

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 98-40089  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

BALDEMAR M. GARZA, JR.,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. L-97-CR-266-1  
- - - - -

January 6, 1999

Before DAVIS, DUHE', and PARKER, Circuit Judges.

PER CURIAM:\*

Baldemar M. Garza appeals the district court's denial of his motion to suppress following his conviction for possession with intent to distribute marijuana. Garza argues that the reaction of the canine as the tractor-trailer was driving through the checkpoint was insufficient to establish probable cause. Garza did not make this argument in the district court. His argument was fact-based regarding the credibility of Agent Zelmer's testimony that the dog alerted to Garza's vehicle. Once the dog

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

positively alerted to the presence of drugs, the agents had probable cause to search the tractor-trailer and any containers in it that might contain drugs. See United States v. Ross, 456 U.S. 798, 824-25 (1982); United States v. Seals, 987 F.2d 1102, 1106-07 (5th Cir. 1993); United States v. Dovali-Avila, 895 F.2d 206, 207 (5th Cir. 1990); and United States v. Hernandez, 976 F.2d 929, 930 (5th Cir. 1992). Garza cites no authority for his argument that the dog's alert alone was insufficient to establish probable cause. The district court did not commit plain error in denying Garza's motion to suppress and admitting the marijuana seized during the warrantless search of Garza's truck at the permanent border patrol checkpoint. United States v. Calverley, 37 F.3d 160, 162-64 (5th Cir. 1994) (en banc).

AFFIRMED.