UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-60524
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MARCUS LAKEY GEORGE,
aka "TOOT",

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Mississippi
(3:94-CR47WN)

(September 25, 1995)

Before JOLLY, JONES and STEWART, Circuit Judges.

PER CURIAM:*

After the district court denied his motions to suppress evidence, Marcus Lakey George entered a conditional guilty plea to an indictment charging him with possession with intent to distribute cocaine base. George appeals the denial of the motions to suppress. We affirm.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

BACKGROUND

George was charged in a single count indictment with possession of cocaine base with intent to distribute. Prior to trial, George moved to suppress certain evidence. At the suppression hearing, George and Police Officer Robert Sanders testified concerning the events leading up to the arrest of George.

George testified that he was driving home in a Chevy Blazer at 12:30 in the morning on January 8, 1993 when he was stopped by the police in Ridgeland, Mississippi for driving with his high beams on, which George denies. The officer asked for George's driver's license and for him to step out of the vehicle. Additionally, the officer asked George whether he had any guns or drugs in the car. George testified that he answered "No," and that when the officer asked for permission to search the car that he refused, asking to see a search warrant. Then, according to George, two or three other officers asked him to step back to the police car and when he had done so, another officer searched the Blazer using a dog. Cocaine was found under the console near the glove compartment. George admitted that the cocaine was his and that he had stolen it from another man.

Officer Sanders, of the Ridgeland Police Department, testified that he was southbound on Highway 51 when he noticed George's Blazer coming from the other direction with its high beams on. Because the driver did not dim his beams as he passed, Sanders wanted to determine whether the driver of the Blazer was intoxicated. Sanders turned his car around and stopped the Blazer.

After George produced his driver's license, Sanders asked him to step to the rear of the Blazer. While Sanders was waiting for information on the vehicle tags and George's driver's license, Sanders testified that he asked George whether he had any weapons, pornography, alcohol or drugs in the vehicle and that George stated that there was nothing illegal in the vehicle.

Sanders then asked George if he could search the vehicle, advising George that he did have a right to refuse. In the presence of another officer, George said "No," and added, "I don't mind if you look in my vehicle. You're not going to find anything in it. Go ahead." Sanders did not have any printed consent forms with him that night and denies that George asked him to produce a search warrant. Another officer then escorted George and his female passenger back to the police car. Sanders retrieved his dog, ran the dog around the outside of the Blazer and then through the open door of the Blazer. The dog alerted to the bottom of the console where the console and the carpet met. The console was loose. Tilting the console up, Sanders could see a plastic bag. Some of the screws which fastened the console were loose and Sanders removed them with his hand and lifted up the console. Three bags were found in the console containing crack cocaine. George and the passenger were arrested and informed of their rights.

On rebuttal, George testified that Sanders's car was parked alongside the road and was not driving in the opposite direction prior to the traffic stop. Presented with two conflicting

stories, the district court chose to believe Sanders and denied the motion to suppress.[1]

DISCUSSION

In reviewing a district court's denial of a motion to suppress, this court reviews the district court's findings of underlying facts for clear error and views all of the evidence introduced at the suppression hearing and at trial in the light most favorable to the prevailing party, in this case the government. *United States v. Ponce*, 8 F.3d 989, 995 (5th Cir. 1993). The determination whether a search or seizure was reasonable under the Fourth Amendment is reviewed de novo. *United States v. Seals*, 987 F.2d 1102, 1106 (5th Cir. 1992), *cert. denied*, 114 S. Ct. 155 (1993).

This court applies the analysis set forth in *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868 (1968) to routine traffic stops. *See United States v. Kelley*, 981 F.2d 1464, 1467 (5th Cir. 1993), *cert. denied*, 113 S. Ct. 2427 (1993). To assess the reasonableness of the seizure, it must be determined whether the officer's action was justified at its inception and whether the action was reasonably related in scope to the circumstances which justified the interference. *Terry*, 392 U.S. at 19-20, 88 S. Ct. at 1879; *Kelly*, 981 F.2d at 1467. Questioning during the pendency of a computer check incident to a valid traffic stop does not exceed the scope of the initial stop for Fourth Amendment purposes, even if

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[1] Neither party presented corroborating testimony.

the questioning is unrelated to the original purpose of the stop. *United States v. Shabazz*, 993 F.2d 431, 436-37 (5th Cir. 1993).

George contends that the original traffic stop was not justified at its inception. However, failing to dim headlights for oncoming traffic is an offense in Mississippi. MISS. CODE ANN. § 63-7-31 (1972). The district court credited Sanders's testimony that George was stopped because he was in violation of this statute. This fact finding was not clearly erroneous.

George contends that the search of the vehicle was not consensual. 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 the totality of the circumstances. *Schneckloth v. Bustamonte*, 412 U.S. 218, 227, 93 S. Ct. 2041, 2048 (1973). This court reviews the district court's findings respecting voluntariness for clear error. *United States v. Olivier-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 witnessess." *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 voluntariness 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. All six factors are relevant, but none is dispositive. *Id*. Although George had been detained and was not free to leave, the circumstances of the traffic stop cannot be characterized as coercive. Sanders testified that George was cooperative and had been advised of his right to refuse consent. There is nothing in the record indicating that George is unsophisticated or intellectually impaired, and Sanders testified that George had expressed his belief that no contraband would be found. The district court was entitled to believe Sanders's testimony in this regard and its decision to do so is not clearly erroneous.

CONCLUSION

For the foregoing reasons, the judgment of the district court is **AFFIRMED.**