

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

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UNITED STATES OF AMERICA,

Plaintiff,

v.

IGNACIO PANZO-ACAHUA,

Defendant.

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ORDER

04-CR-0151-C

In a report and recommendation entered on January 20, 2005, the United States Magistrate Judge recommended denial of defendant's motion to suppress evidence derived from a seizure that occurred when an Eau Claire, Wisconsin police officer detained him for a suspected traffic violation. After conducting an evidentiary hearing on defendant's motion, the magistrate judge found that the officer had reason to suspect that defendant had committed a traffic violation even though his suspicion was not borne out and, as a consequence, it was legal for him to detain defendant and his girlfriend long enough to obtain background information from them.

The magistrate judge conducted an evidentiary hearing on defendant's motion and heard testimony from the police officer, defendant and defendant's girlfriend. He found that

the officer observed defendant's car, saw that it had no front license plate, pulled out into traffic to follow the car, followed it for about three blocks, until it turned into an apartment parking lot and parked, whereupon the officer pulled in behind the car, parked his unmarked car and proceeded to question defendant and his passenger (defendant's girlfriend). The magistrate judge found that the officer never observed the temporary plate that was in place on the rear of defendant's car. Both defendant and his girlfriend testified that the officer had been directly behind them when he was following them and must have seen the plate, in which case he would have realized that defendant was not in violation of state law. (Wisconsin law requires front and rear license plates, except for a limited period in which an owner is waiting for permanent plates. During that period, no front license is required so long as the owner displays a temporary license in the rear.) However, the magistrate judge found the officer was credible when he testified that he had not observed the temporary plate and that defendant and his girlfriend were not believable in their testimony about how close the officer was to their car while he was following them.

Having read the transcript of the evidentiary hearing, as well as the briefs on the motion and defendant's objections, I am convinced that the magistrate judge did not err in making his credibility determination. The officer's testimony was that he followed defendant's car at about 9:30 in the evening in mid-September, when it would have been dark, that there were cars between him and defendant and that he followed the car for only

about three blocks before it turned into the parking lot of an apartment complex. He testified that in that period of time he was unable to observe the rear of defendant's car closely enough to determine whether the car had a temporary license because of the traffic and the distance between him and defendant's car. He said that he did not notice the license even after he pulled into the parking lot and parked behind defendant's car because at that point he was focused on the actions of the car's occupants.

Neither defendant nor his 16-year-old girlfriend had reason to be dispassionate about their versions of what had occurred. Defendant's girlfriend testified that she identified the officer's unmarked car as a police car even before it began following her and was apprehensive about it, no doubt because of her knowledge that defendant was in the country illegally after having been deported just a few months earlier following his conviction of statutory rape. She testified that the officer's car was less than a yard behind them from the time he pulled out of the parking lot but she also said that she looked backward only once and was not paying close attention because she was scared. She did not remember whether the officer had his headlights on. Defendant testified that the police car was within a car's length of his while it was following him before he turned into the apartment parking lot.

Both defendant and his girlfriend had obvious reasons to try to suppress the evidence obtained as a result of defendant's seizure and to slant their testimony toward that end. Moreover, the girlfriend admitted that she had lied to the officer about her age, name and

residence when he first asked her for identification, thereby further undermining her credibility.

Defendant wants the court to believe that the officer must have lied because he had to have seen the temporary license, but he has not shown that the officer *must* have seen the temporary license; at most, he has shown that the officer *might* have seen it. This is not enough evidence to allow a finding that the officer lied. Therefore, I will adopt the magistrate judge's recommendation and deny defendant's motion to suppress evidence. Defendant has not shown that the officer did not have a reasonable belief that defendant's car was lacking its required license plates when he pulled in behind it as it was parked and asked the occupants for identifying information. So long as the officer had reasonable suspicion that a violation had occurred, he was justified in stopping the car and obtaining identifying information from the occupants. It is irrelevant that the officer's suspicion was proven to be unfounded later. The inquiry focuses on its reasonableness at the time.

#### ORDER

IT IS ORDERED that the report and recommendation entered by the United States Magistrate Judge on January 20, 2005, is ADOPTED. FURTHER, IT IS ORDERED that defendant Ignacio Pancho-Acahua's motion to suppress evidence obtained during his

detention by the Eau Claire police on the night of September 12, 2004, is DENIED.

Entered this 8th day of February, 2005.

BY THE COURT:

BARBARA B. CRABB  
District Judge