IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 94-40659
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

MARIA EUGENIA JARAMILLO-TRUJILLO,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Texas
(6:94-CR-7 (2))

(February 7, 1995)

Before SMITH, EMILIO M. GARZA, and PARKER, Circuit Judges.

PER CURIAM:[*]

Maria Jaramillo-Trujillo appeals her conviction of conspiracy to possess with intent to distribute, and possession with intent to distribute, cocaine, in violation of 21 U.S.C. §§ 841 and 846. Jaramillo challenges only the denial of her motion to suppress. Finding no error, we affirm.

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[*] Local Rule 47.5.1 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 Pursuant to that rule, the court has determined that this opinion should not be published.

I.

On January 28, 1994, Jaramillo and a passenger were driving on U.S. 59 when they were stopped by Texas Department of Public Safety Troopers Ronnie Porter and Barry Washington for failure to signal a lane change. The troopers subsequently found sixteen kilos of cocaine in a secret compartment under the rear seat of the vehicle. Jaramillo and the passenger were then arrested and later indicted for conspiracy to possess with intent to distribute in excess of five kilograms of cocaine and with the intentional possession with intent to distribute in excess of five kilograms.

Jaramillo filed a motion to suppress all statements and evidence seized as a result of the traffic stop, arguing that the troopers had neither reasonable suspicion nor probable cause to believe that she was engaged in criminal activity. Following a hearing, the motion to suppress was denied. Jaramillo filed a second motion to suppress, but the court denied it, concluding that "Troopers Porter and Washington lawfully stopped the defendants and discovered the cocaine pursuant to a lawful search." Jaramillo was found guilty on both counts.

II.

In reviewing the denial of a motion to suppress, we review findings of fact for clear error and the ultimate determination))whether the search and seizure was reasonable under the Fourth Amendment))de novo. United States v. Seals, 987 F.2d 1102, 1106 (5th Cir.), cert. denied, 114 S. Ct. 155 (1993). The evidence

must be viewed most favorably to the prevailing party, unless such a view is inconsistent with the findings or is clearly erroneous considering the evidence as a whole. United States v. Shabazz, 993 F.2d 431, 434 (5th Cir. 1993).

The facts of the stop come from the testimony of the troopers and a videotape of the incident. Porter approached the car and asked Jaramillo to step to the rear of the vehicle so that they would both be off of the edge of the roadway. Porter asked for Jaramillo's driver's license and insurance; Jaramillo produced the drivers license, got out of the vehicle, and opened the trunk. Porter did not ask her to open the trunk; she did this voluntarily.

Porter looked into the trunk and noticed "a real sweet smell of some kind of deodorant." At this time, Porter was questioning Jaramillo as to her origination point and destination; Washington was separately interviewing the passenger. Jaramillo told Porter that she had been to Houston to visit friends, and the passenger told Washington that they had been to Houston to see his two brothers.

As they were interviewing Jaramillo and the passenger, the officers looked in through the car window and saw coffee "poured all around the edge where the back seat sits on top of the floor." In response to the troopers' questioning, Jaramillo stated that she had attempted to open the coffee and that it had spilled. Jaramillo could not provide an explanation as to why there was no coffee in the front seat of the car.

Washington asked Jaramillo whether he could look inside the

vehicle. Jaramillo consented and opened both rear doors. Porter was running driver's-license checks on Jaramillo and the passenger while this was occurring. When he looked into the rear seat, Washington saw what he thought to be a hidden compartment under the rear seat.

The troopers decided to call for a certified drug dog. The dog arrived at 11:30 p.m. and alerted at 11:39 p.m.

We apply the analysis set forth in Terry v. Ohio, 392 U.S. 1 (1968), to routine traffic stops. See United States v. Kelley, 981 F.2d 1464, 1467 (5th Cir.), cert. denied, 113 S. Ct. 2427 (1993). To assess the reasonableness of the seizure, we must determine whether the officers' action was justified at its inception and was reasonably related in scope to the circumstances that justified the interference. Terry, 392 U.S. at 19-20.

With respect to the first prong of the Terry test, Jaramillo concedes the validity of the stop of her vehicle for a traffic offense. With respect to the second prong, Jaramillo argues that the troopers exceeded the scope of the stop by detaining her after she had produced a driver's license and proof of insurance. We have rejected the proposition that a "police officer's questioning even on a subject unrelated to the purpose of the stop, is itself a Fourth Amendment violation," and have held that questioning that takes place during the pendency of a computer check incident to a valid traffic stop does not change the scope of the stop. Shabazz, 993 F.2d at 436-37.

Jaramillo has not argued that any of the events leading up to

the decision to call for the dog occurred after the troopers had completed the driver's-license check. She instead asserts that the detention should have ended when the officers could not find a source for the sweet smell. This argument has no merit, as the officers were still engaged in the investigation of the traffic violation at the time the sweet smell was initially investigated. As a result, the argument that the questioning of Jaramillo and her passenger regarding the origin and destination of their trip was the result of an illegal detention has no merit. See Shabazz, 993 F.2d at 436-37.

Jaramillo also argues that the troopers did not obtain valid consent to enter the vehicle. The government has the burden of proving by a preponderance of the evidence that a consent to search was voluntary. United States v. Yeagin, 927 F.2d 798, 800 (5th Cir. 1991). The voluntariness of consent is a question of fact to be determined from a totality of the circumstances. Schneckloth v. Bustamonte, 412 U.S. 218, 227 (1973). We review findings respecting voluntariness for clear error. United States v. Oliver-Becerril, 861 F.2d 424, 425-26 (5th Cir. 1988). "Where the judge bases a finding of consent on the oral testimony at a suppression hearing, the clearly erroneous standard is particularly strong since the judge had the opportunity to observe the demeanor of the witnesses." United States v. Sutton, 850 F.2d 1083, 1086 (5th Cir. 1988).

To evaluate whether the consent was voluntary, the district court should analyze the following six factors: (1) the voluntari-

ness of custody; (2) the presence of coercive police tactics; (3) the extent and level of the defendant's cooperation; (4) the defendant's awareness of the right to refuse to consent; (5) the defendant's education and intelligence; and (6) the defendant's belief that no incriminating evidence will be found. Olivier-Becerril, 861 F.2d at 426. Although all six factors are relevant, none alone is dispositive. Id.

The parties do not dispute that Jaramillo was in custody and was cooperative. The record does not disclose any evidence of coercion, and Jaramillo's only assertions thereof are that she was asked to get out of the car and was questioned in English separately from her passenger. Jaramillo does not argue that she was unaware of her right to refuse consent; she does argue, however, that she was never advised of that right. This is not disputed by the government. With respect to Jaramillo's education and intelligence, the district court found that her English was weak but that she was capable of understanding the officers. This finding was based upon the officers' testimony that Jaramillo did understand their questions and her testimony that she did not. Finally, Jaramillo denied all knowledge of the presence of any contraband. Based upon the district court's specific findings and the totality of the circumstances reflected in the testimony given at the suppression hearing, the district court did not clearly err in determining that Jaramillo's consent to enter the vehicle was voluntarily given.

AFFIRMED.