

United States Court of Appeals  
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

May 11, 2023

Christopher M. Wolpert  
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ISAAC RAYMOND RODRIGUEZ,

Defendant - Appellant.

No. 22-2038  
(D.C. No. 2:21-CR-00394-RB-1)  
(D.N.M.)

**ORDER AND JUDGMENT\***

Before **MORITZ, SEYMOUR, and EID**, Circuit Judges.

Mr. Isaac Raymond Rodriguez was stopped by a Border Patrol agent while driving about fifty miles north of the Mexican border in New Mexico. The stop uncovered that Mr. Rodriguez was transporting several noncitizens. Following a failed motion to suppress, Mr. Rodriguez pled guilty to one count of conspiracy to transport noncitizens. On appeal, he challenges the denial of his motion to suppress, contending there was no reasonable suspicion for the stop. On de novo review, we conclude the totality of the circumstances established reasonable suspicion for the stop. Accordingly, we affirm.

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\* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

## Background

On October 7, 2020, U.S. Border Patrol Agent Demetrios Campbell was patrolling Highway 80 in an unmarked vehicle. He was located north of Rodeo, New Mexico in a remote area near the Arizona border. At approximately 8:50 p.m., he received a “be on the lookout” (“BOLO”) for a gray SUV traveling north on Highway 80. The BOLO was sent from a Border Patrol station in Lordsburg, New Mexico and relayed information received from the station located near the Mexican border in Douglas, Arizona. The BOLO indicated that “an agent observed a vehicle that had possibly made an incursion over the international boundary and/or had loaded up in a border area and was continuing northward on Highway 80.” Rec., vol. II at 17–18.

About five minutes later, Agent Campbell observed what appeared to be a gray SUV travelling northbound. The vehicle was covered in dust with Arizona license plates and dark tinted windows. Agent Campbell began to follow the vehicle, which crossed over the center line. He noticed handprints in the dust on back windshield and called in for registration information. The registration revealed the vehicle was a gold Jeep Grand Cherokee registered to a resident of Duncan, Arizona, about eighty miles north of where he was. Suspecting the driver of smuggling either contraband or noncitizens, he initiated a traffic stop. At this time, he was approximately fifty-one miles from the Mexican border. Agent Campbell approached the vehicle and, with the aid of a flashlight, observed a driver and passenger, three people in the back seat, and two people laying in a cargo area. None of the occupants had pillows or luggage. Agent Campbell asked the driver, later determined to be Mr. Rodriguez, whether he was a U.S. citizen. Mr.

Rodriguez answered affirmatively. Agent Campbell determined the rest of the occupants were noncitizens without valid immigration documentation. He arrested Mr. Rodriguez.

Mr. Rodriguez was indicted for one count of conspiracy to transport noncitizens in violation of 8 U.S.C. § 1324(a)(1)(A)(v)(I). He filed a motion to suppress evidence obtained during the traffic stop, contending Agent Campbell lacked reasonable suspicion that his vehicle was involved in criminal activity. The district court held a suppression hearing, during which Agent Campbell testified.

Agent Campbell testified that he had been a Border Patrol agent for over fourteen years and had spent almost nine years patrolling Highway 80. As a Border Patrol agent, it is his “primary objective [] to detect and apprehend subjects who have crossed the border illegally.” *Id.* at 8–9. In his role, he has attended various smuggling interdiction trainings and has instructed a training on roadside interview and search techniques. According to Agent Campbell, Highway 80 is “notorious” for smuggling because it is the only paved road leaving southeastern Arizona and southwestern New Mexico without a Border Patrol checkpoint and is concealed by two mountain ranges. *Id.* at 14. Agent Campbell testified that he has “interdicted dozens of alien smuggling attempts in and around Rodeo” and was involved in several such attempts in the weeks leading up to Mr. Rodriguez’s arrest. *Id.* at 16–17. Agents from his station had already interdicted eight attempts that week alone. Most of the attempts he interdicted occurred between 6:00 p.m. and midnight. *Id.* at 31.

Agent Campbell testified that he did not receive any information about when the vehicle mentioned in the BOLO crossed the international border, which is common.

Nonetheless, he believed “it was imminent” and that he needed to be looking for the vehicle. *Id.* at 30. He explained that, due to the difficulty of perceiving colors in the dark, he looks for three colors—black, gray, and white—when he receives a vehicle description at night. When he first saw Mr. Rodriguez’s vehicle, it appeared gray to him. It was also the only passenger vehicle he had seen on Highway 80 in about thirty minutes. He testified that he did not recognize the Jeep as a local vehicle and that he typically encounters RVs, motor homes, Subarus, Toyota Priuses, large pickup trucks, and horse trailers without tinted windows in that area. He also testified that Highway 80 is the most logical route from Douglas or Rodeo to Duncan but that he does not typically encounter people from the Duncan area while patrolling.

Agent Campbell testified that the handprints on the Jeep were significant because they indicated someone had driven on a dirt road, the tailgate was opened, and then someone—likely the driver based on the location of the handprints—had put something inside and closed the tailgate. *Id.* at 20–21. He was not able to see any passengers prior to initiating the stop due to a combination of the tinted windows, the dust on the car, and the darkness of night. The Jeep did not appear particularly heavy-laden.

