

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-40331
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOSEPH PAUL PEREZ,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. C-95-CR-206-1
- - - - -

September 30, 1996

Before SMITH, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:*

Joseph Paul Perez appeals his conviction and sentence for possession with intent to distribute cocaine, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(C), and possession of marijuana, in violation of § 841(a). Perez argues that the district court erred in denying his motion to suppress the controlled substances discovered in his vehicle in which he was traveling. Perez argues that the traffic stop resulted in a custodial

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

interrogation which required Miranda** warnings prior to obtaining his consent to search the vehicle.

The district court did not err in denying Perez's motion to suppress seized evidence because Perez was not in custody prior to his arrest and, therefore, his rights under Miranda did not attach. See Berkemer v. McCarty, 468 U.S. 420, 439 (1984). Assuming arguendo that Perez was in custody at the time the police officer requested consent to search, the failure to give Miranda warnings to a suspect during a custodial interrogation does not vitiate a valid, voluntary consent. See United States v. Garcia, 496 F.2d 670, 673-75 (5th Cir. 1974) (holding that Miranda warnings are not required to be administered to a suspect in custody in order to validate a consensual search), cert. denied, 420 U.S. 960 (1975).

AFFIRMED.

** Miranda v. Arizona, 384 U.S. 436 (1966).