

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

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UNITED STATES OF AMERICA,

Plaintiff,

v.

REPORT AND  
RECOMMENDATION

IGNACIO PANZO-ACAHUA,

04-CR-151-C

Defendant.

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REPORT

The government has charged defendant Ignacio Panzo-Acahua with illegal re-entry into the United States. Before the court for report and recommendation is Panzo-Acahua's motion to suppress evidence derived from his "unlawful detention" by the Eau Claire police, namely the discovery that Panzo-Acahua was not legally in the United States. *See* dkt. 23. Panzo-Acahua contends that his encounter with the police in his apartment complex's parking lot was an investigative detention unsupported by reasonable suspicion. The government disagrees.<sup>1</sup>

Because I conclude that the police did have a reasonable suspicion that Panzo-Acahua had committed a traffic regulatory violation, I find that the police-citizen encounter was lawful. Accordingly, I am recommending that the court deny the motion to suppress.

On December 21, 2004, this court held an evidentiary hearing. Having heard and seen the witnesses testify, and having considered all the exhibits, I find the following facts:

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<sup>1</sup> Because Panzo-Achahua requested and obtained several deadline extensions for his initial brief, the government's response came due on January 18, the day briefing ended. Accordingly, there is no reply brief. Even if there had been, the outcome would not have changed.

## Facts

Bill Slaggie is an officer with the Eau Claire Police Department assigned to the Special Operations Section of the Plain Clothes Division. Officer Slaggie usually patrols in an unmarked car working on traffic enforcement, drug enforcement and other plain clothes police work. Officer Slaggie has been with the police department over ten years, serving in the Patrol Division, Juvenile Section, and Detective Bureau. In connection with his duties as a police officer, Officer Slaggie has been trained in the traffic laws of Wisconsin and is familiar with those laws. Over the course of his police career, Officer Slaggie has performed thousands of traffic stops, including several hundred that involved failure to display proper license plates.

On the evening of September 12, 2004, Officer Slaggie was on duty in an unmarked patrol car parked in a business parking lot near the 2500 block of Golf Road, watching traffic. At about 9:25 p.m. Officer Slaggie saw a black Grand Am pass his position heading west. He noticed that the car had no front license plate. Wisconsin law requires motor vehicles to have two permanent plates, one in the front and one in the rear.<sup>2</sup> Officer Slaggie regularly performs traffic stops on vehicles that do not have a required front plate.

Officer Slaggie pulled into traffic with the intent to approach and observe the Grand Am. He did not succeed. First, several other cars passed Officer Slaggie as he waited to enter traffic in the business parking lot driveway, preventing him from entering the roadway immediately.

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<sup>2</sup> Temporary license plates are different: the state issues only one temporary plate for a vehicle, which is to be affixed to the rear until receipt of the two permanent plates. Wisconsin temporary plates are cardboard placards devoid of reflective material or raised lettering. Thus, they are harder to see in the dark than permanent plates.

Second, those cars remained between Officer Slaggie and the Grand Am as he attempted to approach it, blocking his view. Third, within three blocks of the parking lot, the Grand Am, the Grand Am pulled into the parking area of an apartment complex at 2313 Golf Road. At no time prior to this did Officer Slaggie see the rear license plate of the Grand Am. He was too far back and the vehicles between them that prevented a clear view prior to the Grand Am pulling off the street.

Having recently participated in an unrelated traffic stop in which the vehicle occupants had fled on foot as he approached, Officer Slaggie was concerned that perhaps the occupants of the Grand Am had spotted him and were trying to elude him, so he wanted to reach the Grand Am before its occupants parked and left the area. He pulled into the apartment complex driveway and saw the Grand Am parked in a stall, with the two occupants beginning to exit. Officer Slaggie parked within half a car length of the Grand Am and approached on foot.

Officer Slaggie asked the male driver and female passenger to get back in their car. Officer Slaggie did this so that he could control the situation while he investigated.<sup>3</sup> The driver was Ignacio Panzo-Acahua, the defendant in this case. Officer Slaggie asked Panzo-Acahua if he had a driver's license. Panzo-Acahua responded that he did not. Officer Slaggie asked Panzo-Acahua if he had any other sort of identification. Panzo-Acahua responded that he did not. Officer Slaggie discerned that Panzo-Acahua did not speak English well, so he asked Panzo-Acahua if he was in the United States legally; Panzo-Acahua admitted that he was not. Officer

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<sup>3</sup> As Officer Slaggie soon learned, Panzo-Acahua had not been attempting to flee: he lived in this complex.