The district court denied Mr. Rodriguez’s suppression motion. It concluded that, under the totality of the circumstances—particularly the characteristics of the area, Agent Campbell’s experience, and the BOLO—Agent Campbell had reasonable suspicion to stop Mr. Rodriguez to investigate potential smuggling. Mr. Rodriguez then entered into a conditional plea agreement, reserving the right to appeal the denial of his suppression motion. The district court sentenced him to nine days’ imprisonment or time served,

whichever is less, followed by two years of supervised release. This timely appeal followed.

## Discussion

### A. Legal Standards

“When reviewing the denial of a motion to suppress, ‘we view the evidence in the light most favorable to the government, accept the district court’s findings of fact unless they are clearly erroneous, and review de novo the ultimate question of reasonableness under the Fourth Amendment.’” *United States v. Cortez*, 965 F.3d 827, 833 (10th Cir. 2020) (quoting *United States v. McNeal*, 862 F.3d 1057, 1061 (10th Cir. 2017)). Factual findings are clearly erroneous when “they are without factual support in the record” or when, “after reviewing all the evidence, we are left with the definite and firm conviction that a mistake has been made.” *United States v. Morgan*, 936 F.2d 1561, 1573 (10th Cir. 1991). “[W]here findings are not made, this court must uphold the ruling of the trial court if there exists any reasonable view of the evidence to support it.” *Id.* at 1570.

Consistent with the Fourth Amendment, Border Patrol “officers on roving patrol may stop vehicles only if they are aware of specific articulable facts, together with rational inferences from those facts, that reasonably warrant suspicion that the vehicles contain aliens who may be illegally in the country.” *United States v. Brignoni-Ponce*, 422 U.S. 873, 884 (1975). An officer can develop reasonable suspicion on a variety of factors, including the following factors identified in *Brignoni-Ponce*:

- (1) characteristics of the area in which the vehicle is encountered;
- (2) the proximity of the area to the border;
- (3) the usual patterns of traffic on the particular road;
- (4) the previous experience of the agent with alien traffic;
- (5)

information about recent illegal border crossings in the area; (6) the driver’s behavior, including any obvious attempts to evade officers; (7) aspects of the vehicle, such as a station wagon with concealed compartments; and (8) the appearance that the vehicle is heavily loaded.

*United States v. Monsisvais*, 907 F.2d 987, 990 (10th Cir. 1990) (citing *Brignoni-Ponce*, 422 U.S. at 884–85). “In all situations the officer is entitled to assess the facts in light of his experience in detecting illegal entry and smuggling.” *Brignoni-Ponce*, 422 U.S. at 885; *see also United States v. Frazier*, 30 F.4th 1165, 1174 (10th Cir. 2022) (“Given the specialized training and experience that law enforcement officers have, we generally defer to their ability to distinguish between innocent and suspicious behavior . . .”).

There is no “minimum number of factors necessary to constitute reasonable suspicion or any outcome determinative criteria.” *United States v. Lopez-Martinez*, 25 F.3d 1481, 1484 (10th Cir. 1994). Rather, courts “must look at the ‘totality of the circumstances’ of each case to see whether the detaining officer has a ‘particularized and objective basis’ for suspecting legal wrongdoing.” *United States v. Arvizu*, 534 U.S. 266, 273 (2002) (quoting *United States v. Cortez*, 449 U.S. 411, 417–18 (1981)). “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.’” *Id.* (quoting *Cortez*, 449 U.S. at 418).

Under the reasonable suspicion standard, “the likelihood of criminal activity need not rise to the level required for probable cause, and it falls considerably short of satisfying a preponderance of the evidence standard.” *Id.* at 274. An officer also “need not rule out the possibility of innocent conduct.” *Id.* at 277. Officers only need “some

minimal level of objective justification’ for making the stop.” *United States v. Sokolow*, 490 U.S. 1, 7 (1989) (citing *INS v. Delgado*, 466 U.S. 210, 217 (1984)). However, more than an “unparticularized suspicion or hunch” is required. *See Terry v. Ohio*, 392 U.S. 1, 27 (1968) (internal quotation marks omitted).

## **B. Analysis**

On appeal, Mr. Rodriguez contends the district court did not consider the totality of the circumstances, which he argues do not establish reasonable suspicion. We are not persuaded. This is not a case in which the district court considered the *Brignoni-Ponce* factors in isolation. Rather, the court made multiple references to the totality of the circumstances standard and analyzed relevant factors together in a portion of its opinion entitled “The Totality of the Circumstances Justified the Stop.” Finding no error in the standard applied by the district court, we conduct de novo review of the district court’s determination that Agent Campbell reasonably suspected Mr. Rodriguez of illegal activity. We begin with the *Brignoni-Ponce* factors.

