

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 92-8508
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

CHARLES COOK,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
(P 92 CR 50 1)

April 19, 1993

Before KING, DAVIS and WIENER, Circuit Judges.

DAVIS, Circuit Judge:¹

Cook challenges his conviction for possession with intent to distribute cocaine on the sole ground that the district court erred in denying his motion to suppress. We find no error and affirm.

I.

On April 21, 1992, a Greyhound bus pulled into the Sierra Blanca Border Patrol checkpoint. In accordance with common

¹Local 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

practice, the bus pulled into the secondary inspection station. Border Patrol Agent Hillin checked the lower luggage compartments while Agent Cantu boarded the bus to check the overhead passenger compartments. Agent Cantu inquired into each passenger's immigration status. Then Agent Cantu began checking the overhead luggage bins--starting at the rear of the bus and ending at the front. He squeezed and touched the bags. Agent Cantu located a black, nylon bag in which he felt a brick-shaped object.

Agent Cantu pulled out the bag and asked the passengers if the bag belonged to any of them. He asked for someone to claim ownership of the bag three or four times times, but it was not claimed. Agent Cantu took the bag off of the bus and into the checkpoint where a canine inspection of the bag was conducted. The dog alerted on the bag. Agent Cantu opened the bag and found three bricks of cocaine and some clothing.

Agent Cantu returned to the bus to finish the inspection. He continued his inspection where he left off and felt brick-shaped objects in a blue nylon bag next to where the black bag had been. He removed the blue bag, asked someone to claim it, and took it to the checkpoint for canine inspection after no one claimed it. The dog alerted positive on the blue bag. Agent Cantu found four bricks of cocaine, children's clothing, shoes, diapers, and an envelope with the names McCoy and Charles Cook, III, inside the envelope.

Agent Cantu reboarded the bus and asked to see the tickets and identification of the passengers. When Agent Cantu found Charles

Cook, Jr., the appellant in this case, he asked Cook to step off of the bus. Cook stepped off of the bus carrying his eighteen month-old son, Charles Cook, III. Cook filed a motion to suppress the cocaine discovered in the two bags. He argued that Agent Cantu improperly squeezed and touched the bags. The district court denied the motion to suppress and later found Cook guilty as charged. This appeal followed.

Cook argues on appeal that Agent Cantu conducted an unreasonable search under the Fourth Amendment when he touched and squeezed his luggage. We disagree. Under the evidence presented, the district court did not clearly err in concluding that this minimally intrusive touching of the exterior of the suitcase in the open common baggage area of the interior of the bus did not constitute a search within the meaning of the Fourth Amendment. **United States v. Viera**, 644 F.2d 509, 510-11 (5th Cir.), **cert. denied**, 102 S.Ct. 332 (1981); **United States v. Muniz-Melchor**, 894 F.2d 1430, 1435 (5th Cir.), **cert. denied**, 110 S.Ct. 1957 (1992); **United States v. Wilson**, No. 92-8312 (5th Cir. 1993)(not published).

AFFIRMED.