IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 92-9094

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ABDOLREZA HAGHIGHAT-JOU,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
(4:92-CR-136-(A))

(January 14, 1994)

Before KING, HIGGINBOTHAM and BARKSDALE, Circuit Judges.

PER CURIAM:*

Abdolreza Haghighat-Jou (Haghighat-Jou) entered a conditional plea of guilty to possession with intent to distribute opium, reserving his right to appeal the district court's adverse ruling on his motion to suppress evidence.

---

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

Haghighat-Jou appeals only the district court's denial of his motion to suppress. We affirm.

I. FACTS AND PROCEDURAL HISTORY

On July 17, 1992, Haghighat-Jou arrived at the Dallas/Fort Worth International Airport from Houston, Texas. Drug Enforcement Administration agents William Travis and Ray Cissna watched the passengers depart from the plane. The agents had no prior knowledge of Haghighat-Jou, nor did they have any particular reason to be concerned with this flight, other than the fact that Houston is a "source city" for narcotics traffic. Because Haghighat-Jou appeared to be nervous, the agents continued to watch him as he walked through the concourse. As Haghighat-Jou walked through the concourse to the departing gate for his next flight, about 150 feet, the agents noticed that Haghighat-Jou continued to appear nervous and was looking around as if he were looking to see if someone was following him.

After Haghighat-Jou obtained a boarding pass for his flight to Los Angeles, the two agents approached Haghighat-Jou and identified themselves as federal agents. The agents were dressed in blue jeans and T-shirts and asked to see Haghighat-Jou's airline ticket. Another agent stood about ten feet away as a look-out for the agents' safety. Haghighat-Jou still appeared to be very nervous as he handed agent Travis his ticket. The airline ticket had a scheduled return trip to Houston on July 18, 1992, and was in the name of Ahmad Rafie. When agent Travis asked Haghighat-Jou if he was Mr. Rafie, Haghighat-Jou indicated

that he was. Agent Travis then handed Haghighat-Jou back his airline ticket and asked him if he had any other identification; Haghighat-Jou handed him an expired driver's license. The name on the driver's license was Andy Jou. Haghighat-Jou explained that there was a discrepancy in the names because his cousin had purchased the airline ticket for him. Also, at some point during this initial exchange between Haghighat-Jou and the agents, agent Travis informed Haghighat-Jou that he was not under arrest and was free to leave.

After giving Haghighat-Jou back his driver's license, agent Travis explained to Haghighat-Jou that the agents job at the airport was to prevent narcotic trafficking and requested to look inside Haghighat-Jou's briefcase. Haghighat-Jou handed the briefcase to agent Travis, and he took the briefcase to a seating area, a few feet away, to open it. After agent Travis opened the briefcase, Haghighat-Jou removed a small paper sack from the briefcase and placed it beside him. Agent Travis asked Haghighat-Jou whether the bag contained any illegal material in it, and Haghighat-Jou responded negatively. Agent Travis then requested to look inside the bag. Haghighat-Jou did not respond to this request. Agent Travis repeated the request, and Haghighat-Jou handed the bag over to him without saying anything.

Inside the paper bag, agent Travis found a travel folder containing six wax paper rolls. As agent Travis pulled out a roll, he detected the smell of opium; he then unwrapped the roll, smelled it again, and affirmed his suspicion, though he testified

that he was not positive what the substance was. Agent Travis then found two more wax paper rolls inside Haghighat-Jou's shaving kit in the briefcase. The agents then asked Haghighat-Jou to accompany them to their office. Haghighat-Jou returned with the agents to their office. Subsequent tests confirmed that the wax paper rolls contained opium.

A grand jury returned a one count indictment charging Haghighat-Jou with possession with intent to distribute opium in violation of 21 U.S.C. § 841(a)(1). Haghighat-Jou then filed a motion to suppress. The district court in overruling the motion to suppress made the following findings:

> I think that the initial stop wasSQof the defendant by Officer Travis was entirely appropriate under the circumstances. I think that the request forSQby Officer Travis to look at the driver's licenseSQfirst of all, the SQthe airline ticket and then the driver's license was appropriate, in each instance was appropriate. The fact that the driver's license carried a different name from the name the defendant said he had and the name that was on the airline ticket would, in my judgment, cause there to be reasonable suspicion that the defendant was up to something that he should not be up to. And I think that all of the conduct thereafter on the part of the officer was entirely appropriate, and certainly once he became aware that there was something in the suitcase or briefcase that had a smell that he recognized as being opium, that it was appropriate at that point that there be a seizure and that an arrest at that point would be appropriate.

Haghighat-Jou entered a conditional guilty plea, reserving his right to appeal the district court's denial of his motion to suppress. On December 4, 1992, the district court sentenced Haghighat-Jou to twenty-three months imprisonment, and three years supervised release, and ordered him to pay a fifty dollar special assessment.

II. DISCUSSION

We review a district court's findings of fact on a motion to suppress under the clearly erroneous standard, and we review the district court's ultimate determination of Fourth Amendment reasonableness de novo. United States v. Seals, 987 F.2d 1102, 1106 (5th Cir.), cert. denied, 114 S. Ct. 155 (1993). We must also view the evidence in the light most favorable to the party that prevailed below. United States v. Simmons, 918 F.2d 476, 479 (5th Cir. 1990).

