

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

United States v. Jay

87 F. App'x 49 (9th Cir. 2004) · Decided January 26, 2004

SUMMARY

The Ninth Circuit reversed and remanded a district court order suppressing evidence obtained during an encounter involving defendants Baker and Jay. The court held that the officers had reasonable suspicion for a Terry stop, that a protective sweep of the vehicle would inevitably have revealed the firearms and drugs, and that those items supplied probable cause supporting Jay’s statements and a warrant for a related residence.

CASE DETAILS

COURT	United States Court of Appeals for the Ninth Circuit
JURISDICTION	Federal
DECIDED	January 26, 2004
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The government appealed the district court's order granting the defendants' motion to suppress evidence.
STANDARD OF REVIEW	Motions to suppress are reviewed de novo, while the district court's factual findings are reviewed for clear error.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	United States v. Jay, Baker

TOPICS

- suppression of evidence
- fourth amendment
- search and seizure
- probable cause
- appellate procedure

PRACTICE AREAS

- criminal procedure
- appellate practice

QUESTIONS PRESENTED

1. Whether the government waived or abandoned reliance on Terry v. Ohio.
2. Whether the officers had reasonable suspicion to initiate and continue a Terry stop of Baker and Jay.

3. Whether drawing a weapon and handcuffing the defendants were reasonable measures within the scope of the Terry stop.
4. Whether the drugs and guns found in the Chevrolet Caprice were admissible under the inevitable-discovery doctrine.
5. Whether the vehicle evidence supplied probable cause for the defendants' arrests and for a search warrant covering Foster's duplex, making Jay's statements and the duplex evidence admissible.

HOLDINGS

1. The government did not waive or abandon its Terry theory because it cited Terry and argued that the officers had reasonable suspicion as well as probable cause.
2. The officers had reasonable suspicion that Baker and Jay were engaged in illegal activity involving a firearm or drugs, so they permissibly could initiate a Terry stop and question them.
3. Drawing a weapon and handcuffing the defendants were reasonable responses to legitimate officer-safety concerns and were consistent with a Terry stop under the circumstances.
4. The drugs and guns found in the Caprice were not subject to suppression because they inevitably would have been discovered during a reasonable protective sweep conducted as part of the Terry stop.
5. The evidence found in the Caprice would have given the officers probable cause to arrest both defendants and to obtain a search warrant for Foster's duplex; accordingly, Jay's statements and the evidence found in the duplex were not subject to suppression.

KEY QUOTATIONS

“The items found in the car are not subject to suppression, because they inevitably would have been found as part of the Terry stop.” (at 50)

“The items found in the car, in turn, would have given the officers probable cause to arrest both Defendants and probable cause to obtain a search warrant for Ms. Foster’s duplex.” (at 51)

FACTUAL BACKGROUND

Officers encountered Baker and Jay on N.E. Portland Boulevard Court while investigating suspected illegal possession of a firearm or drugs. The officers reasonably suspected that the defendants were armed, Officer Santos drew his weapon, and the defendants were handcuffed after additional officers arrived. Santos feared that Baker was reaching for a gun under the passenger seat of a gray Chevrolet Caprice; the court determined that a protective sweep of the vehicle would have been a reasonable and inevitable safety response, leading to the discovery of drugs and guns. Those items would have supported probable cause to arrest the defendants and obtain a warrant to search Foster's duplex.

PROCEDURAL HISTORY

The district court granted a motion to suppress evidence discovered in a vehicle and in Foster's duplex, apparently including statements made by Jay. The Ninth Circuit reversed and remanded for further proceedings, concluding that the officers had reasonable suspicion to conduct a Terry stop and that the vehicle evidence was

admissible under inevitable discovery; the vehicle evidence then supplied probable cause for the arrests and for a warrant to search the duplex.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Further proceedings consistent with the opinion.

CASES CITED

- Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968)
- United States v. Fernandez-Castillo, 324 F.3d 1114, 1117 (9th Cir. 2003), cert. denied, 124 S. Ct. 418, 157 L. Ed. 2d 299 (2003)
- United States v. Miles, 247 F.3d 1009, 1012-13 (9th Cir. 2001)
- United States v. Ramirez-Sandoval, 872 F.2d 1392, 1399 (9th Cir. 1989)
- Michigan v. Long, 463 U.S. 1032, 1049-50, 103 S. Ct. 3469, 77 L. Ed. 2d 1201 (1983)

OPINION

PER CURIAM.

MEMORANDUM * The government appeals the district court’s order granting a motion to suppress evidence. We reverse and remand for further proceedings. 1. The district court erred when it asserted that the government had “disclaim[ed] any reliance on Terry [v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968),] in this case.” Although the written materials and colloquies with the court were far from crystal clear, the government cited Terry in all but its final supplemental briefs and argued that the officers had “reasonable suspicion,” as well as “probable cause.” The government never waived or abandoned its Terry theory.

2. The facts found by the district court, which are not clearly erroneous, establish that the officers had a reasonable suspicion that Defendants Baker and Jay were engaged in illegal activity, specifically related to illegal possession of a firearm or possession of drugs. See United States v. Fernandez-Castillo, 324 F.3d 1114, 1117 (9th Cir.) (stating that we review motions to suppress de novo but review the district court’s factual findings for clear error), cert. denied, — U.S. —, 124 S.Ct.

418, 157 L.Ed.2d 299 (2003). The officers therefore permissibly could initiate a Terry stop when they encountered Defendants on N.E. Portland Boulevard Court and could question Defendants. Indeed, the district court noted that “a Terry stop and investigative inquiry would have been warranted” with respect to a possible drug crime, and the court listed a variety of factors that

supported “the reasonableness of the officers’ suspicions” that Defendants were involved in criminal activity.

3. Initially, the encounter between Officer Santos and Defendants was objectively consistent with a Terry stop. Officer Santos was covering the situation alone, Defendants did not immediately comply with his orders, and Officer Santos had a reasonable suspicion that Defendants were armed. Officer Santos’ decision to draw his weapon and, when other officers arrived, to handcuff Defendants, was a reasonable response to legitimate safety concerns.

See *United States v. Miles*, 247 F.3d 1009, 1012-13 (9th Cir.2001) (explaining scope of Terry stop). 4. We need not decide whether an arrest had occurred before Jay made his incriminating statements in the back of the patrol car, or whether the police had probable cause for such an arrest, because we hold that, “by following routine procedures, the police would inevitably have uncovered [the drugs and guns in the gray Chevrolet Caprice].” *United States v. Ramirez-Sandoval*, 872 F.2d 1392, 1399 (9th Cir.1989).

The officers had a reasonable suspicion that Defendants were armed, and Officer Santos feared that Baker was reaching for a gun under the passenger seat. In these circumstances, a protective sweep of the car would have been a reasonable (and, on these facts, an inevitable) response to legitimate safety concerns. See *Michigan v. Long*, 463 U.S. 1032, 1049-50, 103 S.Ct.

3469, 77 L.Ed.2d 1201 (1983); *Miles*, 247 F.3d at 1012-13. The officers would have checked the Caprice for weapons before allowing Defendants back into the car after an investigatory stop. The items found in the car are not subject to suppression, because they inevitably would have been found as part of the Terry stop. 5.

The items found in the car, in turn, would have given the officers probable cause to arrest both Defendants and probable cause to obtain a search warrant for Ms. Foster’s duplex. Therefore, Jay’s statements and the items found in Foster’s *51duplex likewise are not subject to suppression. REVERSED and REMANDED for further proceedings. This disposition is not appropriate for publication and may not be cited to or by the courts *50of this circuit except as may be provided by Ninth Circuit Rule 36-3.