

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION**

UNITED STATES OF AMERICA

v.

TAM TRAHN NGUYEN

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Cause No.: 2:03 CR 88

ORDER

This matter is before the Court on Defendant Tam Trahn Nguyen's motion to suppress evidence of drugs recovered from a minivan he was driving in Lake Station, Indiana. This case involves the arrest of four individuals, including Defendant Nguyen, arising from the alleged transportation of a large quantity of marijuana into the United States. A hearing was held on May 18, 2004, during which Agent John Woolley from Immigration and Customs Enforcement testified about the circumstances leading to the arrest of Defendant Nguyen. Because the Court finds the totality of the circumstances demonstrate that the agents who arrested Nguyen and searched his minivan had probable cause to do so, Nguyen's motion to suppress is DENIED.

BACKGROUND

In the early morning of October 18, 2003, co-Defendant Parvinder Atwal, while driving a tractor trailer, applied for entry into the United States from Canada in Port Huron, Michigan. According to the information provided by Atwal to the border agents, the tractor trailer contained approximately one-hundred and fifty boxes of plastic bags that were destined for a Bed, Bath & Beyond distribution center in Dresden, Tennessee. An X-ray and subsequent examination of the tractor-trailer performed by the border agents, however, revealed that twenty-five out of the one-hundred and fifty 3' by 3' cardboard boxes contained marijuana. There were

no distinguishing characteristics between the boxes that contained marijuana and those that did not.

The customs inspectors who found the marijuana did not advise Atwal of their discovery. Instead, given the large quantities involved, they called Agents from Immigration and Customs Enforcement (“ICE”) in Detroit, Michigan to investigate and handle the matter. When the Detroit ICE Agents arrived, Atwal and the trailer were allowed to proceed and the ICE agents followed in a “cold-convoy” to observe where the marijuana was delivered. Atwal, of course, was unaware that the marijuana had been discovered and that he was being followed by law enforcement.

From Port Huron, the trailer proceeded onto Interstate 69 in a westbound direction. The trailer made an initial stop at a rest area in the vicinity of exit 100 on westbound Interstate 69. The agents maintained constant surveillance on the trailer as it was parked in the rest area for approximately six hours. Atwal, with the Detroit agents continuing to follow, then resumed driving westbound on Interstate 69. The trailer eventually exited Interstate 69 and merged onto westbound Interstate 94. At approximately 9:40 pm, Atwal pulled the trailer off Interstate 94 and into a TA Truck Stop located at 1201 Ripley Street in Lake Station, Indiana.

According to the testimony of Immigration and Customs Enforcement Agent John Woolley, ICE agents from Chicago then joined in the surveillance operation. The details of the operation, including the fact that the tractor trailer they were surveilling had crossed the border from Canada with boxes of marijuana, were relayed to the Chicago ICE agents by the Detroit ICE agents. The Chicago and Detroit agents then continued the constant surveillance of the trailer as it was parked in the truck stop overnight and into the following morning.

Based upon information learned from Detroit Special Agent Manns during the course of the surveillance, Agent Woolley testified that, at approximately 11:00 am on the following morning, two men, later identified as Defendant Nguyen and co-Defendant Joshua Bryant, were observed driving into the TA Truck Stop parking lot in a green minivan. Special Agent Manns observed these Defendants get out of their minivan to recline the rear seats before leaving the truck stop parking lot and entering a neighboring McDonald's parking lot. At the same time as Nguyen and Bryant left the parking lot in the green minivan, Manns observed Atwal move the tractor trailer to a different parking spot in the truck stop. According to information learned from Special Agent Manns, Agent Woolley testified that Nguyen and Bryant then returned to the truck stop and pulled the minivan up to the rear of the tractor trailer. Special Agent Manns then informed Agent Woolley over the radio that the minivan, which was empty when it pulled up to the rear of the trailer, was now full of cardboard boxes as it left the rear of the trailer.

The Chicago ICE agents then followed the green minivan as it left the truck stop and entered Interstate 80/94. The agents stopped the minivan shortly thereafter as it exited the highway onto Calumet Avenue in Hammond, Indiana. According to Agent Woolley, Defendant Nguyen and Defendant Bryant were then arrested. The Chicago ICE agents, including Agent Woolley, then searched the minivan and discovered large quantities of marijuana in the cardboard boxes.

DISCUSSION

Defendant Nguyen seeks to suppress the evidence against him claiming that it is the fruit of an illegal search. His argument is twofold: (1) that the search does not fall within the border search exception to the warrant requirement of the Fourth Amendment because he never crossed

a border; and (2) that the agents did not have the necessary probable cause to arrest and search him without a warrant.¹

Extended Border Search

The Fourth Amendment protects individuals from unreasonable searches and seizures. U.S. Const., Amend IV. The Government argues that the search of Defendant Nguyen's vehicle was reasonable under the extended border doctrine recognized by the Seventh Circuit in *United States v. Yang*, 286 F.3d 940, 944-49 (7th Cir. 2002), as well several other circuits. *See, e.g.*, *United States v. Espinoza-Seanez*, 862 F.2d 526, 531 (5th Cir. 1988); *United States v. Caicedo-Guarnizo*, 723 F.2d 1420 (9th Cir. 1984); *United States v. Garcia*, 672 F.2d 1349 (11th Cir. 1982); *United States v. Bilir*, 592 F.2d 735 (4th Cir. 1979).

