

Recent Case Report

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U.S. v. Ludwig

(10th Cir. 2011) __ F.3d __ [2011 WL 1533520]

Issues

(1) Did an officer have sufficient grounds to stop a car for speeding? (2) Did the officer develop reasonable suspicion to detain the driver to investigate the possibility he was transporting drugs? (3) Was the officer's K9 sufficiently reliable so that an alert would generate probable cause to search?

Facts

A Wyoming state trooper, David Chatfield, was parked on the median of a highway when he saw a car approaching at an estimated 10 m.p.h. over the speed limit. Chatfield's radar gun confirmed the vehicle's speed. When Chatfield pulled in behind the car and turned on his emergency lights, the driver slowed down and moved onto the shoulder—but he continued to drive slowly for 44 seconds before coming to a stop.

As Chatfield walked up to the car, the driver—later identified as Sergei Ludwig—rolled down his window, at which point the officer was engulfed in an overpowering odor of cologne. He considered this suspicious because, as he later testified, he was aware that cologne is “often used to mask the smell of illegal drugs.” Chatfield also noticed that Ludwig appeared to be “very, very, very nervous”; so nervous, in fact, that “his hands were trembling and he had difficulty retrieving his wallet from his pocket.”

While writing a speeding ticket, Chatfield asked Ludwig about his travel plans. Ludwig said he was an “IT administrator,” and that he was returning to his home in New Jersey from San Jose where he had been sent by his employer to fix a “server problem.” He explained that he had decided to drive across the country (rather than fly), even though his assignment in San Jose took only four days. He also said he had slept in his car.

All of these circumstances suggested to Chatfield that Ludwig might be transporting drugs. So, after issuing him the ticket, he asked Ludwig if he would be willing to answer a few more questions. Ludwig said no. Believing he had reasonable suspicion to detain Ludwig, Chatfield told him to stay put while his drug detecting dog checked the outside of his car. The dog quickly alerted, so Chatfield began searching the vehicle and eventually noticed a “recently welded metal patch that seemed to conceal a compartment.” So, after backup arrived, he opened the compartment and found 11 pounds of ecstasy.

Ludwig was charged with possession of ecstasy with intent to distribute and, when his motion to suppress the evidence was denied, he pled guilty.

Discussion

On appeal, Ludwig argued that his motion to suppress should have been granted because (1) Chatfield lacked grounds to stop him for speeding, (2) Chatfield did not have reasonable suspicion to detain him to investigate drug trafficking, and (3) the alert by Chatfield's K9 did not constitute probable cause to search because the dog had a dubious track record.

GROUNDS TO STOP: Ludwig attacked the legality of the traffic stop by presenting evidence that proved, or so he claimed, that Chatfield's radar gun could not be trusted due to Chatfield's "shoddy maintenance habits." The court responded that, even if that were true, Chatfield also visually estimated Ludwig's speed, and that it has "long been the case that an officer's visual estimation can supply probable cause to support a traffic stop for speeding in appropriate circumstances." And here, said the court, "the trooper enjoyed a fine view, watching Mr. Ludwig's car approach as he was parked in the highway's median," plus "the day was crystal clear and the trooper possessed 15 years' experience as a highway patrolman watching cars and estimating speeds."

GROUNDS TO DETAIN: As noted, Ludwig also argued that Chatfield lacked grounds to continue the detention to investigate his suspicion that Ludwig was transporting drugs. The court disagreed, pointing to the following circumstances. First, there was Ludwig's driving on the shoulder for 44 seconds before stopping. Said the court, "The trooper testified that he thought this behavior 'unusual.' Recognizing as much ourselves, this court has repeatedly held that a driver's failure to stop his vehicle promptly is a factor that can contribute to reasonable suspicion of criminal activity."

Second, there was the overpowering odor of cologne that "hit Chatfield in the face" when Ludwig rolled down his window of his car. It is true, of course, that the law does not prohibit people from wearing a lot of cologne (although the idea should not be casually dismissed). Nevertheless, the court observed that "our cases have acknowledged that [cologne] is commonly used to mask the odor of drugs and so can contribute to a reasonable suspicion calculus." (It would seem that this circumstance would take on added significance in light of Ludwig's failure to stop promptly, as it would indicate he was using the time to unleash his cologne.) Third, in addition to Ludwig's extreme nervousness, the court noted that he was driving a car that was not registered to him, and that this "is a factor we have often held may indicate a stolen vehicle or drug trafficking."

Finally, there was Ludwig's strange story about driving his car across the United States to help a company in San Jose repair a server. Noting that "[b]izarre travel plans may, by themselves, contribute to reasonable suspicion," the court noted it was indeed "curious" that a company in San Jose—"a hub of the computer industry"—would require the assistance of an "IT administrator" from New Jersey to fix a server. But even assuming that Ludwig was a brilliant computer wiz whose talents were in great demand, the court pointed out that the trooper might justifiably question why such a person would go to a job 3,000 miles away in his car (and even sleep in it) instead of flying.

In light of these suspicious circumstances, the court ruled that Chatfield had sufficient grounds to detain Ludwig to investigate the possibility that he was transporting drugs.

GROUNDS TO SEARCH: Although an alert by a trained drug-detecting dog ordinarily constitutes probable cause to search, Ludwig claimed that Chatfield lacked probable cause because his dog was incompetent. In fact, Ludwig pointed out that, based on the records of the dog's performance during his seven years of service, his alerts identified a seizable quantity of drugs only 58% of the time. The court pointed out, however, that because probable cause requires only about a 50% chance, the dog's performance was quite satisfactory.

Consequently, the court ruled that the detention and search were lawful, and that Ludwig's 11 pounds of ecstasy were admissible. POV