langerlaan that he owned the items contained in the ammunition box and that he sold methamphetamine to other truck drivers he knew.

At trial, Jenkins filed a motion to suppress the fruits of the search of the truck and any incriminating statements that he made to law enforcement officers. The motion to suppress was carried along with the bench trial. The district court denied

⁴ Miranda v. Arizona, 384 U.S. 436 (1966).

the motion and found Jenkins guilty of the possession with intent to distribute methamphetamine. This appeal ensued.

II.

A. The Fourth Amendment claim

i) The alleged pretextual stop

Jenkins argues that the search was unconstitutional because the Trooper Knox's original detention of Jenkins for speeding was simply a pretext to search the tractor-trailer. We reject Jenkins' conclusory argument that Trooper Knox engaged in such a pre-textual detention. Jenkins has offered no evidence that Trooper Knox did not stop Jenkins for a legitimate reason. Indeed, the record indicates that Trooper Knox had a perfectly legitimate reason for pulling Jenkins over. Moreover, as we held in United States v. Causey, 834 F.2d 1179, 1184 (5th Cir. 1987) (en banc), "[s]o long as police do no more than they are objectively authorized and legally permitted to do, their motives in doing so are irrelevant and hence not subject to inquiry."

ii) The search

Jenkins further argues that Trooper Knox did not have probable cause to search the cab of the tractor-trailer and that in order to be valid, the search must have come under the "inventory exception" to the Fourth Amendments warrant

requirement.⁵ The Government argues that Jenkins voluntarily consented to the search. Because we agree with the Government, we see no need to address Jenkins' "inventory search" argument.

In Schneckloth v. Bustamonte, 412 U.S. 218 (1973), the Supreme Court held that a consensual search by a police officer lacking probable cause to search was not a Fourth Amendment violation. Although Schneckloth was a case in which the defendant gave consent while not yet under arrest, the Court has subsequently held that a voluntary consent to search may be given even by one under arrest. See, e.g., United States v. Watson, 423 U.S. 411 (1976). Our review of the record indicates that Jenkins freely consented to Trooper Knox's search of the truck. Thus, even absent probable cause to search, there was no Fourth Amendment violation.

B. Jenkins' confession

Jenkins' next argument hinges on his Fourth Amendment claim. He asserts that because the stop and arrest were pretextual and the search was unconstitutional, any incriminating statements subsequently given to police officers should have been declared inadmissible as "fruit of a poisonous tree." See Wong Sun v. United States 371 U.S. 471 (1963). Jenkins does not argue that the statements should have been suppressed because they were coerced or were given in violation of Miranda. In the light of

⁵ See, e.g., United States v. Gallo, 927 F.2d 815, 819 (5th Cir. 1991) (discussing the "inventory exception").

our disposition of Jenkins' Fourth Amendment claim, we believe this claim also has no merit.

III.

For the foregoing reasons, we AFFIRM Jenkins' conviction.