A. Validity of the Stop

Initially, Haghighat-Jou argues that, from the beginning, the agents' actions toward him amounted to a "seizure" not supported by reasonable suspicion and therefore constituted a violation of the Fourth Amendment. In United States v. Berry, we held that there are at least three tiers of police-citizen encounters: "communication between police and citizens involving no coercion or detention and therefore without the compass of the Fourth Amendment, brief 'seizures' that must be supported by reasonable suspicion, and full-scale arrests that must be supported by probable cause." 670 F.2d 583, 591 (5th Cir. Unit B 1982) (en banc). Not all airport stops are necessarily seizures; a seizure only occurs if "'in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave.'" Id. at 595 (quoting United States v. Mendenhall, 446 U.S. 544, 554 (1980)). Furthermore, it is well established that the mere fact that a law enforcement

official identifies himself is not so coercive that this statement alone would render an encounter between a citizen and the law enforcement official a seizure. United States v. Simmons, 918 F.2d 476, 480 (5th Cir. 1990).

The initial exchange between Haghighat-Jou and the agents was not a seizure under the Fourth Amendment. United States v. Galberth, 846 F.2d 983, 989 (5th Cir.) (noting that there was no seizure of the defendant when the stop was conducted in a non-coercive manner and the defendant's ticket and driver's license were immediately returned after the officer looked at them), cert. denied, 488 U.S. 865 (1988); United States v. Hanson, 801 F.2d 757, 761 (5th Cir. 1986) (noting that the Fourth Amendment was not implicated when officers merely approached the defendants, displayed their badges, and asked questions). Rather, the initial exchange was "mere communication." The agents' conduct was not coercive or threatening, and they informed Haghighat-Jou that he was free to leave at any time. Additionally, as we have already stated, an agent's self-identification is not so coercive as to render the encounter a seizure. The district court concluded that the agents' actions during the initial questioning of Haghighat-Jou were "entirely appropriate." We agree.

However, when agent Travis informed Haghighat-Jou that the agents were involved in the interdiction of drug trafficking and asked to look in Haghighat-Jou's briefcase, a seizure of Haghighat-Jou occurred. United States v. Simmons, 918 F.2d 476,

481 (5th Cir. 1990) (holding that when the agents identified themselves as narcotics officers and requested to search the defendants carry-on-bag, a seizure of the defendant had occurred); United States v. Gonzales, 842 F.2d 748, 752 (5th Cir. 1988) (holding that a seizure of the defendant occurred when the officer informed the defendant that he was "working narcotics" and requested to look into her bag), overruled on other grounds by United States v. Hurtado, 905 F.2d 74 (5th Cir. 1990) (en banc). Having determined that Haghighat-Jou was seized for purposes of the Fourth Amendment, we must now determine whether the seizure was supported by reasonable suspicion. Gonzales, 842 F.2d at 753; Berry, 670 F.2d at 598; Reasonable suspicion has been defined by the Supreme Court as "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." Terry v. Ohio, 392 U.S. 1, 21 (1968).

In this case, we agree with the district court that the agents had reasonable suspicion to justify their seizure of Haghighat-Jou. Haghighat-Jou had arrived from a known "source city," he appeared nervous as he got off the plane, his airline ticket and driver's license revealed a name discrepancy, he stated a false name to the agents, and he was to return from Los Angeles to Houston the next day. See Galberth, 846 F.2d at 989 (noting that officers had specific and articulable facts to seize the defendant when the defendant tried to hide her true identity, appeared nervous, was returning from a known source city, had a

one-way ticket, and had been in Miami for only twenty-four hours). Therefore, we conclude that the agents had reasonable suspicion to warrant the brief detention of Haghighat-Jou.

B. Valid Consent

Haghighat-Jou further contends that the evidence seized from his briefcase should be excluded because his consent to the search was not voluntary, but instead was the result of subtle police coercion. Two distinct inquiries must be undertaken in analyzing an individual's consent to search: whether his consent was voluntarily given, and whether the search was within the scope of his consent. United States v. Rich, 992 F.2d 502, 505 (5th Cir.), cert. denied, 114 S. Ct. 348 (1993).

1. Did Haghighat-Jou voluntarily consent?

The government has the burden of proving by a preponderance of the evidence that Haghighat-Jou freely and voluntarily consented to the search. United States v. Riley, 968 F.2d 422, 426 (5th Cir.), cert. denied, 113 S. Ct. 507 (1992); United States v. Hurtado, 905 F.2d 74, 75 (1990) (en banc). The Supreme Court has stated that "the question whether a consent to a search was in fact 'voluntary' or was the product of duress or coercion, express or implied, is a question of fact to be determined from the totality of all the circumstances." Schneckloth v. Bustamonte, 412 U.S. 218, 227 (1973). We have outlined six primary factors for consideration in determining whether consent to a search is knowing and voluntary: (1) the voluntariness of the defendant's custodial status; (2) the presence of coercive

