UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 07-20759-CR-JORDAN
Magistrate Judge Torres

UNITED STATES OF AMERICA

v.

RICARDO OLMEDO,

Defendant.
_____/

GOVERNMENT'S RESPONSE TO THE DEFENDANT'S POST-HEARING REPLY TO THE GOVERNMENT'S OPPOSITION TO DEFENDANT'S MOTION TO SUPPRESS

The United States, by and through the undersigned Assistant United States Attorney, hereby responds to the defendant's post-hearing reply to the government's opposition to the defendant's motion to suppress. The defendant has essentially acknowledged, as he must in light of the evidence advanced at the hearing on the motion to suppress, that probable cause existed for the stop and search of his motor vehicle. He argues that the evidence obtained from his vehicle must nevertheless be suppressed because the Drug Enforcement Administration (DEA) Group Supervisor who ordered the stop of his vehicle did not communicate the probable cause for the stop to the local law enforcement officers who actually stopped and searched the vehicle. This argument fails as a matter of law. There is no requirement that a law enforcement officer who has probable cause to conduct a stop and search of a motor vehicle communicate that probable cause a second officer who is instructed to conduct the stop. To the contrary, the Supreme Court case cited to by the defendant, *United States v. Hensley*, 469 U.S. 21 (1985), makes clear beyond any doubt that a police officer who makes a stop in response to a request from another police officer does not need to be aware of the facts that support a finding of

probable cause so long as the requesting officer possessed probable cause. Accordingly, the motion to suppress should be denied.

The defendant cites to *Hensley* as the "leading United States Supreme Court decision" addressing the issues raised in his motion to suppress [DE 419 at 7]. The defendant claims that "*Hensley* stands for the proposition that some information regarding probable cause must be communicated to the arresting officer for the collective knowledge doctrine to apply." *Id.* This is categorically incorrect. Indeed, *Hensley* stands for the exact opposition proposition; that is that in assessing probable cause the Court looks to the knowledge possessed by the officer who requests the stop rather than the offer who actually affects the stop.

Hensley involved an armed robbery of a tavern in the Cincinnati suburb of St. Bernard, Ohio. Six days after the robbery, a St. Bernard police officer interviewed an informant who identified Hensley as the getaway driver. The officer then issued a wanted flyer.

> The flyer twice stated that Hensley was wanted for investigation of an aggravated robbery. It described both Hensley and the date and location of the alleged robbery, and asked other departments to pick up and hold Hensley for the St. Bernard police in the event he were located. The flyer also warned other departments to use caution and to consider Hensley armed and dangerous.

Hensley, 469 U.S. at 223. Significantly, the flyer contained no information regarding probable cause. Nothing in the flyer provided any information regarding how the St. Bernard police were able to tie Hensley to the robbery. It simply stated that the robbery had occurred and asked that Hensley be held for questioning in connection with it.

Six days after the wanted flyer was issued, Hensley was located in Covington, Kentucky, approximately 5 miles from St. Bernard, by a Covington police officer. Hensley was driving a Cadillac convertible at the time. Covington police officers stopped that vehicle, and when they did so, they discovered two handguns in the vehicle. Hensley and his sole passenger in the

vehicle were both convicted felons. Hensley was charged with, and convicted of, being a felon in possession of a firearm. Just as the defendant in this case challenges the stop of his motor vehicle because the local officers who conducted the stop were unaware of the facts underlying the probable cause determination made by DEA Group Supervisor Fernandez, so too did Hensley challenge the stop of his vehicle because the wanted flyer did not advise the Covington police officers of any facts linking him to the crime being investigated. The Sixth Circuit Court of Appeals held that the stop was not valid. That "holding apparently rest[ed] on the omission from the flyer of the specific and articulable facts which led the first department to suspect [Hensley's] involvement in a completed crime." *Id.* at 230. The Supreme Court reversed and upheld the legality of the stop. The Supreme Court held that:

> when evidence is uncovered during a search incident to an arrest in reliance merely on a flyer or bulletin, its admissibility turns on whether the officers who *issued* the flyer possessed probable cause to make the arrest. It does not turn on whether those relying on the flyer were themselves aware of the specific facts which led their colleagues to seek their assistance. In an era when criminal suspects are increasingly mobile and increasingly likely to flee across jurisdictional boundaries, this rule is a matter of common sense: it minimizes the volume of information concerning suspects that must be transmitted to other jurisdictions and enables police in one jurisdiction to act promptly in reliance on information from another jurisdiction.

Id. at 231 (emphasis in original). In reaching this decision, the Supreme Court cited to the Ninth Circuit Court of Appeals decision in *United States v. Robinson*, 536 F.2d 1298, 1299-1300 (1976). In that case, the Ninth Circuit

> concluded that, although the officer who issues a wanted bulletin must have a reasonable suspicion sufficient to justify a stop, the officer who acts in reliance on the bulletin is not required to have personal knowledge of the evidence creating a reasonable suspicion. The Ninth Circuit there noted "that effective law enforcement cannot be conducted unless police officers can act on directions and information transmitted by one officer to another and that officers, who must often act swiftly, cannot be expected to cross-examine their fellow officers about the foundation for the transmitted information."

Hensley, 469 U.S. at 223 (internal citations omitted).

Simply put, once it is established that DEA Group Supervisor Fernandez made the correct determination that the collective knowledge possessed by law enforcement officers investigating the defendant established probable cause that he was transporting narcotics, the defendant's Fourth Amendment rights were in no way violated when Special Agent Fernandez (who was in an unmarked vehicle and not in a position to personally stop the defendant's car) instructed local law enforcement officers to stop the defendant's car without briefing them on the facts that supported probable cause. Therefore, a suppression of the evidence obtained from that vehicle stop would run directly afoul of the precedent of *Hensley*, the case the defendant himself cites to as the "leading United States Supreme Court decision" on point. Accordingly, the motion to suppress should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 7, 2008, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF.

s/ Sean Paul Cronin
Sean Paul Cronin
Assistant United States Attorney