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Summaries: Criminal Law & Procedure

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CRIMINAL LAW & PROCEDURE

BORDER VEHICLE DETENTION & SEARCH

I. INTRODUCTION

In *U.S. v. Corral-Villavicencio*,¹ the Ninth Circuit held that a stop and search of an automobile near the border, while not made pursuant to a valid extended border search, was justified because the officers had a reasonable suspicion that the driver was involved in criminal activity and from the stop, gained probable cause to search the trunk of the vehicle.

After observing a vehicle driven by the defendant enter a park near the Arizona-Mexican border in the early morning hours, customs patrol officers checked the vehicle plates for registration.² Upon finding that the vehicle was registered to a female and not locally owned, and upon observing the vehicle leave the park ten minutes after entering a well known smuggling area, the officers stopped the vehicle.³

During the stop, officers discovered that the defendant did not know who owned the car and that he could only produce title signed and notarized in blank.⁴ Officers further observed that the defendant appeared very nervous.⁵ Based upon these facts, the officers opened the trunk of the vehicle, seized over one-hundred pounds of marijuana,⁶ and arrested the defendant.⁷

At trial, the district court denied defendant's motion to sup-

1. *U.S. v. Corral-Villavicencio*, No. 83-1269, slip op. (9th Cir. Feb. 15, 1985) (per Tang, J.; the other panel members were Hug and Farris, J.J.).

2. *Id.* at 2.

3. *Id.*

4. *Id.* at 3.

5. *Id.*

6. *Id.*

7. *Id.*

press the evidence of marijuana and any statements made by him during the stop.⁸ The defendant was convicted of possession with intent to distribute marijuana and he appealed to the Ninth Circuit.⁹

II. BACKGROUND

In *United States v. Cortez*,¹⁰ the Supreme Court held that an investigatory vehicle stop by Border Patrol officers was constitutional. The stop was based upon information obtained from a two month investigation of the *modus operandi* of an illegal alien smuggler and upon the officer's observations during the morning of the stop.¹¹ The Court stated that the test for determining the constitutionality of the stop was whether, based upon the "whole picture" an experienced Border Patrol officer could reasonably surmise that the particular vehicle stopped was being used in criminal activity.¹²

In *United States v. Bates*,¹³ the Ninth Circuit upheld a stop as valid and found probable cause to support a search of the trunk of a vehicle where customs officers twice observed a vehicle drive into a deserted warehouse parking lot known as a smuggling area. The officers stopped the vehicle and observed handprints in the dust on the vehicles trunk lid.¹⁴ Upon questioning the driver, the officers learned that the driver was not the owner of the car.¹⁵ The driver's behavior was also suspicious and matched the *modus operandi* of a drug smuggler.¹⁶ Based on these facts, the court held that the seemingly innocent events had "proceeded to the point where a prudent person could say that an innocent course of conduct was substantially less likely

8. *Id.*

9. *Id.* at 1.

10. 449 U.S. 411 (1981).

11. *Id.* at 418-22.

12. *Id.* at 421-22. See also *U.S. v. Brignoni-Ponce*, 422 U.S. 873 (1975) holding that the reasonableness of a stop depends on balancing the public interest and the individual's right to be free from arbitrary interference by law officers. *Id.* at 878. The Court found that a stop of a vehicle by the Border Patrol based upon the single factor that the occupants were of Mexican ancestry was unconstitutional under the balancing test above. *Id.* at 885-86.

13. 533 F.2d 466 (9th Cir. 1976).

14. *Id.* at 468.

15. *Id.* at 468-69.

16. *Id.* at 469.

than a criminal one.”¹⁷

III. THE COURT’S ANALYSIS

In *Corral*, the Ninth Circuit first concluded that the search was not justified as an “extended border search” which does not require probable cause, because the customs officers were not “reasonably certain” that parcels had been smuggled across the border or placed in a vehicle crossing the border.¹⁸ The court then discussed whether, under the facts, the initial stop was constitutional.¹⁹

In finding that the initial stop was justified by a reasonable suspicion that the driver was involved in illegal activity, the court looked at the totality of the circumstances as required by *Cortez*.²⁰ The court noted that the officers observed the defendant’s car driving in and out of an area six-tenths of a mile from the border in an area known for contraband pickups. The court also pointed to the officers’ experience in determining that the time lapse between the defendant’s entrance and exit from the area was a normal time for such a contraband pickup and that the driver was not the owner of the vehicle.²¹ The court held that these facts amply supported a brief investigatory stop.²²

The court then analyzed whether the search of the trunk of the vehicle during the stop was based upon probable cause.²³ The court found that the officers’ level of suspicion was raised to that of probable cause when, after the stop, the agents confirmed that the defendant was not the owner of the vehicle, and, noticed upon questioning, that the defendant appeared very nervous.²⁴ The court held that in light of the events preceeding the stop and the officer’s knowledge the defendant’s conduct was

17. *Id.* The court further stated, “[t]he totality of the evidence, as viewed by the experienced customs officers familiar with the smuggling methods of the area, established probable cause to believe that Bates’ car was being used to transport contraband.” *Id.*

18. *U.S. v. Corral-Villavicencio*, No. 83-1269, slip op. at 6, (9th Cir. Feb. 15, 1985).

19. *Id.* at 8.

20. *Id.* (citing *U.S. v. Cortez*, 449 U.S. 411, 417-18 (1981) and *U.S. v. Brignoni-Ponce*, 422 U.S. 873, 884).

21. *Corral*, No. 83-1269, slip op. at 8.

22. *Id.*

23. *Id.* at 9.

24. *Id.* at 9-10.

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consistent with that of a person smuggling contraband, probable cause existed to search the trunk of the vehicle.²⁵ The court found that the knowledge of the officers in this case was analogous to that of the officers in *Bates*, where the suspect followed the *modus operandi* for a contraband pickup.²⁶

IV. CONCLUSION

Corral is consistent with prior federal cases in the area of vehicle detentions and searches near the border.²⁷ The case emphasizes the Ninth Circuit's willingness to defer considerable judgment of *reasonable suspicion* and *probable cause* to border patrol officers familiar with the repeated patterns of contraband smugglers.

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25. *Id.* at 10. The court noted that in *Bates*, the officers observed the suspect driving a vehicle in a known smuggling area during the early morning hours, acting consistent with the *modus operandi* for a contraband pickup. *Bates*, 533 F.2d at 469. See also discussion of *Bates* in text, *supra*.

26. *Corral*, No. 83-1269, slip op. at 10. (citing *Bates*, 533 F.2d at 469). The court also cited *United States v. Kessler*, 497 F.2d 277, 279 (9th Cir. 1974), where a search of a vehicle was supported by probable cause after officers observed the vehicle slow down and stop at a known smuggling point next to the border. *Id.* at 279.

27. Compare the following federal cases: *U.S. v. Cortez*, 449 U.S. 411 (1981), *U.S. v. Brignoni-Ponce*, 422 U.S. 873 (1975), *U.S. v. Bates*, 533 F.2d 466 (9th Cir. 1976), and *U.S. v. Kessler*, 497 F.2d 277 (9th Cir. 1974).

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