

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-40437  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JEFFERY LEVAR DENNIS,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Eastern District of Texas  
(6:93-CR-63-1)

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(November 23, 1994)

Before JONES, BARKSDALE and BENAVIDES, Circuit Judges.

PER CURIAM:\*

Appellant Jeffery Dennis pleaded guilty to conspiracy to possess cocaine, was sentenced to 78 months imprisonment and other penalties, and has appealed the denial of his suppression motion. Finding no error, we affirm.

The cocaine that implicated Dennis was found in a package wrapped as a Christmas present with a tag reading, "to Grandmother

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

from Jeff." The package was found in a Mazda RX-7, which Dennis was not riding in, although he was a passenger in and perhaps the person who insured the van that was accompanying the Mazda through Carthage, Texas. When the deputy sheriff stopped the vehicles for traffic violations, both Dennis and the driver of the van initially denied knowing the occupants of the Mazda. The driver of the Mazda, however, stated that the men in the van were his cousins. Neither owner of the vehicles was present at the time of the stop. Justifiably suspicious of inconsistencies in the stories told by the four suspects, the deputy sheriff asked if he could look into the cars. When he did so, he found the incriminating Christmas package. At this point, Dennis told Deputy Henderson that this package contained old plates for his grandmother. The deputy testified that the package felt too heavy to contain dishes and that it smelled like laundry detergent.

Dennis refused to consent to Henderson's opening the package, so Henderson called for a drug-sniffing canine. The dog alerted on the package, which had been placed on the sidewalk. Henderson told Dennis he was going to open it because the dog's response indicated that it contained narcotics. In the package, Henderson found a box of Tide laundry detergent that contained two brick-like objects which appeared to be cocaine. The officers field tested the substance, weighed it at over two kilograms, and sent it to a laboratory, which confirmed their analysis.

The district court denied Dennis's suppression motion without making findings of fact. On appeal, Dennis argues that the

officer had no justification to stop the vehicles; that Dennis did not consent to search the Mazda and as the officer only requested to "look inside the vehicle," the officer had no basis to remove the Christmas package from the Mazda; and finally, that the officer had no justification to open the package after the dog alerted on it. The government, by contrast, argues principally that Dennis had no standing to contest the search of the Mazda or its contents, because he neither owned nor was riding in that car at the time of the stop. The government's argument has some force, although it does not seem to rest squarely within established caselaw. Without hesitation, however, we affirm on the basis that even if Dennis had standing for some purposes, the search of the package was not unconstitutional.

First, it is clear under Fifth Circuit law that the officer, having testified without contradiction to the commission of motor vehicle violations by the autos, had the right to stop them. United States v. Causey, 834 F.2d 1179 (5th Cir. 1987). The officer also had the right to investigate the identity of the drivers and passengers and the ownership of the vehicles. During the course of that brief investigation, he turned up numerous inconsistencies in the suspects' stories, which reasonably led him to be suspicious about the mission on which they were all embarked.

Second, when Deputy Henderson asked to "look into" the vehicles, their drivers consented. Because Dennis was neither the owner nor driver of the Mazda, he had no standing to contest the search of the Mazda insofar as it revealed the Christmas package.

See Rakas v. Illinois, 439 U.S. 128, 99 S.Ct. 421 (1978); United States v. Harrison, 918 F.2d 469, 472 (5th Cir. 1990).

Third, it may be that when Dennis asserted his ownership in the Christmas package, contradicting the statements he earlier made that he did not even know the occupants of the Mazda, he had an expectation of privacy in that package. We need not decide this question, because even if he properly withheld consent to search the Christmas package, his refusal was overcome by the dog's positive sniff for the presence of drugs. At that point, Officer Henderson had probable cause to search the package, and he was entitled to do so. United States v. Dovali-Avila, 895 F.2d 206 (5th Cir. 1990).

Because each step in the officer's investigation is justified under well-established Fourth Amendment principles, the district court properly denied Dennis's motion to suppress. The judgment of the trial court is AFFIRMED.