

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

No. 93-7550  
Conference Calendar

---

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOSE GIL GARCIA-SANCHEZ,

Defendant-Appellant.

- - - - -  
Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. C-93-41-01  
- - - - -  
(March 25, 1994)

Before KING, DAVIS, and DeMOSS, Circuit Judges.

PER CURIAM:\*

Jose Gil Garcia-Sanchez argues that the district court erred in denying his motion to suppress. He contends that U.S. Border Patrol agents did not possess reasonable suspicion to justify the stop of his vehicle, that the detention exceeded the scope of the investigatory stop, and that his consent to the search was tainted by the illegal stop.

This Court employs a two-tier standard in reviewing a denial of a motion to suppress. The district court's findings of fact

---

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

are accepted unless clearly erroneous, but its ultimate conclusion as to the constitutionality of the law enforcement action is reviewed de novo. United States v. Chavez-Villarreal, 3 F.3d 124, 126 (5th Cir. 1993). This Court must review the evidence in the light most favorable to the Government as the prevailing party, and the district court's ruling to deny the suppression motion should be upheld if there is any reasonable view of the evidence to support it. United States v. Tellez, 11 F.3d 530, 532 (5th Cir. 1993).

A Border Patrol agent conducting a roving patrol in a border area may make a temporary, investigative stop of a vehicle if specific, articulable facts and the rational inferences drawn from those facts reasonably warrant suspicion that the vehicle is engaged in illegal activities. United States v. Casteneda, 951 F.2d 44, 46-47 (5th Cir. 1992). In assessing the evidence, this Court examines the totality of the circumstances as understood by those versed in the field of law enforcement, seeking grounds for reasonable suspicion that the particular individual being stopped was engaged in wrongdoing. United States v. Diaz, 977 F.2d 163, 164-65 (5th Cir. 1992).

Factors to be considered include the characteristics of the area, its proximity to the border, usual traffic patterns, the agent's previous experience with criminal traffic, information about recent illegal border crossings in the area, characteristics of the vehicle stopped, and the behavior of the driver. United States v. Brignoni-Ponce, 422 U.S. 873, 884-85, 95 S.Ct. 2574, 45 L.Ed.2d 607 (1975). Although any single factor

standing alone may be insufficient, under a "totality of the circumstances" analysis, the absence of a particular factor will not control a court's conclusion. United States v. Cardona, 955 F.2d 976, 980 (5th Cir.), cert. denied, 113 S.Ct. 381 (1992).

Agent Rueda articulated several specific facts supporting the agents' decision to stop the van. The particular area was one often used by alien smugglers, approximately eighty miles from the Mexican border. The agents had received several "sensor hits," indicating to Agent Rueda that illegal aliens were walking around the checkpoint. Agent Rueda observed Garcia-Sanchez's van leave an unlit, unpaved area that was known to the agent as a designated area to drop off aliens. When the agents caught up with the van, it was traveling "half on the shoulder and half on the main highway." Further, Agent Rueda testified that smugglers often use cargo vans to transport illegal aliens. Finally, Agent Rueda was experienced in matters involving the illegal transportation of aliens in the Texas-Mexico border area. Based upon the totality of the circumstances, the agents possessed a reasonable suspicion to justify the stop of the van.

Garcia-Sanchez's argument that the ensuing detention exceeded the scope of the investigatory stop is also without merit. An investigative stop and inquiry by Border Patrol agents "must be `reasonably related in scope to the justification for their initiation.'" United States v. Lara, 517 F.2d 209, 211 (5th Cir. 1975) (citation omitted). Although an agent may question the driver and passengers about their citizenship and immigration status and ask them to explain suspicious

circumstances, any further detention or search must be based upon consent or probable cause. Id. After Agent Rueda questioned Garcia-Sanchez and his female passenger, Garcia-Sanchez consented to a search of the back of the van. The remainder of the detention was based upon Garcia-Sanchez's consent. Because the investigatory stop was lawful, this Court need not reach Garcia-Sanchez's argument that the consent to search was tainted by the unlawful stop. The district court did not err in denying the motion to suppress.

AFFIRMED.