

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-8402
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MICHAEL LYNN UPCHURCH,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. DR-92-CR-103
- - - - -
(January 5, 1994)

Before GARWOOD, JOLLY, and BARKSDALE, Circuit Judges.

PER CURIAM:*

Michael Lynn Upchurch argues that the district court erred in finding that U.S. Border Patrol agents had reasonable suspicion to stop his vehicle. He contends that the Government failed to meet the "specificity requirement" necessary to support a finding of particularized suspicion.

This Court employs a two-tier standard in reviewing a denial of a motion to suppress. The district court's findings of fact are accepted unless clearly erroneous, but its ultimate

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

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).

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 Moore articulated several specific facts supporting the agents' decision to stop the vehicle. The particular area

was a "well known route" for smuggling, approximately twenty miles from the Mexican border. The agents had received information that smugglers were using this route before agents on "day shift" arrived at 6:00 a.m. Furthermore, Upchurch was driving an "older model car" at a high rate of speed, and Agent Moore testified that F.M. 2523 is primarily used by local ranchers and ranch hands, who travel in pick-up trucks.

Agent Moore also observed that Upchurch's vehicle was covered with dust and travelling very low. He testified that, based upon his experience, smugglers often travel down dirt roads to the river to pick up their loads, causing the vehicle to become covered in dust. Additionally, the vehicle "slowed down drastically" and began to "swerv[e] into both lanes of travel" as the agents followed it. This indicated to Agent Moore that Upchurch was either having a "hard time keeping [the car] on the road" because it was heavily loaded or that he was very nervous and looking in his rear view mirror. The agents also observed hand prints in the dust on the vehicle's trunk, which Moore believed had recently been opened and closed, "from the fresh look of the prints." Finally, Agent Moore was experienced in matters involving the illegal transportation of undocumented persons and contraband in the Texas-Mexico border area. See Cardona, 955 F.2d at 981. He had worked as a Border Patrol agent in the area for over five years.

Upchurch's argument that the Government failed to meet the "specificity requirement" necessary to support a finding of particularized suspicion is thus without merit. The agents were

aware of "specific articulable facts" reasonably warranting a suspicion that his vehicle was engaged in illegal activities. See Casteneda, 951 F.2d at 46. Based upon the totality of the circumstances, they possessed a reasonable suspicion to justify the stop of his vehicle. The district court thus did not err in denying his motion to suppress.

AFFIRMED.