

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
vs.)
)
DANUEL DEAN QUAINANCE,)
)
 Defendant.)

CR No. 06-538 JH

**GOVERNMENT’S RESPONSE TO DEFENDANT
DANUEL DEAN QUAINANCE’S MOTION TO SUPPRESS**

COMES NOW the United States of America by and through DAVID C. IGLESIAS, United States Attorney for the District of New Mexico and Luis A. Martinez, Assistant United States Attorney for said District, and hereby responds to defendant Danuel Dean Quaintance’s motion to suppress and further states:

I. Factual Background

On February 22, 2006, at approximately 1:30 pm Senior Border Patrol Agent Bernardo M. Ramirez, III was fueling his patrol vehicle at the Diamond Shamrock gas station in Lordsburg, New Mexico. Agent Ramirez saw a Chrysler 300 parked next to the Diamond Shamrock. A green minivan was parked in the drive through area of the Kentucky Fried Chicken Restaurant next to the Diamond Shamrock. Agent Ramirez saw the minivan’s passenger, defendant Danuel Quaintance, exit the vehicle and walk into the Diamond Shamrock. Shortly, the minivan driven by Mary Quaintance went through the Kentucky Fried Chicken Restaurant’s drive through and parked in the Diamond Shamrock’s parking lot. Timothy Jason Kripner then drove the Chrysler a short distance and parked

next to the minivan. Mr. Kripner exited the Chrysler and began speaking with Ms. Quaintance. Agent Ramirez saw Mr. Kripner take a large quantity of food that was obviously purchased at the Kentucky Fried Chicken Restaurant from the minivan and place it in the front passenger floorboard of the Chrysler. Mr. Quaintance then exited the Diamond Shamrock with two large see through plastic bags of food items and handed them to Mr. Kripner. The two had a short conversation. Kripner then placed the food items into the Chrysler. Agent Ramirez thought this odd, since there was so much food for only three people.

Agent Ramirez has extensive experience with alien apprehensions and narcotic loads while working at the Lordsburg Station. Agent Ramirez has observed smugglers, as a common practice, purchase large portions of food for drug “backpackers” or undocumented aliens.

At approximately 1:55 p.m., both vehicles exited the parking lot and enter onto Interstate 10, traveling east from the 22 mile marker. Agent Ramirez followed both vehicles for approximately ten (10) miles when both suspect vehicles exited Interstate 10 and went south on New Mexico 113. New Mexico 113 is known to Agent Ramirez as a notorious route of travel for alien and narcotic smugglers.

Agent Ramirez pulled his patrol unit over and, using binoculars, maintained surveillance on the vehicles as they traveled south on New Mexico 113 for approximately five miles until losing sight of the vehicles.

Agent Ramirez proceeded in the direction the vehicles had last been seen. He traveled south for approximately 13 miles when he encountered the vehicles headed

toward him traveling north in tandem from the 7 mile marker ¹ on New Mexico Highway 113. Agent Ramirez knew the 7 mile marker to be a notorious delivery point for narcotic smugglers. Previously, agents of the Lordsburg USBP station have apprehended numerous individuals attempting to deliver narcotics in this area.

Agent Ramirez communicated to Agent Jose Portillo what he (Ramirez) had observed and requested Agent Portillo's assistance. Agent Portillo drove to the intersection of Interstate 10 and New Mexico Highway 113 and observed two vehicles traveling in tandem northbound heading toward him. Agent Portillo drove south on Highway 113 toward the vehicles to confirm that they were the suspect vehicles. At approximately the 15 mile marker, Agent Portillo confirmed they were the suspect vehicles.

Agent Portillo pulled in behind the Chrysler 300 and noticed that Mr. Kripner, the driver and sole occupant, swerved the Chrysler onto the shoulder of the highway. Agent Portillo noted that the vehicle's trunk area appeared dusty and observed what appeared to be hand prints about the trunk area of the vehicle. Agent Portillo's past law enforcement experiences coupled with the information transmitted to him by Agent Ramirez caused Agent Portillo to conclude a smuggling scheme was afoot.

