

Pet. App 1a

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 20-11666
Non-Argument Calendar

D.C. Docket No. 3:19-cr-00346-ALB-SRW-1

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JULIO CESAR HERNANDEZ-PACHECO,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Alabama

(June 1, 2021)

Before JILL PRYOR, LUCK and LAGOA, Circuit Judges.

PER CURIAM:

Julio Hernandez-Pacheco appeals his conviction for illegal reentry into the United States, in violation of 8 U.S.C. § 1326(a). He challenges the district court's denial of his motion to suppress. Because binding precedent forecloses his argument that the district court erred in denying his motion, we affirm.

While Hernandez-Pacheco and his co-workers were commuting to work, agents with the Department of Homeland Security stopped their vehicle and asked the driver and all passengers for identification. Hernandez-Pacheco provided an identification card issued in Mexico. Using the information on Hernandez-Pacheco's identification, officers searched immigration databases and determined that Hernandez-Pacheco had previously been removed from the United States. Hernandez-Pacheco also admitted to an agent that he was undocumented. He was then charged with illegally reentering the United States.

In the district court, Hernandez-Pacheco filed a motion to suppress, arguing that the agents lacked reasonable suspicion to stop the truck or had unlawfully prolonged the stop. After a hearing, the district court denied the motion to suppress. The court concluded that the agents had reasonable suspicion to stop the vehicle and did not unlawfully prolong the stop. In the alternative, the court determined that, even if the stop was unreasonable, the exclusionary rule did not apply because evidence of "an alien's identity is not suppressible in a prosecution

for unlawful reentry.” Doc. 46 at 2.¹ After the court denied the motion to suppress, Hernandez-Pacheco pled guilty but reserved the right to appeal the denial of his motion to suppress. This is Hernandez-Pacheco’s appeal.

On appeal, Hernandez-Pacheco argues that the district court erred in denying his motion to suppress.² But we cannot say that the district court erred because we previously held in *United States v. Farias-Gonzalez*, 556 F.3d 1181 (11th Cir. 2009), that identity-related evidence cannot be suppressed.

In *Farias-Gonzalez*, federal law enforcement agents stopped a man and asked him a series of questions to determine whether he was legally in the United States. *Id.* at 1182–83. As part of the stop, the agents took the man’s fingerprints. *Id.* at 1183. Based on the fingerprints, the agents were able to deduce that the man had given them a false name, uncovered his real name, and determined that he previously had been removed from the United States. *Id.* The man later challenged his conviction for illegally reentering the country, arguing that the stop violated his constitutional rights. *Id.*

On appeal, we considered “whether evidence of who the defendant is (‘identity-related evidence’), obtained after an unconstitutional search and seizure,

¹ “Doc.” numbers refer to the district court’s docket entries.

² When reviewing a ruling on a motion to suppress evidence, we review a district court’s factual findings for clear error and its application of the law to these facts *de novo*. *United States v. Nunez*, 455 F.3d 1223, 1225 (11th Cir. 2006).

is suppressible in a criminal prosecution.” *Id.* at 1182. We held that the exclusionary rule does not apply to such evidence when it is used “to establish the defendant’s identity in a criminal prosecution,” because the policy rationale of the exclusionary rule was not well served by its application to identity-related evidence. *Id.* at 1186, 1189.

Assuming for purposes of this appeal that the stop was unconstitutional, the district court correctly concluded, based on *Farias-Gonzalez*, that the evidence in this case could not be suppressed.³ Notably, Hernandez-Pacheco does not dispute that *Farias-Gonzalez* controls here. He instead argues that *Farias-Gonzales* was wrongly decided and should be overruled. But, as Hernandez-Pacheco concedes, under our prior panel precedent rule, *Farias-Gonzales* “bind[s] all subsequent panels unless and until the . . . holding is overruled by the Court sitting en banc or by the Supreme Court.” *Smith v. GTE Corp.*, 236 F.3d 1292, 1300 n.8 (11th Cir. 2001).

AFFIRMED.

³ After observing that “[t]he line between ‘identity’ evidence and non-identity evidence under *Farias-Gonzalez* is not entirely clear,” the district court found that it need not address the issue in more detail because “Hernandez-Pacheco does not argue that the relevant evidence here is anything but evidence of his identity that would fall under *Farias-Gonzalez*.” Doc. 46 at 2 n.1. Hernandez-Pacheco has raised no argument on appeal that the district court erred in treating all the evidence he sought to suppress as identity-related evidence and thus has abandoned any challenge that the evidence he sought to suppress included non-identity evidence. See *United States v. Jernigan*, 341 F.3d 1273, 1283 n.8 (2003).

