

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-8871
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

PASCUAL ALDACO-LERMA,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. P-93-CR-88
- - - - -

(September 22, 1994)

Before KING, SMITH, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Pascual Aldaco-Lerma argues that the district court erred in denying his motion to suppress. He contends that U.S. Border Patrol Agent Saucedo did not possess reasonable suspicion to justify the stop of his vehicle 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 are accepted unless clearly erroneous, but its ultimate conclusion as to the constitutionality of the law enforcement

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

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), cert. denied, 114 S. Ct. 1630 (1994).

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, 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).

Agent Saucedo, who had over four years of experience as a Border Patrol agent in the area, articulated several specific

facts supporting his decision to stop Aldaco-Lerma's vehicle. At 8:45 p.m., while performing still-watch duties approximately one mile from the Mexican border, Agent Saucedo observed a vehicle drive down to an area by the Rio Grande filled with drains, ditches, and irrigation canals, to the "back drain," a canal located forty to fifty yards from the river with approximately one foot of water. The particular area was known for narcotics smuggling and was approximately fifty yards from the Mexican border. Further, the area was normally deserted after 5:00 p.m. Once the vehicle reached the back drain, its headlights were turned off for approximately five minutes. The vehicle then returned to the main road. Prior to stopping the vehicle, Agent Saucedo was advised by another border patrol agent that fresh tracks came from across the river and across the back drain. Agent Saucedo additionally observed mud on the vehicle's sides and wheels. The vehicle initially failed to stop when Agent Saucedo turned on his emergency lights and siren.

Based upon the totality of the circumstances, Agent Saucedo possessed a reasonable suspicion that the occupant of the vehicle was engaged in illegal smuggling activities. Accordingly, the initial stop of the vehicle was justified. Because the investigatory stop was lawful, this Court need not reach Aldaco-Lerma'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.