

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

REPORT AND
RECOMMENDATION

v.

00-CR-92-C

FILIMON SANDOVAL-GOMEZ,

Defendant.

REPORT

Before the court for report and recommendation is defendant Filimon Sandoval-Gomez's motion to suppress evidence (dkt. #9). Sandoval-Gomez argues that a traffic stop of his van was not supported by reasonable suspicion or probable cause; therefore, all evidence derived from this stop should be suppressed. Because I find that the police properly stopped Sandoval-Gomez's van, I am recommending that this court deny his motion.

Facts

At the December 5, 2000 evidentiary hearing, Sun Prairie Police Officers Randall Sharpe and Jason Bertram testified about the events challenged by Sandoval-Gomez. Having heard and seen the witnesses, and having reviewed the exhibits, I find the following facts:

Office Jason Bertram is a community patrol officer for the Sun Prairie Police Department. Sometime in the Fall of 2000, a confidential informant advised Bertram about

alleged drug trafficking by Filimon Sandoval-Gomez, among other people. Following up on this tip, Officer Bertram contacted the Immigration and Naturalization Service to obtain more information about Sandoval-Gomez. The INS advised Officer Bertram that although it had not issued any warrants or holds for Sandoval-Gomez, the agency would be interested in talking to him if he were located. INS asked to be notified immediately if local officers encountered Sandoval-Gomez.

Thereafter, on October 4, 2000, the Sun Prairie Police Department conducted a drug interdiction operation. At the pre-interdiction briefing, Office Bertram provided information regarding targeted vehicles and people, including Filimon Sandoval-Gomez.

While patrolling that day in support of the interdiction, Officer Randall Sharpe spotted one of the targeted cars. Officer Sharpe began following the car to watch for traffic law violations that would give him a pretextual but legally sound basis to stop it and interview its passengers. While following the car, Officer Sharpe noticed that a van seemed to be traveling in tandem with it. Although the van was not a target of the interdiction operation, Officer Sharpe redirected his attention toward it because it appeared to be speeding and its license plate was improperly displayed. After clocking the van on his verified speedometer at 10 miles over the speed limit, Officer Sharpe pulled it over to issue written warnings, which was his standard operating procedure in this situation.

The driver of the van turned out to be Sandoval-Gomez. Officer Sharpe remembered this name from the briefing, so he radioed Officer Bertram to ask whether he should detain

Sandoval-Gomez for the INS. Officer Bertram and other officers arrived on the scene while Officer Sharpe was writing up his warning tickets. Although Officer Bertram immediately contacted the INS in Chicago, the agency hadn't yet decided whether it wanted to detain Sandoval-Gomez. So, Officer Sharpe issued Sandoval-Gomez two written warnings on his traffic violations and sent him on his way. No one tailed Sandoval-Gomez or otherwise took note of where he went.

Perhaps predictably, shortly after the police released Sandoval-Gomez, the INS called back to advise that it had decided to detain him. The INS forthwith issued an immigration hold, the functional equivalent of an arrest warrant.

About an hour later, Officer Sharpe happened upon Sandoval-Gomez's van in the parking lot of an apartment complex. Officer Sharpe radioed the van's location to Officer Bertram, who responded to the scene. Officer Bertram located Sandoval-Gomez near his van and took him into custody on basis of INS's immigration hold.

Analysis

Sandoval-Gomez contends that Officer Sharpe did not actually stop his van for traffic violations that day. Sandoval-Gomez bases this contention on Officer *Bertram's* report regarding his arrest, which does not mention the basis for Officer Sharpe's traffic stop and implies that there was only one police encounter with Sandoval-Gomez that day. Sandoval-Gomez argues that because this report does not refer to the nature of any alleged traffic violations, it follows that Officer Sharpe must have stopped him without a valid reason.

This argument is meritless. Officer Sharpe's testimony at the evidentiary hearing established that he had probable cause to stop Sandoval-Gomez's van for speeding and a tag violation. This testimony is corroborated by the warning tickets issued to Sandoval-Gomez. Against this backdrop, the fact that Officer Bertram's report did not mention the exact reason for the traffic stop is meaningless.

Once I accept Officer Sharpe's testimony, the analysis is essentially over. Because Officer Sharpe had probable cause to stop Sandoval-Gomez's van for traffic violations, he was operating within the constraints of the Fourth Amendment. *See Whren v. United States*, 517 U.S. 806, 816-817 (1996); *see also United States v. Cashman*, 216 F.3d 582, 587, (7th Cir. 2000). Therefore, everything that occurred as a result of the initial traffic stop occurred lawfully. Sandoval-Gomez is not entitled to suppression of any evidence.

RECOMMENDATION

Pursuant to 28 U.S.C. §636(b)(1)(B) and for the reasons stated above, I recommend that this court deny defendant Filimon Sandoval-Gomez's motion to suppress evidence.

Entered this 17th day of January, 2001.

BY THE COURT:

STEPHEN L. CROCKER
Magistrate Judge