

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

FILED
United States Court of Appeals
Tenth Circuit

MAY 21 1990

ROBERT L. HOECKER
Clerk

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
v.
DAVID WELLS EDGAR, also known as
David Wayne Edgerly,
Defendant-Appellant.

No. 89-4065
(D.C. No. 88-CR-213S)
(D. Utah)

ORDER AND JUDGMENT*

Before MCKAY, LOGAN, and BALDOCK, Circuit Judges.

Defendant David Wells Edgar pleaded guilty to possession of cocaine with intent to distribute, in violation of 21 U.S.C. § 841(a)(1). His plea was conditioned on his right to appeal the district court's denial of his motion to suppress twenty-two kilograms of cocaine found in the car he was driving.

After a hearing on the suppression motion, the district court found the relevant facts as follows. Defendant was eastbound on Interstate-70 when he was stopped at a roadblock in Grand County, Utah, conducted by the Utah Highway Patrol and the Grand County

* This order and judgment has no precedential value and shall not be cited, or used by any court within the Tenth Circuit, except for purposes of establishing the doctrines of the law of the case, res judicata, or collateral estoppel. 10th Cir. R. 36.3.

Sheriff's Office to systematically check drivers' licenses and registrations. At the request of Officer Curt Brewer, defendant produced a California license in the name of David Wayne Edgerly and a California registration in the name of Antonio Alberto Manduro. Defendant told the officer that he was driving the car with Manduro's permission and was to meet Manduro in Vail, Colorado, for a ski holiday. Officer Brewer returned the license and registration to defendant and asked him whether he was transporting alcohol, narcotics, weapons, or large sums of money in the vehicle. Defendant responded in the negative, and Officer Brewer then asked defendant for permission to search the vehicle for those items and specifically requested permission to search the trunk. Defendant responded, "That would be fine." III R. 18. The subsequent search of the trunk produced the cocaine at issue.

The district court concluded that the roadblock stop was legitimate, as was the subsequent questioning, and that defendant's consent to the search was voluntary. Therefore, the district court denied the motion to suppress. Defendant raises these same issues on appeal. We affirm.

I

The Supreme Court has expressed approval of roadblocks for the purpose of verifying licenses and registrations in Delaware v. Prouse, 440 U.S. 648, 663 (1979), and this circuit has repeatedly upheld their use, see, e.g., United States v. Corral, 823 F.2d 1389, 1392 (10th Cir. 1987), cert. denied, 486 U.S. 1054 (1988); United States v. Lopez, 777 F.2d 543, 547 (10th Cir. 1985); United States v. Díaz-Albertini, 772 F.2d 654, 658 (10th Cir. 1985),

cert. denied, 484 U.S. 822 (1987); United States v. Obregon, 748 F.2d 1371, 1376 (10th Cir. 1984); United States v. Prichard, 645 F.2d 854, 856-57 (10th Cir.), cert. denied, 454 U.S. 1069 (1981). Defendant contends that the roadblock was pretextual, pointing to evidence that the officers exercised unbridled discretion in deciding which cars to stop. There was conflicting evidence on this point, however, and the district court found that cars were waived through the roadblock only when all available officers were occupied with the searches and arrests of defendant and a man from another vehicle. This finding is not clearly erroneous.

II

Defendant next argues that Officer Brewer's questions about narcotics constituted a seizure without reasonable suspicion of illegal activity. When a person has been detained by a law enforcement official for a legitimate purpose, further investigatory detention, short of an arrest, for a different purpose must be supported by the reasonable suspicion for an investigatory "stop" under Terry v. Ohio, 392 U.S. 1 (1968). See, e.g., Corral, 823 F.2d at 1392-93 (suspicion of narcotics activity arose after roadblock stop).

Determining whether an officer had an objectively reasonable and articulable suspicion of wrongdoing sufficient to justify a given intrusion necessarily turns on the facts and circumstances of each case. See United States v. Sokolow, 109 S. Ct. 1581, 1585 (1989). We must determine "whether the officer's action was justified at its inception, and whether it was reasonably related

in scope to the circumstances which justified the interference in the first place." Terry, 392 U.S. at 20.

Assuming that Officer Brewer's brief series of questions invoked Fourth Amendment protections, we hold that they were justified by a reasonable and articulable suspicion that defendant was involved in illegal activity. In addition to the fact that defendant was driving a car owned by someone else, Officer Brewer testified that although there was a pair of skis on top of defendant's car, the interior of the car was relatively barren and noticeably absent were other items he normally saw in skiers' cars. Officer Brewer also detected a strong odor of perfume or deodorizer which he thought could be used to mask the smell of something else. Officer Brewer also said defendant was conspicuously nervous during their encounter, refusing to remove his sunglasses or look at Officer Brewer. The district court thought these circumstances justified Officer Brewer's brief questioning of defendant concerning illegal activities, and we agree. Cf. United States v. Espinosa, 782 F.2d 888, 891 (10th Cir. 1986) (officer's brief questions about narcotics put to men stopped at permanent immigration checkpoint justified by their hesitancy in answering previous questions, temporary license plate, and lack of luggage for supposed vacation). These same circumstances justified Officer Brewer's request to search the car, cf. United States v. Gonzalez, 763 F.2d 1127, 1128, 1130 (10th Cir. 1985) (officer who stopped defendant for speeding and had suspicions based upon curious state of license and registration and strong smell of deodorizer could have requested

defendant for permission to search car).

III

Defendant's only challenge to his consent to the search is that it was tainted by an illegal detention. This argument must fail in view of our conclusion that there was no illegal detention, and the district court's finding that defendant's consent was voluntary is not clearly erroneous.

AFFIRMED.

Entered for the Court

James K. Logan
Circuit Judge