

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-4011
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

HOWARD BRADLEY THOMPSON,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 6:92-CR-25(1)

- - - - -
June 24, 1993

Before POLITZ, Chief Judge, WIENER, and DeMOSS, Circuit Judges.

PER CURIAM:*

Howard Bradley Thompson argues that the warrantless search of his vehicle violated the Fourth Amendment. This Court reviews a district court's fact findings on a motion to suppress under the clearly erroneous standard, and reviews the court's ultimate determination of Fourth Amendment reasonableness de novo. United States v. Seals, 987 F.2d 1102, No. 92-4753, slip op. at 3357 (5th Cir. March 24, 1993).

As to the initial search of the passenger side of the

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

vehicle, "when a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile." New York v. Belton, 453 U.S. 454, 460, 101 S.Ct. 2860, 69 L.Ed.2d 768 (1981) (footnote omitted). Thompson does not contest the lawfulness of his arrest for driving with a suspended license, nor does he assert that the search of the passenger side was not contemporaneous. Thus, the initial search was reasonable as a search incident to arrest.

As to the search of the undercarriage of the vehicle, warrantless searches of automobiles are permitted by the Fourth Amendment if supported by probable cause that the vehicle contains contraband. United States v. Ross, 456 U.S. 798, 808-09, 102 S.Ct. 2157, 72 L.Ed.2d 572 (1982). A dog sniff is not a search (see Seals, slip op. at 3357), and an alert by a trained narcotics dog can, by itself, provide probable cause for a search. See United States v. Gonzalez-Basulto, 898 F.2d 1011, 1013 (5th Cir. 1990). The dog's alert to the right rear area of the vehicle and Thompson's nervousness and agitation provided the officers with probable cause to believe that narcotics were concealed in that area. See Seals, slip op. at 3358. Therefore, the search of the rear of the pickup truck was also reasonable.

The judgment of the district court is AFFIRMED.