police procedures; (3) the extent and level of the defendant's cooperation with the police; (4) the defendant's awareness of his right to refuse consent; (5) the defendant's education and intelligence; and (6) the defendant's belief that no incriminating evidence will be found. United States v. Phillips, 664 F.2d 971, 1023-24 (5th Cir. Unit B 1981), cert. denied, 457 U.S. 1136, and cert. denied, 457 U.S. 1136, and cert. denied, 459 U.S. 906 (1982). While we have noted that all of the above factors are relevant, we have concluded that none of the preceding factors is considered to be dispositive of the voluntariness issue. Id. at 1023. A district court's determination that a suspect voluntarily consented to a search will not be reversed on appeal unless the finding is clearly erroneous. Galberth, 846 F.2d at 986; Phillips, 664 F.2d at 1023.

While the district court did not expressly find that Haghighat-Jou consented to the search of his briefcase, the district court did implicitly find that Haghighat-Jou had validly consented to the search. The district court found that after the agents discovered that Haghighat-Jou was traveling under an assumed name they had "reasonable suspicion" and that agent Travis' subsequent conduct was "entirely appropriate." Thus, the district court implicitly found that Haghighat-Jou had voluntarily consented to the search of his briefcase.

On the facts of this case, we cannot say that the district court's implicit finding that Haghighat-Jou voluntarily consented

to the search of the briefcase was clearly erroneous. Haghighat-Jou argues that there are numerous intangibles which demonstrate that he did not freely and voluntarily consent to agent Travis' search of his briefcase. Namely, Haghighat-Jou argues that because English is not his primary language and he is soft-spoken, and because the agents were much larger than him, his consent to the search of his briefcase was the product of subtle coercion. Although these factors are relevant, they are not dispositive in this case. There is no indication in the record that Haghighat-Jou had any problem communicating in English. In fact, the pre-sentence investigation report reveals that Haghighat-Jou has an undergraduate and a master's degree from American universities. Furthermore, there is nothing in the record to indicate that the agents were coercive in their tactics. Agent Travis' testimony indicates that Haghighat-Jou freely cooperated with the agents in a polite manner. Therefore, we conclude that the district court's determination that Haghighat-Jou freely consented to the search of the briefcase is not clearly erroneous.

Haghighat-Jou further argues that even if he did consent to the search of the briefcase, he withdrew his consent to have the paper bag searched when he removed the paper bag from the briefcase. A suspect may of course delimit as he chooses the scope of the search to which he consents. Florida v. Jimeno, 111 S. Ct. 1801, 1804 (1991). While it is clear that Haghighat-Jou initially withdrew his consent to have the paper bag searched,

the record reflects and the district court expressly found that Haghighat-Jou then freely handed the paper bag to agent Travis. Therefore, we must determine whether Haghighat-Jou voluntarily consented to have the paper bag searched. The facts reveal that Haghighat-Jou voluntarily submitted to questioning and politely cooperated with the agents. The record does not reveal any coercive tactics by the agents. Therefore, we conclude that the district court's determination that Haghighat-Jou voluntarily consented to have the paper bag searched is not clearly erroneous.

2. Did the search exceed the scope of the consent?

Lastly, Haghighat-Jou argues that even if he did consent to the agent's search of the paper bag, his consent did not extend to a search of the packages inside the paper bag. "The standard for measuring the scope of a suspect's consent under the Fourth Amendment is that of 'objective' reasonableness . . . ." Florida v. Jimeno, 111 S. Ct. 1801, 1803-04 (1991); United States v. Rich, 992 F.2d 502, 505 (5th Cir.), cert. denied, 114 S. Ct. 348 (1993). The key inquiry is what the "'typical reasonable person [would] have understood by the exchange between the officer and the suspect.'" Rich, 992 F.2d at 505 (quoting Jimeno, 111 S. Ct. at 1803-04). "The scope of a search is generally defined by its expressed object." Rich, 992 F.2d at 506. Objective reasonableness is a question of law and reviewed de novo. Id.

The district court determined that when Haghighat-Jou gave the agent permission to look inside the paper bag, he also gave

the agent permission to look at the things inside the paper bag. According to agent Travis' testimony at the suppression hearing, he had asked Haghighat-Jou for permission "to look into the sack." We agree with the district that a reasonable person would have viewed the exchange between Haghighat-Jou and the agent as permission by Haghighat-Jou for the agent to search not only the paper bag, but also the items inside the paper bag. See Jimeno, 111 S. Ct. at 1804 (holding that when the defendant had been informed by the officers that they were searching for drugs and the officers requested to search the defendant's car that it was objectively reasonable that an officer would believe that the general consent to search the defendant's car included the consent to search containers in the car which might contain narcotics). Haghighat-Jou clearly knew that agent Travis was searching for narcotics and it would only be reasonable that agent Travis would have believed that Haghighat-Jou had also consented to a search of the contents of the paper bag which might contain narcotics.

III.

For the foregoing reasons, we AFFIRM the district court's denial of Haghighat-Jou's motion to suppress and AFFIRM Haghighat-Jou's judgment of conviction.