



NO. 01-1034
Criminal

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff and Appellant,

vs.

MANUEL RODRIGUEZ-ARREOLA,

Defendant and Appellee.

Appeal from the United States District Court
for the District of South Dakota
Southern Division

The Honorable Lawrence L. Piersol
Chief United States District Judge

APPELLANT'S REPLY BRIEF

TED L. MC BRIDE
UNITED STATES ATTORNEY
Michelle G. Tapken
Assistant United States Attorney
P.O. Box 5073
Sioux Falls, SD 57117-5073
(605)330-4400

Attorney for Appellant.

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF THE ISSUES 1

ARGUMENT:

I. THE INTENSITY, SCOPE, AND DURATION OF THE SEIZURE OF RODRIGUEZ DID NOT EXCEED THE TROOPER’S REASONABLE SUSPICION UNDER THE FOURTH AMENDMENT. 2

II. RODRIGUEZ’S INCRIMINATING TELEPHONIC STATEMENTS TO THE CHICAGO INS AGENT WERE NOT SOLICITED IN VIOLATION OF *MIRANDA V. ARIZONA*. 3

III. RODRIGUEZ’S WASHINGTON STATE I.D. CARD ND HIS ADMISSIONS TO THE TROOPER AND THE CHICAGO AGENT SHOULD NOT BE SUPPRESSED. 5

CONCLUSION 7

CERTIFICATE OF COMPLIANCE 8

CERTIFICATE OF SERVICE 9

TABLE OF AUTHORITIES

<i>Hoonsilapa v. INS</i> , 575 F.2d 735, 738 (9th Cir. 1978)	7
<i>Miranda v. Arizona</i> , 384 U.S. 436 (1966)	3
<i>United States v. \$404,905.00 in U.S. Currency</i> , 182 F.3d 643 (8th Cir. 1999), <i>cert. denied</i> , 120 S. Ct. 1175 (2000)	2
<i>United States v. Guzman-Bruno</i> , 27 F.3d 420 (9th Cir. 1994)	6
<i>United States v. Henry</i> , 604 F.2d 908 (5th Cir. 1979)	5
<i>United States v. Orozco-Rico</i> , 589 F.2d 433 (9th Cir. 1978)	7

STATEMENT OF THE ISSUES

I.

WHETHER THE INTENSITY, SCOPE, AND DURATION OF THE SEIZURE OF RODRIGUEZ EXCEEDED THE TROOPER'S REASONABLE SUSPICION UNDER THE FOURTH AMENDMENT.

United States v. \$404,905.00 in U.S. Currency, 182 F.3d 643 (8th Cir. 1999), *cert. denied*, 120 S. Ct. 1175 (2000)

II.

WHETHER RODRIGUEZ'S INCRIMINATING TELEPHONIC STATEMENTS TO THE CHICAGO INS AGENT WERE SOLICITED IN VIOLATION OF *MIRANDA V. ARIZONA*.

Miranda v. Arizona, 384 U.S. 436 (1966)
United States v. Henry, 604 F.2d 908 (5th Cir. 1979)

III.

WHETHER RODRIGUEZ'S WASHINGTON STATE I.D. CARD AND HIS ADMISSIONS TO THE TROOPER AND THE CHICAGO AGENT SHOULD BE SUPPRESSED.

United States v. Guzman-Bruno, 27 F.3d 420 (9th Cir. 1994)
United States v. Orozco-Rico, 589 F.2d 433 (9th Cir. 1978)

ARGUMENT

I.

THE INTENSITY, SCOPE, AND DURATION OF THE SEIZURE OF RODRIGUEZ DID NOT EXCEED THE TROOPER'S REASONABLE SUSPICION UNDER THE FOURTH AMENDMENT.

The Defendant argues that Trooper Koltz lacked reasonable suspicion to question him as to his immigration status. This is incorrect.

Trooper Koltz made a traffic stop supported by probable cause. The immigration questions Trooper Koltz asked the driver did not prolong the traffic detention. Those few questions did not transform a non-custodial detention into a custodial interrogation. In fact, Trooper Koltz told the driver he was free to leave once it was determined the driver was in the United States legally. Because the driver told Trooper Koltz that his passenger was illegally in the United States, Koltz had an obligation to determine whether this was accurate.

This Court has previously determined that questioning unrelated to the purpose of a traffic stop does not violate the Fourth Amendment if it does not prolong the stop. *United States v. \$404,905.00 in U.S. Currency*, 182 F.3d 643

(8th Cir. 1999), *cert. denied*, 120 S. Ct. 1175 (2000). Here, the stop was not prolonged. In fact, only minutes into the stop Trooper Koltz was told the passenger was illegal. VT 1:47:30.

II.

RODRIGUEZ'S INCRIMINATING TELEPHONIC STATEMENTS TO THE CHICAGO INS AGENT WERE NOT SOLICITED IN VIOLATION OF *MIRANDA V. ARIZONA*.

Trooper Koltz contacted the INS Command Center because the Defendant did not speak English. T 41. He did not have an interpreter present. T 41. Law enforcement agencies are instructed to contact the Command Center if they have a question as to whether an individual is legally in the United States. T 63. In the present case, the Command Center told Trooper Koltz that the driver was in the United States legally, but that the Defendant was illegally in the United States. T 63.

When Trooper Koltz gave the Command Center the Defendant's name, they were able to determine that he had previously been deported from the United States on two occasions. T 64. The individual at the Command Center spoke with the Defendant to confirm this. T 64. The interview with the Command Center was for administrative purposes and was not a custodial interrogation. *Miranda v. Arizona*, 384 U.S. 436 (1966). There was no obligation to give Miranda warnings as the questioning was for administrative purposes. T 66. Once Trooper Koltz

gave the Command Center the Defendant's name, the Command Center determined that the Defendant was in the country illegally. At that point the alien bears the burden of proving that he is here legally. T 66.

