

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

NOV 2 1990

ROBERT L. HOECKER
Clerk

UNITED STATES OF AMERICA,)
)
Plaintiff-Appellee,)
)
v.)
)
JERRY JOSEPH JESSIE,)
)
Defendant-Appellant.)

No. 90-2021
(D.C. No. 89-339SC-01)
(D.N.M.)

ORDER AND JUDGMENT*

Before MOORE, SETH, and TACHA, Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. The case is therefore ordered submitted without oral argument.

This appeal is from the district court's denial of a motion to suppress evidence seized from defendant's truck after an initial stop at an Immigration and Naturalization Service checkpoint north of Las Cruces, New Mexico. Defendant appeals on the grounds that the district court erred in finding that the secondary detention of defendant by the Border Patrol officers was

* 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.

based on specific, objective, and articulable facts sufficient to justify the search of the truck. We affirm.

Defendant was stopped at a routine Immigration and Naturalization Service checkpoint north of Las Cruces, New Mexico on Interstate Highway 25. The Border Patrol agent observed a Texas license plate on the front of the vehicle. After asking questions regarding defendant's citizenship, the agent went to the rear of the truck to determine whether the license plate on the back of the truck matched the plate on the front. When the agent went to the back of the truck he smelled marijuana. He looked underneath the vehicle and saw what he believed to be a compartment underneath the flatbed. The vehicle was then referred to a secondary inspection unit where a trained dog was called to perform a canine sniff of the vehicle. The dog alerted to the area under the flatbed portion of the vehicle. The agent found a compartment beneath the truck which contained 134 pounds of marijuana. This is the evidence that defendant seeks to suppress.

When reviewing the district court's determination on a motion to suppress, we will reverse the findings of fact only when they are clearly erroneous. United States v. Butler, 904 F.2d 1482, 1484 (10th Cir. 1990).

We cannot say that the district court in this case was clearly erroneous in finding that the officer's brief foray to the back of the pickup to match license plates exceeded the permissible scope of the initial stop to determine citizenship. It is settled that a stop to determine citizenship and brief questioning connected therewith is justified under the Fourth

Amendment. United States v. Martinez-Fuerte, 428 U.S. 543, 566 (1976); United States v. Espinosa, 782 F.2d 888, 890-91 (10th Cir. 1986) (questions regarding suspicious circumstances also allowed). The limited nature of the further inquiry by the officer in this case when he went to the back of the truck simply to verify a license plate does not exceed the appropriate limitations on the scope of the stop. See Martinez-Fuerte, 428 U.S. at 566; United States v. Johnson, 895 F.2d 693, 696 (10th Cir. 1990). At that point the officer smelled marijuana and observed the hidden compartment. These two factors provided ample articulable facts upon which to base the secondary detention and the canine sniff. See Martinez-Fuerte, 428 U.S. at 563; United States v. Arango, No. 89-4084, slip op. at 12-13 (10th Cir. Aug. 28, 1990). We have held that a canine sniff during an otherwise lawful detention is not a search within the meaning of the Fourth Amendment. United States v. Morales-Zamora, Nos. 89-2172, 89-2244, slip op. at 7 (10th Cir. Sept. 6, 1990). After the dog alerted to the compartment in the pickup, the search by the officer was supported by probable cause. Id. at 13; United States v. Stone, 866 F.2d 359, 364 (10th Cir. 1989). The district court did not err in refusing to suppress the evidence that was seized during that search. We **AFFIRM**.

ENTERED FOR THE COURT

Deanell Reece Tacha
Circuit Judge