

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

United States v. Nelson

No. 19-41008, United States Court of Appeals for the Fifth Circuit (March 12, 2021)

SUMMARY

We

CASE DETAILS

COURT	United States Court of Appeals for the Fifth Circuit
WRITING FOR THE COURT	Patrick E. Higginbotham; Jerry E. Smith; James L. Dennis
JURISDICTION	Federal
DECIDED	March 12, 2021
DOCKET	19-41008
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from district court denial of motion to suppress after conditional guilty plea
STANDARD OF REVIEW	Factual findings reviewed for clear error; legal conclusions, including reasonable suspicion and Miranda custody, reviewed de novo. Evidence viewed in light most favorable to the prevailing party.
PRECEDENTIAL VALUE	published
PARTIES	Vernon D. Nelson v. United States of America

TOPICS

criminal procedure

fourth amendment

fifth amendment

miranda rights

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PRACTICE AREAS

Criminal Law

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QUESTIONS PRESENTED

- Whether the Border Patrol agents had reasonable suspicion to justify the roving-patrol stop of Nelson's vehicle.

2. Whether Nelson was in custody for Miranda purposes during the two-minute questioning by Agent Stauffiger.
3. Whether Border Patrol agents have authority to conduct roving stops related to non-immigration offenses.

HOLDINGS

1. The totality of the circumstances, including proximity to the border (29 miles), the agent's extensive experience, the VACIS scan showing bundle-shaped objects, the presence of a seal on the trailer inconsistent with personal equipment, and the inconsistencies in the bill of lading, gave rise to reasonable suspicion that Nelson was engaged in illegal activity.
2. Nelson was not in custody because the questioning was brief (two minutes), occurred in a public location on the side of the highway, was non-accusatory and cooperative in tone, involved no physical restraint or handcuffs, and the agent indicated that Nelson would be free to go if the canine did not alert.
3. Border Patrol agents have authority under Brignoni-Ponce to make roving stops on the basis of reasonable suspicion of any criminal activity, not just immigration offenses.

KEY QUOTATIONS

“A Border Patrol agent on roving patrol 'is justified in stopping a vehicle if he reasonably suspects, based on specific articulable facts together with rational inferences from the facts, that the vehicle might be engaged in illegal activity.'” (at 7)

“A suspect is 'in custody' for Miranda purposes when placed under formal arrest or when a reasonable person in the suspect's position would have understood the situation to constitute a restraint on freedom of movement of the degree which the law associates with formal arrest.” (at 10)

“This court has repeatedly considered certain key details when analyzing whether an individual was or was not in custody, including (1) the length of the questioning; (2) the location of the questioning; (3) the accusatory, or non-accusatory, nature of the questioning; (4) the amount of restraint on the individual's physical movement; and (5) statements made by officers regarding the individual's freedom to move or leave.” (at 11)

“Border Patrol agents possess authority under Brignoni-Ponce to 'make roving stops on the basis of reasonable suspicion of any criminal activity.'” (at 12)

FACTUAL BACKGROUND

Around 9:55 P.M. on October 30, 2018, Vernon Nelson approached a U.S. Border Patrol checkpoint north of Laredo, Texas, in a tractor-trailer. After a VACIS scan revealed bundle-shaped objects and a seal on the trailer door, Border Patrol Agent Stauffiger suspected narcotics. Due to construction, Nelson left the checkpoint. Agents pursued and stopped him six miles north. Nelson presented a bill of lading for cereal, but Stauffiger noted inconsistencies. Stauffiger asked Nelson to step out, told him about the bundles, and requested consent to search. Nelson refused, and a canine unit was called. While waiting, Stauffiger asked Nelson routine questions for about two minutes. The canine alerted, and agents found 72 kilograms of marijuana.

PROCEDURAL HISTORY

Nelson pleaded guilty to conspiracy to possess with intent to distribute marijuana, reserving the right to appeal the denial of his suppression motion. The district court adopted the magistrate judge's recommendation and denied the motion. Nelson appealed.

DISPOSITION

affirmed

CASES CITED

- United States v. Brignoni-Ponce, 422 U.S. 873 (1975)
- United States v. Jacquinot, 258 F.3d 423 (5th Cir. 2001)
- United States v. Martinez-Fuerte, 428 U.S. 543 (1976)
- United States v. Garza, 727 F.3d 436 (5th Cir. 2013)
- United States v. Freeman, 914 F.3d 337 (5th Cir. 2019)
- United States v. Cervantes, 797 F.3d 326 (5th Cir. 2015)
- United States v. Casteneda, 951 F.2d 44 (5th Cir. 1992)
- United States v. Rangel-Portillo, 586 F.3d 376 (5th Cir. 2009)
- United States v. Melendez-Gonzalez, 727 F.2d 407 (5th Cir. 1984)
- United States v. Zapata-Ibarra, 212 F.3d 877 (5th Cir. 2000)
- United States v. Nichols, 142 F.3d 857 (5th Cir. 1998)
- United States v. Ramirez-Mendoza, 657 F. App'x 298 (5th Cir. 2016)
- United States v. Wright, 777 F.3d 769 (5th Cir. 2015)
- Missouri v. Seibert, 542 U.S. 600 (2004)
- United States v. Ortiz, 781 F.3d 221 (5th Cir. 2015)
- United States v. Chavira, 614 F.3d 127 (5th Cir. 2010)
- United States v. Cavazos, 668 F.3d 190 (5th Cir. 2012)
- United States v. Bengivenga, 845 F.2d 593 (5th Cir. 1988) (en banc)
- United States v. Perkins, 352 F.3d 198 (5th Cir. 2003)
- United States v. Cortez, 449 U.S. 411 (1981)
- Adams v. Unione Mediterranea di Sicurta, 364 F.3d 646 (5th Cir. 2004)
- United States v. Castillo, 804 F.3d 361 (5th Cir. 2015)
- United States v. Harrell, 894 F.2d 120 (5th Cir. 1990)
- United States v. Rodriguez, 702 F.3d 206 (5th Cir. 2012)
- United States v. Gibbs, 421 F.3d 352 (5th Cir. 2005)
- United States v. Massi, 761 F.3d 512 (5th Cir. 2014)
- United States v. Resendez, 578 F.2d 1041 (5th Cir. 1978)

- *Celanese Corp. v. Martin K. Eby Const. Co.*, 620 F.3d 529 (5th Cir. 2010)

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