

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 94-60164

(Summary Calendar)

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

IGNACIO CARAVANTES-MALDONADO,

Defendant-Appellant.

Appeal from the United States District Court
For the Southern District of Texas
(CR-B-93-157-1)

March 28, 1995

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

PER CURIAM:*

Ignacio Caravantes-Maldonado was convicted of the import into the United States of more than fifty kilograms, see 21 U.S.C. §§ 952(a), 960(b)(3) (1988), and possession of in excess of fifty kilograms of marijuana, see 21 U.S.C. § 841(a)(1), (b)(1)(C) (1988). He appeals his conviction, claiming that the district court erred in denying his motion to suppress evidence seized from his car. We affirm.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

In the early morning, Border Patrol Agents Patricia Salcido and Mike Richardson received notice by radio that an electronic sensor near the Rio Grande River on the United States-Mexico border had been activated.¹ The agents drove to within one-half mile of the river and parked where they could observe traffic coming from the river on a dirt road leading to Highway 281. Just before 5:00 a.m., after waiting five minutes, the agents saw a vehicle on the road leading from the river to the highway.² The vehicle turned onto the highway and drove in the direction of the officers, who then turned on their headlights and pulled onto the highway behind the vehicle. As the marked Border Patrol vehicle established a position behind the vehicle, the driver of the vehicle accelerated and began to swerve slightly. The driver then made a sharp turn off of the highway onto a side road, at which time the agents flashed their emergency lights and the driver pulled over.

The driver, later identified as Caravantes-Maldonado, quickly left his vehicle and walked toward the agents parked behind him. Agent Salcido approached Caravantes-Maldonado and asked him what he was doing at the river so early in the morning. After Caravantes-Maldonado answered that he was picking okra, Salcido asked for permission to examine his trunk. Caravantes-Maldonado consented,

¹ The sensor is placed in the ground and gives a signal whenever traffic passes over it.

² The total time elapsed between the initial sensor "hits" and the vehicle's appearance at the intersection of the dirt road and the highway was approximately thirteen minutes.

and Salcido followed him back toward his vehicle. When Salcido approached the vehicle, she observed a rectangular bundle in the back seat, and reached through the open door to inspect it. Believing the bundle to be marijuana, Salcido notified Agent Richardson who arrested Caravantes-Maldonado. Salcido then searched the trunk of Caravantes-Maldonado's car, where she found four more bundles, all containing marijuana. The vehicle also contained a machete and an empty basket. Caravantes-Maldonado was charged with importing and possessing with intent to distribute over 50 kilograms of marijuana, in violation of 18 U.S.C. § 2 and 21 U.S.C. §§ 841(a)(1), 841(b)(1)(C), 952(a), 960(b)(3). The district court denied Caravantes-Maldonado's motion to suppress the marijuana seized from his car, and he was subsequently convicted. Caravantes-Maldonado now appeals his conviction, contending that the district court erred in denying his motion to suppress.

II

In reviewing the district court's denial of a motion to suppress, we uphold purely factual determinations unless they are clearly erroneous. *United States v. Inocencio*, 40 F.3d 716, 721 (5th Cir. 1994). The trial court's determination of whether a reasonable suspicion existed is a conclusion of law, which we therefore review de novo. *Id.* We view the evidence presented at the suppression hearing in the light most favorable to the prevailing party. *Id.*; *United States v. Cardenas*, 9 F.3d 1139, 1147 (5th Cir. 1993), *cert. denied*, ___ U.S. ___, 114 S. Ct. 2150, 128 L. Ed. 2d 876 (1994).

Specifically, Caravantes-Maldonado maintains that the agents' investigative stop constituted an unreasonable seizure in violation of the Fourth Amendment because they lacked reasonable suspicion to justify the stop.³ Border Patrol agents on roving patrol may conduct an investigative stop if they "are aware of specific articulable facts, together with rational inferences from those facts, that reasonably warrant suspicion" that illegal activity involving the vehicle is occurring or has occurred. *Inocencio*, 40 F.3d at 722 (quoting *United States v. Brignoni-Ponce*, 422 U.S. 873, 884, 95 S. Ct. 2574, 2582, 45 L. Ed. 2d 607 (1975)).⁴ To determine whether reasonable suspicion exists, the agents may rely upon several factors, including: "1) [C]haracteristics of the area; 2) proximity to the border; 3) usual patterns of traffic and time of day; 4) previous experience with alien or drug smuggling in the

