

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

United States v. Patsy Marie Galberth

846 F.2d 983 (5th Cir. 1988) · No. 87-1827 · Decided May 26, 1988

SUMMARY

The Fifth Circuit affirmed Patsy Marie Galberth’s conviction and sentence for possession with intent to distribute cocaine. The court held that Galberth voluntarily consented to the airport search and that her consent was not tainted by an unlawful seizure; it also concluded that any Miranda violation would not require suppression of the non-testimonial cocaine evidence.

CASE DETAILS

COURT	United States Court of Appeals for the Fifth Circuit
WRITING FOR THE COURT	Jerry E. Smith; Gee; Rubin; Smith
JURISDICTION	Federal
DECIDED	May 26, 1988
DOCKET	87-1827
DISPOSITION	affirmed
PROCEDURAL POSTURE	Galberth appealed from the denial of her motion to suppress evidence obtained during a warrantless body search. She entered a conditional guilty plea under Federal Rule of Criminal Procedure 11(a)(2), preserving her suppression challenge, and appealed her conviction and sentence.
STANDARD OF REVIEW	The district court's finding that consent was voluntary was reviewed for clear error. The court stated that voluntariness is determined from the totality of the circumstances.
PRECEDENTIAL VALUE	Published Fifth Circuit opinion; precedential unless modified or limited by later authority.
PARTIES	Patsy Marie Galberth v. United States of America

TOPICS

- search and seizure
- fourth amendment
- suppression of evidence
- criminal procedure
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Galberth voluntarily consented to the warrantless search of her person.
2. Whether any consent was tainted by an unlawful seizure or detention preceding the search.
3. Whether the cocaine constituted inadmissible fruit of a Miranda violation or custodial interrogation.

HOLDINGS

1. The government proved that Galberth voluntarily consented to the search, and the district court's finding of valid consent was not clearly erroneous.
2. Any seizure that occurred before the body search was supported by reasonable suspicion and therefore did not taint Galberth's consent.
3. The cocaine was not subject to exclusion as derivative evidence because a mere Miranda violation does not trigger the fruit-of-the-poisonous-tree doctrine absent an actual constitutional violation, and the evidence was nontestimonial.

KEY QUOTATIONS

“the question whether a consent to a search was in fact 'voluntary' or was the product of duress or coercion, express or implied, is a question of fact to be determined from the totality of all the circumstances.” (¶ 16)

“communication between police and citizens involving no coercion or detention and therefore without the compass of the Fourth Amendment, [(2) so-called Terry stops or] brief 'seizures' that must be supported by reasonable suspicion, and [(3)] full-scale arrests that must be supported by probable cause.” (¶ 31)

“This contention is contrary to the rule that a mere violation of Miranda 's 'prophylactic' procedures does not trigger the fruit of the poisonous tree doctrine.” (¶ 52)

FACTUAL BACKGROUND

DEA officers observed Galberth and another passenger arriving at Dallas/Fort Worth International Airport from Miami; Galberth appeared nervous, followed the passenger, traveled on a one-way cash ticket issued in another name, and gave an explanation for the discrepancy. An officer approached her in a public terminal, asked to see her ticket, identification, purse, and carry-on bag, and later asked whether she would permit a female officer to pat her down for narcotics. Galberth responded "Okay," waited approximately ten additional minutes with the officer in a public lounge, and was then patted down by a female customs inspector, who removed a cocaine package from between her pantyhose and underwear. She was arrested and advised of her Miranda rights after the cocaine was discovered.

PROCEDURAL HISTORY

A federal grand jury indicted Galberth for possession with intent to distribute cocaine. The district court denied her motion to suppress the cocaine recovered from her person. She then entered a conditional guilty plea and

received a ten-year prison sentence, a three-year special parole term, and a \$50 special mandatory assessment. The Fifth Circuit affirmed.

DISPOSITION

affirmed

CASES CITED

- United States v. Bengivenga, 845 F.2d 593 (5th Cir. 1988) (en banc)
- United States v. Gonzales, 842 F.2d 748 (5th Cir. 1988)
- Schneckloth v. Bustamonte, 412 U.S. 218 (1973)
- Bumper v. North Carolina, 391 U.S. 543 (1968)
- United States v. Ruigomez, 702 F.2d 61 (5th Cir. 1983)
- United States v. Mendenhall, 446 U.S. 544 (1980)
- Terry v. Ohio, 392 U.S. 1 (1968)
- United States v. Berry, 670 F.2d 583 (5th Cir. 1982) (en banc)
- United States v. Ehlebracht, 693 F.2d 333 (5th Cir. 1982)
- United States v. Elmore, 595 F.2d 1036 (5th Cir. 1979)
- Florida v. Royer, 460 U.S. 491 (1983)
- United States v. Zukas, 843 F.2d 179 (5th Cir. 1988)
- United States v. Hanson, 801 F.2d 757 (5th Cir. 1986)
- Michigan v. Chesternut, 486 U.S. 567 (1988)
- Immigration & Naturalization Service v. Delgado, 466 U.S. 210 (1984)
- Berkemer v. McCarty, 468 U.S. 420 (1984)
- United States v. Cherry, 759 F.2d 1196 (5th Cir. 1985)
- Nix v. Williams, 467 U.S. 431 (1984)
- Oregon v. Elstad, 470 U.S. 298 (1985)
- Miranda v. Arizona, 384 U.S. 436 (1966)
- California v. Beheler, 463 U.S. 1121 (1983) (per curiam)
- Oregon v. Mathiason, 429 U.S. 492 (1977) (per curiam)
- United States v. Phillips, 664 F.2d 971 (5th Cir. Unit B 1981)
- United States v. Davis, 749 F.2d 292 (5th Cir. 1985)
- United States v. Williams, 616 F.2d 759 (5th Cir. 1980)
- United States v. Barfield, 507 F.2d 53 (5th Cir. 1975)
- United States v. Brunson, 549 F.2d 348 (5th Cir. 1977)

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