Agent Portillo apprised USBP Agent Lara, who at this time had positioned his patrol unit at the intersection of Interstate 10 and Highway 113, of the situation and advised that he was going to conduct an immigration inspection of the Chrysler. Agent Portillo requested Agent Lara conduct an immigration inspection of the Pontiac minivan which

¹ The mile markers are set from N.M. Highway 9 south to north. N.M. Highway 9 intersects N.M. Highway 113 approximately 20 miles south of the intersection of Highway 113 and Interstate 10. There is a railroad crossing at mile marker 7. The rails are set across Highway 113. Additionally there are large metal gates on either side of Highway 113 at mile marker 7. The rails and the gates provide distinct reference points and are frequently used by narcotic smugglers as a rendezvous point.

appeared to be guiding the Chrysler. Agent Portillo activated his emergency equipment after which the Chrysler driven by Mr. Kripner came to a stop on Highway 113, mile marker 17. As Agent Portillo approached the vehicle he noticed a square backpack covered by a black shirt behind the passenger seat, and as Agent Portillo questioned Mr. Kripner as to his (Kripner's) immigration status, Agent Portillo detected the odor of marijuana emitting from the inside of the vehicle. The Chrysler driven by Mr. Kripner had Arizona temporary tags.

Meanwhile, approximately a mile to two miles north of Agent Portillo's location, at the Intersection of I-10 and New Mexico Highway 113, Agent Lara stopped the Pontiac minivan which bore Arizona license plates. Ms. Quaintance was the driver of the minivan; Mr. Quaintance was the sole passenger. Agent Lara requested Agent Ford who had arrived at the scene, to stand by with the lead vehicle as he, Agent Lara, responded to Agent Portillo's location. It was later established that Agent Portillo's stop of the Chrysler was approximately two miles south of the I-10 at NM 113 intersection. Agent Ford remained with the minivan and the Quaintances and requested a stolen vehicle and registry check on the vehicle's Arizona license plate. Previously Agent Ford had been advised the minivan and the Chrysler had been traveling in tandem.

As Agent Ford's request was being processed Agent Lara arrived at Agent Portillo's location. Mr. Kripner refused Agent Portillo's request for consent to search the Chrysler. Agent Lara's canine Shusja alerted to the trunk area of the Chrysler. After which agents requested Mr. Kripner open the vehicle's trunk. Mr. Kripner complied and agents found three square burlap backpacks containing marijuana. An inventory inspection of the vehicle by agents netted a fourth burlap backpack of marijuana and a handheld two-way radio with short distance capacity set on channel six.

Agent Lara advised Agent Ford via radio that marijuana had been found in the Chrysler. Agent Ford asked Ms. Quaintance to exit the vehicle and handcuffed her advising her she was being detained for further investigation of possession of marijuana. Agent Ford requested Mr. Quaintance to exit the vehicle. Mr. Quaintance did so and asked Agent Ford if he enforced the law. Agent Ford replied that he did and Mr. Quaintance said, "You're breaking the law, this is a hate crime." Mr. Quaintance handed Agent Ford a card identifying himself as a member of a church and told Agent Ford that he was in violation of 22 USC, the freedom of religion. Agent Ford told Mr. Quaintance to put his hands behind his back and he complied. Agent Ford secured Mr. Quaintance with handcuffs. Mr. Quaintance said, "You are in violation of 22 USC and I am going to sue you personally." Agent Ford told Mr. Quaintance that he should stop talking and that he was being detained. Agent Ford then read Mr. Quaintance the Miranda warnings and asked if he understood. Mr. Quaintance said that he did. Mr. Quaintance continued to state that this was a hate crime and how he was going to sue everyone involved with his detention. Mr. Quaintance said, "I am the head of my church and I have the right to have 'that' marijuana." Agent Ford told Mr. Quaintance he should stop talking; Mr. Quaintance said he wanted to talk. Mr. Quaintance continued to talk about hate crimes, religious freedom and lawsuits. The defendants were transported to the Lordsburg Border Patrol Station. The four bundles of marijuana weighed approximately 172 pounds.

II. Discussion

A. Standing: Preface

The defendant requests this Honorable Court suppress all of the evidence obtained as a result of the unconstitutional search of the vehicles related herein. . . . (Defendant's motion, pg. 5). The defendant expects this Honorable Court to consider suppression of

evidence, yet curiously ignores the issue of standing. “. . . we have held that without a possessory or property interest in the vehicle searched passengers lack standing to challenge vehicle searches.” *United States vs. DeLuca*, 269 F.3d 1128 @ 1133 citing *Eylico-Montoya*, 70 F.3d @ 1162 (citations omitted).

The defendant asserts that “The Agents in this case lacked a particularized and objective factual basis to stop Mr. Quaintance and the vehicles.” (Defendant’s motion, pg. 5). The government not only disagrees with the defendant’s premise but also notes that the defendant seeks suppression as to two separate vehicles. Mr. Quaintance was a passenger in the green minivan driven by his wife and could not have been an occupant of the Chrysler 300 driven by Mr. Kripner. Hence, the defendant’s assertion and request for suppression as to the marijuana and “other evidence” in both vehicles is curious, to say the least.