Slaggie then directed his attention to the minor female passenger who, in response to Officer Slaggie's questions, initially provided a false name, false address and false date of birth. Officer Slaggie referred her to juvenile authorities.

Officer Slaggie contacted the Border Patrol, which advised Officer Slaggie to detain Panzo-Acahua. Officer Slaggie did not issue a traffic ticket since he assumed that Panzo-Acahua would be deported.

The Grand Am likely had a temporary plate properly affixed, which would have been all that Wisconsin law required. Officer Slaggie, however, never saw it and it wasn't because he was avoiding seeing it.

### **Analysis**

Having heard and seen all of the witnesses, having judged their demeanor, and having considered the plausibility and logic of their accounts, I have found Officer Slaggie's testimony true and the testimony of Panzo-Acahua and his passenger false. Panzo-Acahua's false testimony on a salient fact (regarding the alleged proximity of the unmarked police car to his rear bumper while driving) smacked of desperation; his teenage passenger's blithely false testimony on virtually every topic, salient and incidental, smacked of stubborn defiance. Notwithstanding Panzo-Acahua's strident argument to the contrary, Officer Slaggie's account of what happened that night was logical and believable: he never saw a license plate of any sort on Panzo-Acahua's Grand Am because he never got a good look at the rear of the car prior to approaching Panzo-Acahua to question him.

These credibility determinations doom Panzo-Acahua's suppression motion. As the government observes in its response brief, it becomes irrelevant to the analysis whether Panzo-Acahua actually had a temporary plate, and it is a non sequitur to argue that Officer Slaggie *must* have, or at least *should* have seen that plate: I have found that he did not see it and that his "failure" to observe any plate was not intentional or otherwise blameworthy.

The government concedes that the disputed encounter was an investigative detention because Officer Slaggie directed Panzo-Acahua and his passenger back into the car while he questioned them. So the operative question is whether Officer Slaggie had a reasonable suspicion, supported by articulable facts, that criminal activity was afoot. *See Terry v. Ohio*, 392 U.S. 1, 30 (1968). A reasonable suspicion is something more than an inchoate or unparticularized suspicion or hunch, *United States v. Ganser*, 315 F.3d 839, 843 (7<sup>th</sup> Cir. 2003), and it need not rise to the level of probable cause, let alone a preponderance of the evidence. *United States v. Wimbush*, 337 F.3d 947, 949-50 (7<sup>th</sup> Cir. 2003). During an investigative stop officers may briefly detain a driver and obtain background information from him. *See United States v. Brown*, 366 F.3d 456, 461 (7<sup>th</sup> Cir. 2004).

That is what happened here: based on his preliminary observation of Panzo-Acahua's Grand Am as it drove by his position, Officer Slaggie had an articulable reason to suspect that the car violated Wisconsin's license display statute. Nothing that happened between this initial observation and Officer Slaggie's brief questioning of Panzo-Acahua in the apartment parking lot vitiated the reasonableness of that suspicion. Although Panzo-Acahua insists that Officer Slaggie must have seen the Grand Am's temporary plate, I have concluded that he did not.

Therefore, it was reasonable for Officer Slaggie to approach Panzo-Acahua after he parked and briefly to detain him while investigating.

Finally, although the government correctly acknowledges that this encounter should be viewed as an investigative detention upon Officer Slaggie directing Panzo-Acahua to get back in his car, this was about as unobtrusive as such an interaction could be without being deemed consensual. Panzo-Acahua had parked his car in his own stall at his own residence. If Officer Slaggie had arrived 10 seconds earlier and approached Panzo-Acahua before he stepped out of his car (which actually is the way Panzo-Acahua and his passenger originally reported the encounter), then there probably would have been no intrusion implicating the Fourth Amendment.<sup>4</sup> As it is, the intrusion was minimal and justified. Nothing unreasonable occurred that would suggest suppression of evidence as the appropriate remedy.

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<sup>4</sup> In his post-hearing brief Panzo-Acahua did not pursue his original claim that he was detained for Fourth Amendment purposes by the act of Officer Slaggie parking behind him in a one-exit parking lot. Even if this were true, it would not change the analysis or the outcome.

RECOMMENDATION

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

Entered this 20th day of January, 2005.

BY THE COURT:

STEPHEN L. CROCKER  
Magistrate Judge