

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-8589

Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ANTONIO CRUZ-ALATORRE,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
(P-93-CR-29-1)

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(June 3, 1994)

Before KING, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

PER CURIAM:\*

I.

The district court made the following undisputed findings of fact:

On March 17, 1993, at approximately 9:00 p.m., United States Border Patrol Agent Victor Carrillo, alone in a Border Patrol vehicle, was patrolling the area around Fort Hancock, Texas. One of Agent Carrillo's duties on this night was to patrol the area in an effort to detect and prevent the illegal smuggling of contraband

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

into this country across the 50 miles of Rio Grande River encompassed in the patrol area. The area is mostly desert, with some farmland, and is sparsely populated.

Agent Carrillo was traveling east on Interstate 10 and could see the River from the highway. Being accustomed to the local traffic, he took particular interest in an unfamiliar vehicle traveling on a local farm's dirt road with direct access to the River. The vehicle's headlights revealed it was traveling north, away from the River. His suspicions were further aroused since there were no residences on this particular road, the area rarely attracts visitors, few local residents travel after dark, and the nearest port of entry was approximately eight miles away. In addition, shortly before the time the agent spotted the unfamiliar vehicle, he had received reports of a sensor being activated (a sensor "hit") along the border with Mexico.

Agent Carrillo turned his vehicle around and, from a distance, visually tracked the other vehicle as it turned onto Texas Highway 192. When he ran a license check on the vehicle, a white van, the check showed the plates were registered to a white van belonging to Dow-Jones, Inc. Agent Carrillo did not believe this was the vehicle to which these plates were registered, since this did not appear to be a "company" van - it was not in good condition and did not look like a business vehicle. Agent Carrillo established radio communications with other Border Patrol agents and United States Customs special agents in the area, none of whom recognized the vehicle.

The van eventually stopped at a remote intersection, and the occupant extinguished the van's headlights. After a short time, the van began traveling again, westbound toward El Paso. Agent Carrillo followed the van as two other law enforcement vehicles converged on the van. Agent Carrillo activated his overhead lights and pulled over behind the van as another vehicle driven by Border Patrol Agent Saucedo, pulled in behind him and a vehicle driven by United States Customs Special Agents Godshall and Russell pulled over in front of the van.

Agent Godshall got out of his car [and] approached the van from the front, shining his flashlight into the passenger compartment. As he closed in on the van, his flashlight revealed "large cellophane-wrapped bundles, tied together with twine" in the cargo area of the van, visible from his vantage point. Agent Godshall yelled, "he's loaded!" for the benefit of the other agents approaching from the rear of the van. Agent Carrillo could smell marijuana as he identified himself to the driver and asked if there were any other passengers in the van. The Defendant was the only occupant and, when questioned, admitted to the agent he was transporting

marijuana. The agents arrested the Defendant, drove the van to the Fort Hancock Border Patrol Station, and confirmed the Defendant was carrying approximately 640 pounds of marijuana.

A grand jury charged Antonio Cruz-Alatorre with conspiring with unknown persons to import or cause to be imported more than 100 kilograms of marijuana (count one); importing more than 100 kilograms of marijuana (count two); conspiring with unknown persons to possess with intent to distribute more than 100 kilograms of marijuana (count three); and possession with intent to distribute more than 100 kilograms of marijuana (count four).

Cruz-Alatorre filed a motion to suppress the evidence, arguing that there was no reasonable suspicion to justify the stop of his vehicle. The district court denied the motion. Cruz-Alatorre entered a conditional plea of guilty on count four. The Government moved to dismiss counts one through three. The district court sentenced Cruz-Alatorre to 60 months imprisonment and four years supervised release, and assigned a \$50 special assessment.

## II.

Cruz-Alatorre asserts that the district court erred in denying the motion to suppress. A vehicle and its occupants may be briefly detained for investigation based not upon probable cause but upon reasonable suspicion of criminal activity. Terry v. Ohio, 392 U.S. 1, 21-22 (1968). An officer who stops a motor vehicle must have a least an articulable and reasonable suspicion that either the vehicle or an occupant is subject to seizure for violation of law. Id. Agent Carrillo had sufficient justification to stop the van.

The van was travelling at night near the Mexican border, which Carrillo knew to be sparsely populated and lightly travelled at night. There should have been no activity on the farm road, there was no house in the area, and the van's headlights were extinguished. A license plate check revealed that the plates belonged to a 1985 van owned by Dow-Jones, Inc.; this van was older. The appearance of the van was not consistent with a farm vehicle, and its poor condition and the absence of any lettering made it unlikely that the van belonged to Dow-Jones. These factors gave Carrillo sufficient justification to stop the van.

AFFIRMED.