³ The Fourth Amendment prohibition against unreasonable searches and seizures extends to stopping a vehicle and temporarily detaining its occupants. *United States v. Shabazz*, 993 F.2d 431, 434 (5th Cir. 1993). Caravantes-Maldonado argues accordingly that the district court should have suppressed the marijuana seized as a result of the stop as the fruit of an illegal seizure. "Normally the fruits of illegal searches and seizures are not admissible in the prosecution's case in chief under the exclusionary rule." *United States v. Ramirez-Lujan*, 976 F.2d 930, 932 (5th Cir. 1992), *cert. denied*, ___ U.S. ___, 113 S. Ct. 1587, 123 L. Ed. 2d 153 (1993).

Caravantes-Maldonado also argues that his consent to the search of his car did not remove the taint of illegality from the stop. Because we conclude that the investigative stop did not offend the Fourth Amendment, we do not address the issue of consent. We would ordinarily discuss whether probable cause to search existed after the initial stop; however, Caravantes-Maldonado does not press this issue on appeal. See *Inocencio*, 40 F.3d at 723 ("Although only reasonable suspicion is needed to stop a vehicle for an immigration check, probable cause or consent is necessary in order to search a vehicle.").

⁴ See also *Ramirez-Lujan*, 976 F.2d at 933. An investigative stop, because of its limited nature, may properly be made on facts that would not support probable cause to arrest. *Brignoni-Ponce*, 422 U.S. at 880, 95 S. Ct. at 2580; *Terry v. Ohio*, 392 U.S. 1, 25, 88 S. Ct. 1868, 1882, 45 L. Ed. 2d 607 (1968). Though *Brignoni-Ponce* established the reasonable suspicion standard for alien smuggling situations, the standard has been extended to encompass reasonable suspicion of "criminal activity" generally. *United States v. Cortez*, 449 U.S. 411, 417, 101 S. Ct. 690, 695, 66 L. Ed. 2d 621 (1981).

area; 5) behavior of driver, including 'obvious attempts to evade officers;' 6) appearance or behavior of passengers; 7) appearance of the vehicle; and 8) officer experience." *Ramirez-Lujan*, 976 F.2d at 933 (quoting *Brignoni-Ponce*, 422 U.S. at 885, 95 S. Ct. at 2582). In examining a Border Patrol agent's assessment of these factors, we look to the totality of the circumstances "weighed in the crucible of the experience of the officer." *United States v. Pallares-Pallares*, 784 F.2d 1231, 1234 (5th Cir. 1986).⁵

A vital element of the reasonable suspicion analysis is "whether an arresting agent could reasonably conclude that a particular vehicle originated its journey at the border." *Inocencio*, 40 F.3d at 722; see also *Cortez*, 449 U.S. at 419, 101 S. Ct. at 696 (commenting that border proximity element is "[o]f critical importance"); *Chavez-Villarreal*, 3 F.3d at 127 (invalidating investigative stop where Border Patrol agents could not infer that detained vehicle came from border).⁶ The Border Patrol agents in this case parked approximately one-half mile from the river and observed Caravantes-Maldonado as he drove up a small

⁵ Although individual factors standing alone might not arouse suspicion, we ask whether the factors give rise to "articulable and objective manifestations of particularized suspicion" only when considered in the aggregate. *United States v. Chavez-Villarreal*, 3 F.3d 124, 127 (5th Cir. 1993); see also *id.* (recognizing that individual factors taken alone "may indicate wholly innocent behavior"). Similarly, the absence or presence of a particular factor is not dispositive. *Inocencio*, 40 F.3d at 722.

⁶ This element was conspicuously absent in *United States v. Diaz*, 977 F.2d 163 (5th Cir. 1992), the case to which Caravantes-Maldonado attempts to liken his case. See *Diaz*, 977 F.2d at 165 (concluding that reasonable suspicion did not exist where agents made stop 70 miles from border, at a location consistent with non-border origination points); see also *Inocencio*, 40 F.3d at 722 n.7 (explaining that vehicles more than 50 miles from the border generally do not qualify for the proximity element). Unlike in *Diaz*, the agents in this case observed Caravantes-Maldonado driving from an area very near the border, before 5:00 a.m., shortly after a sensor had been activated.