1. Standing as to the Chrysler 300 driven by Mr. Kripner.

The marijuana cannot be excluded as evidence against the defendant. Mr. Quaintance does not have an expectation of privacy in the Chrysler 300 from which the marijuana was seized. In fact, the government contends that it is not likely that even Mr. Kripner, the driver of the Chrysler, has standing to complain of the marijuana seizure. Mr. Quaintance was not a passenger in the Chrysler at the time it was stopped. The vehicle was leased and no defendant in the case at bar has an ownership interest in the Chrysler. The vehicle was leased in the name of Eugene Waylon of Apache, Arizona, allegedly Mr. Kripner’s cousin.

To successfully suppress evidence as the fruit of an unlawful detention, a defendant must first establish that the detention did violate his Fourth Amendment rights. *United States vs. Nava-Ramirez*, 210 F.3d 1128 @ 1130 citing *United States vs. Shareef*, 100

F.3d 1491, 1500. The defendant then bears the burden of demonstrating “a factual nexus between the illegality and the challenged evidence. *Id.* @ 1131 citing *United States vs. Kendlk*, 633 F.2d 1334, 1335 (9th Cir. 1980). The defendant has failed to do so, hence the marijuana and all other inculpatory evidence seized from the Chrysler should not be excluded.

2. Standing as to the Green Minivan Driven by Mary Quaintance in which Mr. Quaintance was a Passenger.

The government concedes Mr. Quaintance has standing as to the green minivan driven by Ms. Quaintance. Agent Ford’s check for registered owner based on the Arizona License Plate confirmed the vehicle’s owner as Mary Quaintance. Since Ms. Quaintance is Mr. Quaintance’s spouse, the government does not contest an ownership interest in the vehicle as to Mr. Quaintance.

B. The Stop of the Green Minivan Driven by Mary Quaintance was Based on Reasonable and Articulate Suspicion and is Therefore Constitutionally Sound

Defendant’s assertion that “any attempt to access the quantum of evidence constituting the totality of the circumstances without evaluating the individual components which make up that totality is farcical” (Defendant’s Motion, pg. 4). The defendant further asserts that this view is not divide and conquer but common sense. *Id.* @ pg. 4. Nonetheless, the defendant cannot ignore the legion of authority which demands a totality of the circumstances analysis. This process allows officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that “might well elude an untrained person.” *United States v. Arvizu*, 534 U.S. 266 @ 273, 122 S.Ct. 744 @ 750-51 (2002), quoting *United States v. Sokolow*, 490, U.S. 1, 7, 109 S.Ct. 1581, 104 L.Ed.2d. (1989).

Agent Ramirez, utilizing his past experience, deduced from the number of individuals (3) and the large amount of food bought by Mr. Quaintance coupled with the vehicle's location, that criminal activity may possibly be developing. The government anticipates Agent Ramirez to testify in a suppression hearing, that if the vehicles would have continued on from the gas station to Interstate 10, his suspicion would have been assuaged.

This did not happen. The government anticipates Agent Ramirez will testify that he was suspicious of the copious amounts of food due to his previous experience with alien and narcotics smuggling enterprises. Agent Ramirez, the government expects, will also say individuals involved in the aforementioned nefarious enterprises will often purchase food for smuggled aliens or in the case of narcotics smuggling, for individuals employed to portage the marijuana to a rendezvous point.

As the vehicles traveled south after entering N.M. Highway 113 from Interstate 10, Agent Ramirez' suspicions rose. With every mile the vehicles traveled south, his suspicions grew. As Agent Ramirez, utilizing his binoculars, watched the vehicles disappear down the highway, his suspicions heightened. The vehicles were now obviously nearing the notorious mile marker 7, the known staging area for narcotics smuggling enterprises. Agent Ramirez once again followed the southerly path the vehicles had taken. Shortly, after 13 miles, the tandem vehicles were now traveling north from mile marker 7 and headed toward Agent Ramirez.

Agent Portillo, after being contacted by Agent Ramirez, drove south on Highway 113.

As a result of the combined circumstances coupled with their previous experience, the Agents' suspicions were now at a zenith. The coupe de gras came as Agent Portillo

maneuvered his unit behind the Chrysler. The hand prints in the dirt on the vehicles trunk spoke volumes. The time it took the vehicles to travel south on 113, get to mile marker 7 and return northbound on 113 easily fit the picture of a contraband pick up. The large food purchase now made sense. The hand prints on the vehicles were the handwriting on the wall.

