

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-60739
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ROBERTO CHAPA CANALES
In Custody,

Defendant-Appellant.

Appeal from the United States District Court for the
Southern District of Texas
(L 94 119)

(July 7, 1995)

Before GARWOOD, HIGGINBOTHAM and DAVIS, Circuit Judges.*

GARWOOD, Circuit Judge:

Defendant-appellant Roberto Chapa-Canales (Canales) appeals his conviction on a conditional plea of guilty, arguing that the district court erred in denying his motion to suppress evidence obtained in an allegedly unlawful stop of Canales's vehicle. We conclude that the district court did not err in holding that the

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

officer had reasonable suspicion to justify the stop and therefore affirm.

Facts and Proceedings Below

On June 4, 1994, Border Patrol Agent Kenneth Edwards (Edwards) and his partner, Joe Chavez (Chavez), were on duty near a Border Patrol checkpoint on Highway 359, about 36 to 40 miles from the Mexican border. Highway 359 runs east to west and intersects FM 2050, which runs north to south, in Bruni, Texas. The checkpoint is west of Bruni on Highway 359. Three miles west of the checkpoint is a locked gate (the La Purisima gate) that opens onto a private ranch road. From the La Purisima gate, the ranch road runs in a northeast direction across the Benavides ranch to Gate 5, which opens onto FM 2050 several miles north of Bruni. By using the private ranch road, it is thus possible to avoid the checkpoint. Edwards, who had worked at the checkpoint for seven years, testified that the ranch road had frequently been used by narcotics smugglers in the past and that ranch employees often sold keys to the gates to smugglers.

Around 5:45 p.m., agents at the checkpoint received a tip from an employee of the ranch that an unauthorized vehicle had entered the ranch at the La Purisima gate. The informant described the vehicle as a beige pickup truck with a black tool box in the back; Edwards testified that tool boxes were often used to smuggle narcotics. Sensors along the ranch road, which had been installed by the Border Patrol several years earlier, subsequently confirmed that a vehicle was travelling on the private road. Edwards and

Chavez proceeded to Gate 5. Edwards was driving a sedan; Chavez was behind him in a Suburban.

As Edwards approached Gate 5, he saw a beige pickup truck exiting the gate; the truck turned south on FM 2050. To avoid alerting the driver, Edwards continued travelling north on FM 2050 and radioed Chavez to be on the lookout for the truck. Chavez, who had pulled the Suburban over to the side of the road just south of Gate 5, radioed back that a beige pickup truck with black tool boxes in the back had just passed him headed south on FM 2050. Edwards and Chavez both turned to follow the truck; Edwards passed Chavez and caught up with the truck north of Bruni. Meanwhile, Chavez ran a check on the truck's license plate, which showed that the plates were not registered. Edwards testified that it was common for people smuggling narcotics to put unregistered license plates on their vehicles, although it could also mean that the car was only recently registered.

After following the truck for several miles, Edwards pulled it over in Bruni. As he approached the truck, he noticed the odor of marihuana. While Edwards was questioning the driver, Canales, the odor of marihuana became stronger. Edwards then arrested Canales. A subsequent search of the vehicle revealed that Canales had been transporting 666 pounds of marihuana in the tool boxes.

Canales was indicted on one count of possession with intent to distribute in excess of 100 kilograms of marihuana, in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(B). He filed a motion to suppress, arguing that Edwards did not have reasonable suspicion to

make an investigatory stop of the truck and that the stop was therefore unlawful. At the suppression hearing, Canales's counsel cross-examined Edwards concerning the relative height of Edwards's sedan to the truck, implying that Edwards could not have seen the tool boxes in the bed of the truck before he pulled the truck over. Edwards, however, testified that he had had a level view of the truck bed and that he had seen the tool boxes in the bed of the truck. The district court denied the motion to suppress, holding that, given the totality of the circumstances, Edwards had reasonable suspicion to stop the truck.

Canales then entered a conditional plea of guilty, reserving the right to appeal the denial of the suppression motion. Because of his prior felony drug convictions, Canales was subject to a statutory minimum sentence of ten years' imprisonment.¹ The district court imposed the statutory minimum sentence and an eight-year term of supervised release. In his timely appeal, Canales argues only that the denial of his motion to suppress was erroneous.

Discussion

In reviewing a district court's ruling on a motion to suppress, we consider the evidence in the light most favorable to the party who prevailed below. *United States v. Baker*, 47 F.3d 691, 693 (5th Cir.), *petition for cert. filed*, ____ U.S.L.W. ____

¹ See 21 U.S.C. § 841(b)(1)(B) ("If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment which may not be less than 10 years . . .").

(May 30, 1995) (No. 94-9460). Regarding investigatory stops, we review the district court's findings of historical fact for clear error, but consider *de novo* the ultimate legal conclusion as to whether those facts made the stop reasonable. *United States v. Casteneda*, 951 F.2d 44, 47 (5th Cir. 1992).