dirt road toward Highway 281. This road is the shorter and more direct of two routes leading away from the border area where the sensors were activated. There were no houses on or roads intersecting with the dirt road between Highway 281 and the river. From these specific and articulable facts, the agents could reasonably conclude that Caravantes-Maldonado's car came from the border. See *United States v. Cardona*, 955 F.2d 976, 980 (5th Cir.) (approving district court's conclusion of reasonable suspicion to believe vehicle originated journey at border when vehicle was stopped between 40 and 50 miles from border on rural road leading directly from border towns), *cert. denied*, ___ U.S. ___, 113 S. Ct. 381, 121 L. Ed. 2d 291 (1992); *United States v. Petty*, 601 F.2d 883, 889 (5th Cir. 1979) (stating that officers could reasonably conclude vehicle came from border, though stop was made 95 miles from border, because only access to that road was 30 miles from border), *cert. denied*, 445 U.S. 962, 100 S. Ct. 1649, 64 L. Ed. 2d 237 (1980).⁷

Viewing the evidence in the light most favorable to the government, other circumstances also support the agents' suspicion that Caravantes-Maldonado's car was being used for illegal activity. The agents were familiar with the area, its traffic

⁷ When the road on which a stop is made also carries a great deal of legal traffic, reasonable suspicion may require more than a late hour, sensor hits, and proximity to the border. See *United States v. Frisbie*, 550 F.2d 335, 338 (5th Cir. 1977) (finding no grounds for reasonable suspicion when vehicle was stopped in early morning hours on road near border leading to and from Big Bend National Park, because opposite conclusion could subject thousands of tourists to unreasonable detention). The concerns present in *Frisbie* do not apply here, because although Caravantes-Maldonado was stopped at 5:00 a.m., he was driving away from the river on a small dirt road surrounded by farm land.

patterns, and likely routes for alien and drug smuggling.⁸ The sensor was located in a farming area adjacent to a border area well known for alien and drug smuggling. The agents arrived at the intersection of the dirt road and Highway 281 very shortly after learning of the sensor hits. In the agents' experience, this dirt road constituted the most likely exit route for smugglers leaving the area of the sensor. They observed no vehicles, other than Caravantes-Maldonado's, either coming from the dirt road or on the highway. There were no houses on the dirt road between Highway 281 and the border, and there was generally no harvesting of crops between 4:00 and 5:00 a.m.⁹ When the agents pulled in behind Caravantes-Maldonado, he began to swerve slightly, as though studying his rear-view mirror. See *Cardona*, 955 F.2d at 981 (discussing inference that weaving car indicated driver was focused on rear-view mirror). He made a sudden, sharp turn off of the highway onto a side road shortly after the agents began following him.¹⁰ Considering all these circumstances in light of the agents' experience, we conclude that they had reasonable suspicion to

⁸ At the time of the stop, Agents Salcido and Richardson had nearly four years of combined experience with the Border Patrol. Salcido testified that during her tenure with the Border Patrol she had numerous opportunities to respond to sensor traffic and had apprehended aliens many times in the area in which Caravantes-Maldonado's car appeared.

⁹ Once okra harvesting started at dawn, the sensor would sound from 50 to 100 times between 6:30 and 7:00 a.m.

¹⁰ There is conflicting evidence in the record regarding whether Caravantes-Maldonado made the sharp turn before or after the agents signaled him to stop. In either event, because of the tell-tale markings of the border patrol vehicle, the officers could reasonably conclude that Caravantes-Maldonado identified their vehicle and was attempting to evade them by making a sudden turn.

believe that Caravantes-Maldonado's car was being used in illegal activities. See *United States v. Gordon*, 712 F.2d 110, 113 (5th Cir. 1983) (upholding stop made after dark, 40 miles from border, on highway leading directly from border that usually bore little traffic after 8:00 p.m.); *United States v. Aguirre-Valenzuela*, 700 F.2d 161, 163 (5th Cir. 1983) (upholding stop within "significant proximity" to border when agents viewed car travelling on road leading directly from border shortly after activation of sensor); *United States v. Ballard*, 600 F.2d 1115, 1119 (5th Cir. 1978) (upholding stop when officers observed defendant's car within one-quarter mile of border on infrequently-travelled road). Accordingly, we hold that the district court properly denied Caravantes-Maldonado's motion to suppress the evidence seized from his vehicle.

III

For the foregoing reasons, we AFFIRM Caravantes-Maldonado's conviction.