The government submits that the vehicle stop conducted by the Agents was “text book” constitutional. Based on reasonable suspicion drawn from a totality of the circumstances the rationale for the stop was reasonable and articulable. Agents using their training, experience, powers of observation and common sense engaged in the performance of their duties; in this case, drug interdiction.

C. What can be Excluded Should this Honorable Court find the Stop of the Minivan Constitutionally Infirm?

The minivan contained no marijuana and one inculpatory item: the short range two-way radio set on channel six. The stop also resulted in Mr. Quaintance’s first inculpatory “blurt out”. Assuming, arguendo, that the stop violated the Fourth Amendment, only the foregoing can be suppressed. Mr. Quaintance would have nonetheless been arrested, based on the abundance of probable cause remaining.

1. Inevitable Discovery of the Short Distance Two-Way Radio found in the Minivan.

The Inevitable Discovery Doctrine applies even if the government had not already initiated the alternative investigation by which the government would have inevitably discovered the challenged evidence. *United States v. Sanders*, 43 Fed. Appx. 249 (Tenth Circuit 2002) @ 253 discussing *United States v. Larsen*, 127 F.3d 984 (10th Cir. 1997).

In fact, this is not the situation in the case at bar. That is, an investigation involving the Chrysler 300 had already begun by the time the minivan was stopped. The tandem travel of the vehicles, the numerous food items, the curious travel and route of travel and the dusty hand prints coupled with the discovery of marijuana would have resulted in Mr. Quaintance's arrest.

The minivan would have been subject to a lawful inventory search and the two-way radio would inevitably have been discovered (as was the case).

Mr. Quaintance's first "blurt out" at the scene of the minivan's stop is also admissible as it was made voluntarily by Mr. Quaintance. It was not made in response to interrogation nor was it made while in custody.

It should be noted that "what makes a discovery 'inevitable' is not probable cause alone . . . but probable cause plus a chain of events that would have led to a warrant (or another justification) independent of the search." *United States vs. Souza*, 223 F.3d 1197 @ 1204 (10th Cir. 2000). The chain of events in motion were now an irresistible wave that was sweeping over the conspirators by the time of the minivan's stop. Hence, even if the minivan's stop was unlawful, the inevitable discovery doctrine should be applied.

III. Defendant's Statements

1. Defendant's Statements Made Voluntarily and Not in Response to Interrogation While in Custody at the Lordsburg Station Should Not be Suppressed.

The defendant, while in custody at the Lordsburg Border Patrol Station, asked Task Force Agents Zavarte and Hernandez through his cell door if they were DEA agents. They replied in the affirmative. Mr. Quaintance immediately began shouting that they belonged to the Cognizance Church and that they were allowed to possess and transport marijuana. The defendant went on to say that they (the Task Force Agents) "were in violation of 22

USC, which states freedom of religion and that is why they are allowed to have and transport the marijuana.” Since these statements were made voluntarily and not in response to interrogation, they are admissible against the defendant in a potential trial.

2. Defendant’s Statements Made While in Custody at the Lordsburg Border Patrol Station in Response to Interrogation Pursuant to Miranda Warnings.

Task Force Agent Hernandez re-read Mr. Quaintance the Miranda warnings witnessed by Task Force Agent Zarate. Mr. Quaintance stated that he wanted to answer some questions. Mr. Quaintance stated he was not going to admit ownership of the marijuana but that he is allowed under his church to transport and possess marijuana. The defendant then stated he wanted a lawyer. No more questions were asked of the defendant. The foregoing statements made by the defendant pursuant to his Miranda warning are also admissible as to Mr. Quaintance.

IV. Conclusion

The defendant’s arrest was valid and the vehicle stops were made well within constitutional bounds. Now before this Honorable Court are co-conspirators caught in the act of committing a crime and law enforcement officers who have done an exemplary, constitutionally sound and effective job.

The defendant lacks standing to challenge the bulk of the evidence sought to be excluded. His statements were made voluntarily as spontaneous outbursts or pursuant to Miranda warnings. As a result, the government requests this Honorable Court deny defendant’s motion in whole or in the alternative, in part.

Respectfully submitted,

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Electronically filed 4/27/06
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I HEREBY CERTIFY that a true copy
of the foregoing response was delivered
to counsel for Defendant, on the 28th _____
day of April, 2006.

/s/ Luis A. Martinez
LUIS A. MARTINEZ
Assistant U.S. Attorney