The extended border doctrine provides that non-routine border searches with a significant nexus to a border crossing are deemed constitutionally permissible if reasonable under the Fourth Amendment. *See id.* As the Seventh Circuit has stated: "The extended border doctrine respects basic Fourth Amendment concepts by striking a sensible balance between the legitimate privacy interests of the individual and society's vital interest in the enforcement of customs laws." *Id.* (quoting *United States v. Corral-Villavicencio*, 753 F.2d 785, 788 (9th Cir. 1985)). To determine whether an extended border search is reasonable courts consider whether: (1) there is a reasonable certainty that a border crossing has occurred; (2) there is a reasonable certainty that no change in condition of the luggage has occurred since the border crossing; and (3) there is a

¹ Nguyen also objected at the suppression hearing to the government's use of hearsay testimony. Hearsay, however, is admissible at such hearings and the weight to be given to it is left to the discretion of the court. *United States v. Matlock*, 415 U.S. 164, 174-75, 94 S.Ct. 988, 39 L.Ed.2d 242 (1974); *see also* Fed. R. Evid. 104(a); Fed. R. Evid. 1101(d)(1).

reasonable suspicion that criminal activity has occurred. *Yang*, 286 F.3d at 945.

Moreover, the *Yang* case suggests that the doctrine is limited to searches of people who have actually entered the country. As the Seventh Circuit explained, “[b]ecause an extended border search entails greater intrusion on an *entrant's* legitimate expectations of privacy than does a search conducted at the border or its functional equivalent, courts have instituted the three-part test to ensure that the search is reasonable.” *Yang*, 286 F.3d at 946 (emphasis supplied) (citing *United States v. Cardenas*, 9 F.3d 1139, 1148 (5th Cir. 1993)). Moreover, the Seventh Circuit went on to say that “[s]earches are reasonable under the extended border doctrine when officers have a reasonable certainty that any contraband found on a suspect was not obtained after the border crossing.” *Yang*, 286 F.3d at 946.

While the Court understands Defendant Nguyen to have some nexus with a border crossing – after all, he received boxes of marijuana that had crossed a border – application of the extended border search doctrine to these particular facts is troubling. First, there is no evidence before the Court that Nguyen himself ever crossed the border; that is, Nguyen was not an *entrant* into this country. *Yang*, 286 F.3d at 946. Second, the arresting agents were not reasonably certain that the “contraband found on the suspect was not obtained after crossing the border.” *Id.* Indeed, the evidence is actually to the contrary. Nguyen did obtain the contraband after the crossing.

Finally, as directed by *Yang*, in balancing Nguyen’s privacy interests with the government’s interest in protection of the border, the balance seems to favor Nguyen. He plainly had a substantial privacy interest at the time of his arrest. By contrast, the government’s interest in enforcement of the customs laws had dissipated once the initial search at the border was

conducted and the marijuana was found. Indeed, it was government agents who made the decision to allow the marijuana into the country and let Atwal go. The agents could have vindicated the government's legitimate interest in protecting the borders by seizing the marijuana and arresting Atwal. They chose not to do this, deciding instead to let marijuana into the country with the hopes of snaring others.

In any event, whatever the limits of *Yang* and the extended border search doctrine may be, the Court need not reach the merits of the government's argument today because the search and arrest of Defendant Nguyen was reasonable for another reason; the Immigration and Customs Enforcement agents had probable cause to arrest Nguyen.

Probable Cause

For a warrantless arrest to be reasonable, law enforcement agents must have probable cause, which exists if, given the facts and circumstances within their knowledge at the time of arrest, the agents reasonably believed that the suspect had committed or was committing a crime. *United States v. Funches*, 327 F.3d 582, 586 (7th Cir. 2003); *Beck v. Ohio*, 379 U.S. 89, 91 (1964); *United States v. Gilbert*, 45 F.3d 1163, 1166 (7th Cir.1995). A Court must examine the totality of circumstances to assess whether the police could have reasonably believed that a particular individual has committed a crime. *United States v. Navarro*, 90 F.3d 1245, 1254 (7th Cir. 1996); *see also Illinois v. Gates*, 462 U.S. 213, 238 (1983); *Gilbert*, 45 F.3d at 1166. Determinations of probable cause are naturally based on probabilities, and a finding of probable cause "does not require evidence sufficient to support a conviction, nor even evidence demonstrating that it is more likely than not that the suspect committed a crime." *United States v. Carrillo*, 269 F.3d 761, 766 (7th Cir. 2001) (quotation omitted); *see also Gerstein v. Pugh*, 420

U.S. 103, 121 (1975) (stating that the probable-cause determination “does not require the fine resolution of conflicting evidence that a reasonable-doubt or even a preponderance standard demands”). In short, probable cause requires more than mere suspicion but less than virtual certainty. *United States v. Covarrubias*, 65 F.3d 1362, 1368 (7th Cir. 1995).