At the time Trooper Koltz was told to detain the Defendant for administrative purposes, a decision had not been made as to whether or not the Defendant would be prosecuted criminally.

Once the Defendant was taken into INS custody, he was Mirandized. T 68. Prior to that time, the Command Center had only asked questions as to the administrative proceeding, including name, date of birth, and citizenship.

Although the Defendant argues that Trooper Koltz had made a decision to arrest him prior to talking to the Command Center, the facts do not support this argument. Trooper Koltz spoke to the Command Center in regard to the driver and the Defendant. He was told the driver was legally in the United States and was free to leave. Only when he was told that the Defendant was illegally in the United States was a decision made to hold him for INS for administrative proceedings.

The government disputes the allegation that the interview with the Command Center was custodial. The initial questioning that took place was not custodial. This is evidenced by the fact that Trooper Koltz was waiting for officials from INS to tell him whether or not the Defendant should be held. In *United States v. Henry*,

604 F.2d 908 (5th Cir. 1979), the court held that Miranda warnings need not be given unless the questioning is custodial and sought for the purpose of using it against the person in a criminal proceeding. Here, the Command Center was only determining whether or not the Defendant was legally in the United States. No determination had been made as to a criminal proceeding. Once INS determined a criminal case could be pursued, the Defendant was Mirandized.

III.

RODRIGUEZ'S WASHINGTON STATE I.D. CARD AND HIS ADMISSIONS TO THE TROOPER AND THE CHICAGO AGENT SHOULD NOT BE SUPPRESSED.

The Defendant argues that the government raised for the first time on appeal that he does not have standing to raise his Fourth Amendment claim. That is not the case. In its objections to the Magistrate's Report and Recommendations, the government argued as follows:

The Magistrate states in his factual findings that Trooper Koltz immediately put confrontational questions to Rodriguez-Arreola as to his residency and green card. In characterizing the questions as immediate, the Magistrate fails to note that Molina (the driver) had previously told Trooper Koltz that Rodriguez-Arreola did not have a green card and was not a legal alien.

DE 34.

The district court rejected the government's objection on the basis that Trooper Koltz only obtained this information from the Defendant by first impermissibly expanding the scope of the questioning at the traffic stop. The government by implication asserted that any violation of the Defendant's rights was irrelevant to the question of whether there was reasonable suspicion to detain and question the Defendant. Thus, the district court was presented with and rejected the government's theory that Fourth Amendment rights are personal and cannot be vicariously asserted.

The Defendant argues that his Washington identification card and his admissions to the Trooper and the Chicago INS agent should be suppressed. Even if the Washington identification card and the admissions to Trooper Koltz and the Chicago INS agent are suppressed, the Defendant's identity should not be.

The government asserts that an individual's identity is not suppressible. Other courts have held that even if identity is discovered as a result of an illegal arrest, it need not be suppressed. *United States v. Guzman-Bruno*, 27 F.3d 420 (9th Cir. 1994). The Ninth Circuit further held in *United States v. Orozco-Rico*, 589 F.2d 433 (9th Cir. 1978): "[a]n illegal arrest would not serve to suppress [the defendant's] identity since, 'there is no sanction to be applied when an illegal arrest only leads to discovery of the man's identity and that merely leads to the official file

or other independent evidence.’’ *Id.* at 435 (quoting *Hoonsilapa v. INS*, 575 F.2d 735, 738 (9th Cir. 1978)).

Simply put, even if this Court determined that the Defendant’s detention was unlawful, his identity cannot be suppressed. All that is necessary to proceed with the prosecution is his name and immigration file.

CONCLUSION

A lawful traffic stop resulted in the brief questioning of the driver. As a result of this permissible questioning, the Trooper became aware of the fact that the passenger was illegally in the United States. The Trooper had reasonable suspicion to follow up on what he had been told. Further, the Defendant lacks standing to object to the questioning of the driver as Fourth Amendment rights are personal and may not be vicariously asserted.

Even if this Court determines that the Defendant’s detention was unlawful, his identity should not be suppressed.

For all the reasons stated herein, the district court’s suppression of the Defendant’s identity should be reversed.

Respectfully submitted this _____ day of March, 2001.

TED L. MC BRIDE
United States Attorney

MICHELLE G. TAPKEN
Assistant United States Attorney
P.O. Box 5073
Sioux Falls, SD 57117-5073
(605)330-4400

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief was prepared using Corel WordPerfect 9 and is 15 pages or less in proportional spacing in 14-pt. type and is therefore in compliance with FRAP 32(a)(7). I further certify that I have provided to the Court and to each party separately represented by counsel a 3-1/2" diskette containing the full text of the brief. The diskettes have been scanned for viruses using InoculateIT version 4.53 and are virus free.

MICHELLE G. TAPKEN
Assistant United States Attorney

CERTIFICATE OF SERVICE

The undersigned hereby certifies that service of the foregoing appellant's brief was made upon the appellant by mailing by first class mail, postage prepaid, two true and correct copies thereof and one 3-1/2" diskette containing the brief to appellee's attorney of record at the post office address as shown, on this 20th day of March, 2001:

Timothy J. Langley
Assistant Federal Public Defender
221 S. Phillips Ave. #202
Sioux Falls, SD 57104

MICHELLE G. TAPKEN
Assistant United States Attorney