

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

March 8, 2021

Lyle W. Cayce
Clerk

No. 20-50068

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JUAN ANTONIO RODRIGUEZ,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 2:17-CR-1405-1

Before JONES, CLEMENT, and GRAVES, *Circuit Judges.*

PER CURIAM:*

Juan Antonio Rodriguez was convicted of one count of conspiracy to transport aliens and one count of transportation of illegal aliens. Customs and Border Patrol agents stopped Rodriguez near the Mexican border and discovered two illegal aliens in his vehicle. The district court sentenced him to concurrent 33-month terms of imprisonment and a three-year term of

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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supervised release. Rodriguez appeals the denial of his motion to suppress. Because there was reasonable suspicion to support the stop, we AFFIRM the judgment of conviction.

The parties are aware of the background facts, which in any event will become clearer as this analysis proceeds. Rodriguez argues that the district court erred when it denied his motion to suppress because the totality of the circumstances surrounding the traffic stop did not rise to the level of reasonable suspicion. He cites the lack of evidence that would have suggested to the agents that he was involved in illegal acts.

When considering the denial of a motion to suppress evidence, we review factual findings for clear error and the constitutionality of action by law enforcement de novo. *United States v. Robinson*, 741 F.3d 588, 594 (5th Cir. 2014). “Factual findings are clearly erroneous only if a review of the record leaves this Court with a definite and firm conviction that a mistake has been committed.” *United States v. Hearn*, 563 F.3d 95, 101 (5th Cir. 2009) (internal quotation marks and citation omitted). In addition to deferring to the district court’s factual findings, we view the evidence in the light most favorable to the prevailing party, which in this case is the Government. *See United States v. Pack*, 612 F.3d 341, 347 (5th Cir. 2010).

“A temporary, warrantless detention of an individual constitutes a seizure for Fourth Amendment purposes and must be justified by reasonable suspicion that criminal activity has taken or is currently taking place; otherwise, evidence obtained through such a detention may be excluded.” *United States v. Garza*, 727 F.3d 436, 440 (5th Cir. 2013) (citing *Terry v. Ohio*, 392 U.S. 1, 30-31(1968)). Reasonable suspicion necessitates “more than merely an unparticularized hunch[] but considerably less than proof of wrongdoing by a preponderance of the evidence.” *Id.* (internal quotation marks and citation omitted). In determining whether reasonable suspicion

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existed, we examine the totality of the circumstances and weigh the factors set forth in *United States v. Brignoni-Ponce*, 422 U.S. 873, 884–85, 95 S. Ct. 2574, 2582 (1975). *United States v. Cervantes*, 797 F.3d 326, 329 (5th Cir. 2015). In border stops, the relevant factors include (1) the stop’s proximity to the border; (2) characteristics of the area; (3) typical traffic patterns; (4) the agents’ experience in identifying illegal activity; (5) behavior by the driver; (6) any specific vehicle characteristics; (7) information about recent criminal trafficking of drugs and aliens in the area; and (8) the number, appearance, and behavior of the passengers in the vehicle. *Id.*

The totality of the circumstances developed in the suppression hearing here confirms that the agents had reasonable suspicion to stop Rodriguez’s vehicle. Rodriguez was transporting his passengers on a farm to market road near the hamlet of El Indio, Texas, at 11:30 pm. Agent Ramos, who has 11 years of experience, first encountered Rodriguez’s vehicle approximately two miles from the Mexican border, well within the 50-mile threshold that, according to this court, satisfies the “paramount” proximity factor. *Id.* at 329–30(citation omitted). Rodriguez’s vehicle was registered to a place that was about three and a half hours away from the location of his arrest. *See id.* at 337.

Further, Agent Ramos explained that the road Rodriguez was travelling is commonly used by smugglers because, unlike the other roads in the area, it does not have a permanent border patrol checkpoint. The route was otherwise not commonly used and passed El Indio, a town with no major commercial businesses, hotels, or restaurants. The agent said that although it is possible to travel on the road Rodriguez was on, people prefer an alternate route because it is faster, safer, and has gas stations and other places to stop. Rodriguez’s chosen route resembles patterns of defendants in other cases in which this court has upheld a district court’s finding of reasonable suspicion. *See, e.g., United States v. Ramirez*, 839 F.3d 437, 439–41 (5th Cir.

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2016) (concluding there was reasonable suspicion where the defendant was nervously driving a vehicle that was popular among smugglers on a road, day of the week, and during late evening hours popular with smugglers).

Here, as he headed into El Indio at 11:30 p.m., Rodriguez slowed down at the intersection with another farm to market road. This was unusual. An agent testified that local drivers did not hesitate at the intersection and usually cut the corner “pretty sharp.” It was also unusual that Rodriguez then didn’t slow for an uneven cattle guard across the road, whereas most drivers, according to the agent, would have slowed.

Rodriguez points to the facts that he did not engage in evasive driving, did not show signs of nervousness when he confronted the agents, and the agents had not been alerted to recent likely alien trafficking in the area. On balance, however, the factors supporting a finding of reasonable suspicion in this matter outweigh the contrary factors. *See Brignoni-Ponce*, 422 U.S. at 884–85, 95 S. Ct. at 2582. Under the totality of the circumstances, and viewing the evidence in a light most favorable to the Government, reasonable suspicion existed to stop Rodriguez’s vehicle, *see Pack*, 612 F.3d at 347; *Brignoni-Ponce*, 422 U.S. at 884–85, 95 S. Ct. at 2582. The district court did not err in denying his motion to suppress, *see Robinson*, 741 F.3d at 594.

AFFIRMED.