"[A] temporary investigative stop of a vehicle may be made by a roving patrol if the Border Patrol agents are aware of `specific articulable facts, together with rational inferences from those facts, that reasonably warrant suspicion' that the vehicle is involved in illegal activities." *United States v. Cardona*, 955 F.2d 976, 980 (5th Cir.), *cert. denied*, 113 S.Ct. 381 (1992) (quoting *United States v. Brignoni-Ponce*, 95 S.Ct. 2574, 2582 (1975)). The determination whether an officer had reasonable suspicion to stop a vehicle is fact-sensitive, depending on the totality of the circumstances known to the officer and his experience in evaluating such circumstances. *Casteneda*, 951 F.2d at 47. The Supreme Court has set forth a number of factors that courts may consider in determining whether the officer had a reasonable suspicion:

"1) characteristics 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 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." *United States v. Ramirez-Lujan*, 976 F.2d 930, 933 (5th Cir. 1992), *cert. denied*, 113 S.Ct. 1587 (1993) (citing *Brignoni-Ponce*, 95 S.Ct. at 2582).

Even if the officer's assessment of the circumstances is ultimately mistaken, we do not exclude the evidence obtained thereby if the

officer had an objectively reasonable good faith belief that the facts then known to him justified the stop under the appropriate standard. *United States v. De Leon-Reyna*, 930 F.2d 396, 402 (5th Cir. 1991) (en banc); see also *Ramirez-Lujan*, 976 F.2d at 934 & n.4 (stop was justified when officer "acted with an objectively reasonable good faith belief that he had a reasonable articulable suspicion that legally justified stopping [the defendant] . . .").

On appeal, Canales argues that Edwards did not have a reasonable suspicion justifying the stop of Canales's vehicle. In this regard, he argues principally that Edwards could not have seen the tool boxes in the bed of Canales's truck until he had already stopped the truck. The district court chose to credit Edwards's testimony that he did in fact see the tool boxes in the truck before he stopped it, and we do not find this determination to be clearly erroneous. Canales presented no solid factual evidence regarding the height of his truck relative to Edwards's sedan or the height of the tool boxes relative to the bed of the truck.² The only evidence was Edwards's testimony on cross-examination that the bed of the truck was about two feet deep, that the tool boxes were approximately two feet tall, and that he had a level view of the bed of the truck while he was following it from about thirty feet back. Given these circumstances, we cannot say that it would "def[y] physical laws" for Edwards to be able to see the tool

² Nor was there any evidence concerning the lay of the road; we do not know whether the road dipped at some point, which might have allowed Edwards to see into the bed of the truck.

boxes. See *United States v. Lindell*, 881 F.2d 1313, 1322 (5th Cir. 1989), cert. denied, 110 S.Ct. 1152, and cert. denied, 110 S.Ct. 2621 (1990).

Nevertheless, even if we thought Edwards's testimony that he could see the tool boxes "incredible as a matter of law," see *Casteneda*, 951 F.2d at 48, we would still find that he had a reasonable suspicion to believe that the tool boxes were in the truck because his partner, Chavez, had radioed to tell him that a beige pickup truck with tool boxes in the back had just left Gate 5 and headed south on FM 2050. Canales does not suggest, nor do we think he could, that Chavez, who was sitting by the side of the road in a Suburban and watched Canales's truck drive past him as it headed south, could not have seen the tool boxes.

Moreover, the other articulable facts known to Edwards at the time he stopped Canales's truck clearly sufficed for a properly trained officer to reasonably conclude that he had a reasonable articulable suspicion that legally justified the stop. See *Ramirez-Lujan*, 976 F.2d at 934 & n.4. The truck had been reported to have entered the ranch road without authorization. Edwards, who had worked at the checkpoint for seven years on the date of this particular stop, knew that the ranch road was a quick and effective way of circumventing the checkpoint and that it was frequently used by drug smugglers for that reason, and that ranch employees had sold keys to the ranch gates to drug smugglers in the past.³ The

³ The ranch road was a private road and was closed to public traffic. This fact distinguishes the present case from *Casteneda*, in which we noted that the mere fact that the

La Purisima gate was located approximately 36 to 40 miles from the Mexican border. See *United States v. Inocencio*, 40 F.3d 716, 722 & n.7 (5th Cir. 1994) (noting that this Court generally considers vehicles travelling within 50 miles of the border to be in close enough proximity to the border to justify a reasonable suspicion that the vehicle originated its journey at the border). When Chavez ran a check on the truck's license plates, they were found to be unregistered.

Canales's attempt to parse these facts is unavailing. The test is one that accounts for the totality of the circumstances; "[r]easonable suspicion . . . is not limited to an analysis of any one factor." *Id.* at 722. Although in isolation, each of these facts might not in itself have been sufficient to support a reasonable suspicion of illegal activity, taken together they were adequate to justify the stop of Canales's truck.

Conclusion

The district court did not err in denying Canales's motion to suppress the evidence seized from his truck. The district court's judgment is therefore

AFFIRMED.

defendant was driving on a *public* road that was known to be frequently traversed by drug smugglers attempting to circumvent a checkpoint did not in itself support a reasonable suspicion of illegality. *Casteneda*, 951 F.2d at 47 n.4.