In determining whether suspicious circumstances rise to the level of probable cause, law enforcement officers are entitled to draw reasonable inferences based on their own training and experience. *See Carrillo*, 269 F.3d at 766-67; *United States v. Faison*, 195 F.3d 890, 893 (7th Cir. 1999). Further, under the “collective knowledge” doctrine, the arresting officer does not have to know all the information so long as he is acting in objective reliance and under the direction of another with knowledge, or where the collective knowledge of the agency making the arrest establishes probable cause. *Tangwell v. Stuckey*, 135 F.3d 510, 517 (7th Cir. 1998). Law enforcement officers may rely on what their peers tell them; they do not need to cross-examine fellow officers to insure the accuracy of the information being transmitted. *Id.*; *United States v. Rodriguez*, 831 F.2d 162, 165-66 (7th Cir. 1987).

The Seventh Circuit has found probable cause to exist where experienced law enforcement agents observed suspicious circumstances similar to those here. *See, e.g., Funches*, 327 F.3d at 586-87 (holding that DEA agents had probable cause to believe that the exchange of shopping bags in an alley way had been a drug transaction where agents observed a series of suspicious events leading to the exchange); *Carrillo*, 269 F.3d at 766-67 (finding that police had probable cause for arrest where they were informed that defendant had installed remotely-locking compartments in vehicles, observed movement of those vehicles from house to house suggestive of drug trafficking over period of time, and defendant drove evasively two

times police were following to avoid surveillance).

In this case, Agent Woolley testified that the ICE agents from Detroit informed him that they were called to the Port Huron, Michigan point of entry after an X-ray and search of a tractor trailer revealed that, of the one-hundred and fifty boxes apparently destined for a Bed, Bath & Beyond store in Dresden, Tennessee, approximately twenty-five contained marijuana. The agents then allowed the trailer to proceed and conducted surveillance on the trailer to see where these twenty-five boxes would be delivered.

The Detroit ICE agents followed the trailer as it headed westbound on Interstate 69 and then from Interstate 69, westbound on Interstate 94 all the way to Lake Station, Indiana. In Lake Station the agents observed the trailer enter a truck stop just off Interstate 94 and remain at the truck stop for a period of over fourteen hours. The agents then observed as two individuals in a green minivan, identified as Defendants Nguyen and Bryant, entered the truck stop. The agents observed Nguyen and Bryant recline the rear seats of their minivan before leaving the truck stop parking lot and pulling into an adjacent McDonald's parking lot. At the same time Defendant Atwal moved the tractor trailer containing the marijuana into a different parking spot at the truck stop. Defendants Nguyen and Bryant then returned to the truck and pulled the green minivan up to the rear of the tractor trailer. According to Agent Woolley, Special Agent Manns informed the agents involved in the surveillance operation that the minivan, which had been empty when it pulled up to the rear of the trailer, left the rear of the tractor trailer full of cardboard boxes.

The Court finds that trained law enforcement agents observing the Defendants' actions could reasonably conclude based on their experience that they had witnessed a drug transaction.

To begin with, the agents knew that twenty-five of the approximately one-hundred and fifty boxes in the trailer contained marijuana. Second, the agents observed Defendants Nguyen and Bryant acting in a suspicious manner; having entered the truck stop and reclining the back seat of their minivan; then leaving the truck stop momentarily as Defendant Atwal moved the tractor trailer into a different parking spot; and eventually returning to the truck stop and driving the minivan up to the rear of Atwal's trailer. Experienced law enforcement officers could reasonably understand that these actions were designed to help conceal the delivery of boxes from the trailer and into the minivan. Further, it was reasonable for Woolley and the other agents to infer from the information given by Special Agent Manns – that the minivan was empty when it pulled up to the rear of the tractor trailer but was full of cardboard boxes as it pulled away – that the boxes in the minivan had been offloaded from the tractor trailer that the agents were surveilling.

Finally, as noted above, probable cause is all about reasonable probabilities. It is hard to ignore the fact that in ordinary, lawful circumstances, a driver delivering a shipment of Bed, Bath & Beyond products to a Bed, Bath & Beyond distribution center in Dresden, Tennessee would not have occasion to deliver a portion of that shipment to individuals in an unmarked minivan at a truck stop in Lake Station, Indiana. Yet that is precisely what the Defendants in this case did, and reasonable probabilities (as well as common sense) dictate that the boxes loaded into the minivan were the ones containing marijuana and not the ones containing bed and bath items.

Accordingly, the Court concludes that the totality of circumstances, including the knowledge that twenty-five boxes in the truck contained marijuana coupled with the very

suspicious nature in which some of the boxes were unloaded into a minivan at a truck stop in Lake Station, Indiana, provided the agents with probable cause to stop, arrest, and search Defendant Nguyen and his vehicle.

CONCLUSION

Because the Court concludes that the Chicago ICE agents had probable cause to stop, arrest and search Defendant Nguyen and his vehicle, Defendant Nguyen's motion to suppress is DENIED.

SO ORDERED.

ENTER: August 31, 2004

S/ Philip P. Simon
Philip P. Simon, Judge
United States District Court