First, the characteristics of the area in which Agent Campbell encountered Mr. Rodriguez’s Jeep support reasonable suspicion. Agent Campbell testified that Highway 80 is a notorious route for smugglers, in part because it is the only paved road leaving a border area without a checkpoint. This testimony is consistent with officer testimony in other cases that have come before us. *See, e.g., Cortez*, 965 F.3d at 835; *United States v. Sauzameda-Mendoza*, 595 F. App’x 769, 774 (10th Cir. 2014); *United States v. Westhoven*, 562 F. App’x 726, 728 (10th Cir. 2014). The location of the stop thus “adds to the reasonableness of suspicion.” *Cortez*, 965 F.3d at 835. Similarly, the proximity to

the border contributes to reasonable suspicion. *See, e.g., Lopez-Martinez*, 25 F.3d at 1485 (“eschew[ing] any inflexible mile benchmark” but concluding a stop within sixty miles from the border weighed in favor of reasonableness).

Next, Agent Campbell’s testimony about usual traffic patterns weighs slightly in favor of finding reasonable suspicion. He did not recognize Mr. Rodriguez’s Jeep, which was unlike the types of vehicles he normally encounters in the Rodeo area. *See United States v. Mendez*, 181 F. App’x 754, 758 (10th Cir. 2006) (“Given the remote location of Rodeo, most traffic on Highway 80 tends to be local.”). He also does not typically encounter vehicles from Duncan, and the Jeep was the first car he had encountered in thirty minutes. On the other hand, Mr. Rodriguez was driving on the most logical route toward the city where the vehicle was registered, rather than a suspicious or circuitous route. *See Sauzameda-Mendoza*, 595 F. App’x at 775.

Agent Campbell’s extensive experience with noncitizen smuggling traffic, particularly on Highway 80 itself, contributes to reasonableness. Agent Campbell testified he had been a Border Patrol agent for over fourteen years, patrolling Highway 80 for about nine of those years. During that time, he received relevant training and interdicted dozens of noncitizen smuggling attempts in the Rodeo area.

Agent Campbell also had relevant information about recent border crossings contributing to reasonableness. He himself had been involved with multiple interdictions in the weeks leading up to the stop and was aware that agents from his station had interdicted eight smuggling attempts that week alone. The BOLO he received about a potential crossing led to particularized suspicion of Mr. Rodriguez’s Jeep. Mr. Rodriguez

argues the BOLO included a vague description of a gray SUV that did not match his gold Jeep. At oral argument, Mr. Rodriguez also highlighted a timing issue: the BOLO concerned a suspicious vehicle departing from an area about fifty miles away from where Agent Campbell observed the Jeep only five minutes after receiving the BOLO.

The district court found that Mr. Rodriguez's vehicle "appeared to match the BOLO" and concluded it was reasonable for Agent Campbell to believe it was a match. Rec., vol. I at 42, 51. This finding is not clearly erroneous. It is undisputed that a Jeep Grand Cherokee is an SUV, and Mr. Rodriguez's Jeep was traveling northbound on Highway 80. While Mr. Rodriguez's Jeep was gold instead of gray, Agent Campbell explained the color was obscured by darkness and dust covering the vehicle. In fact, it is his practice to only look for black, gray, or white vehicles at night due to difficulty discerning colors in the dark. He testified that the Jeep appeared gray to him at first and that he did not realize it was actually gold until another agent later prompted him to inspect the vehicle in better lighting. Accepting this testimony as true, it would have been reasonable for Agent Campbell to either: (1) believe himself that the Jeep was gray at the time of the stop; or (2) believe that the officer who prompted the BOLO thought the Jeep was gray. Having reviewed the photographs of the Jeep submitted in the supplemental record, we agree it may have appeared gray to a reasonable officer.

As for the timing issue, the district court did not make any specific findings concerning the timing of the BOLO and underlying events because the issue was not raised below. We must uphold the district court's ruling so long as there is a "reasonable view of the evidence to support it." *Morgan*, 936 F.2d at 1570. Here, the testimony can

reasonably be viewed to support the court’s ruling. Agent Campbell testified it was common for BOLOs to omit timing information but that he understood he imminently needed to be looking for the vehicle described in the BOLO. Mr. Rodriguez provides us no reason to doubt Agent Campbell’s assessment of imminence, and Agent Campbell’s extensive experience as a Border Patrol agent in this region counsels us to credit it.

Several aspects of the Jeep are relevant to Agent Campbell’s assessment of reasonable suspicion. The Jeep had tinted windows, which are uncommon in the area and may be helpful in concealing passengers. *See Westhoven*, 562 F. App’x at 731. The Jeep was also covered in dust with handprints on the back windshield, indicating the Jeep had been driven on a dirt road and then loaded up with something, likely by the driver. While “each of these factors alone is susceptible of innocent explanation, and some factors are more probative than others,” we must consider them under the totality of the circumstances. *Arvizu*, 534 U.S. at 277. All Agent Campbell needed was a “minimal level of objective justification for making the stop.” *Sokolow*, 490 U.S. at 7 (internal quotation marks and citation omitted). We conclude this low bar has been met when considering all the factors and circumstances together. Under the totality of the circumstances, Agent Campbell reasonably suspected Mr. Rodriguez’s vehicle was involved in illegal activity. Accordingly, we affirm the denial of his motion to suppress.

Entered for the Court

Stephanie K. Seymour  
Circuit Judge