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

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June 01, 2021

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 20-11666-AA
Case Style: USA v. Julio Hernandez-Pacheco
District Court Docket No: 3:19-cr-00346-ALB-SRW-1

This Court requires all counsel to file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause. Non-incarcerated pro se parties are permitted to use the ECF system by registering for an account at www.pacer.gov. Information and training materials related to electronic filing, are available at www.ca11.uscourts.gov. Enclosed is a copy of the court's decision filed today in this appeal. Judgment has this day been entered pursuant to FRAP 36. The court's mandate will issue at a later date in accordance with FRAP 41(b).

The time for filing a petition for rehearing is governed by 11th Cir. R. 40-3, and the time for filing a petition for rehearing en banc is governed by 11th Cir. R. 35-2. Except as otherwise provided by FRAP 25(a) for inmate filings, a petition for rehearing or for rehearing en banc is timely only if received in the clerk's office within the time specified in the rules. Costs are governed by FRAP 39 and 11th Cir.R. 39-1. The timing, format, and content of a motion for attorney's fees and an objection thereto is governed by 11th Cir. R. 39-2 and 39-3.

Please note that a petition for rehearing en banc must include in the Certificate of Interested Persons a complete list of all persons and entities listed on all certificates previously filed by any party in the appeal. See 11th Cir. R. 26.1-1. In addition, a copy of the opinion sought to be reheard must be included in any petition for rehearing or petition for rehearing en banc. See 11th Cir. R. 35-5(k) and 40-1 .

Counsel appointed under the Criminal Justice Act (CJA) must submit a voucher claiming compensation for time spent on the appeal no later than 60 days after either issuance of mandate or filing with the U.S. Supreme Court of a petition for writ of certiorari (whichever is later) via the eVoucher system. Please contact the CJA Team at (404) 335-6167 or cja_evoucher@ca11.uscourts.gov for questions regarding CJA vouchers or the eVoucher system.

For questions concerning the issuance of the decision of this court, please call the number referenced in the signature block below. For all other questions, please call T. L. Searcy, AA at

(404) 335-6180.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Djuanna H. Clark
Phone #: 404-335-6151

OPIN-1 Ntc of Issuance of Opinion

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

Pet. App. 1b

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Case No. 3:19-cr-346-ALB
)	
JULIO CESAR HERNANDEZ-)	
PACHECO,)	
)	
Defendant.)	

MEORANDUM OPINION AND ORDER

This matter comes before the court on Defendant Julio Cesar Hernandez-Pacheco's Motion to Suppress. (Doc. 24). He is being prosecuted for unlawfully reentering the country after previously being deported. The Court held an evidentiary hearing on November 8, 2019, during which the Court asked the parties for additional briefing on the relevance of *United States v. Farias-Gonzalez*, 556 F.3d 1181 (11th Cir. 2009). Upon receiving the parties' supplemental briefing, and consideration of the motion and responses, Hernandez-Pacheco's motion is DENIED.

Hernandez-Pacheco moved to suppress evidence of his identity, including his ID card and statements, after an allegedly unconstitutional stop. He alleges there was

either no basis for the stop or the stop was impermissibly extended.¹ This motion fails for two reasons.

First, the Eleventh Circuit has held that an alien's identity is not suppressible in a prosecution for unlawful reentry: "the exclusionary rule does not apply to evidence to establish the defendant's identity in a criminal prosecution" *Farias-Gonzalez*, 556 F.3d at 1189. Because the relevant facts and procedural posture of *Farias-Gonzalez* are indistinguishable from this case, it is dispositive.

Second, even if Hernandez-Pacheco could get around *Farias-Gonzalez*,² the stop was permissible. To properly stop a car, officers need only a reasonable suspicion under the totality of the circumstances that crime is afoot. *United States v. Pruitt*, 174 F.3d 1215, 1219 (11th Cir. 1999) (quoting *United States v. Tapia*, 912 F.2d 1367, 1370 (11th Cir. 1990)). Here, the officers' reasonable suspicions guided them through an ongoing investigation.

It all started when ICE officers received a tip from a person who had previously provided credible information. The informant said that Menendez-

¹ Hernandez-Pacheco also alleged that Alexander City officers violated the Fourth Amendment by using federal officers to circumvent a warrant. However, it is undisputed that the city officers were not involved, so there could not have been an attempt to circumvent a warrant. Hernandez-Pacheco's counsel forthrightly conceded this mistake in the written motion at the evidentiary hearing.

² The line between "identity" evidence and non-identity evidence under *Farias-Gonzalez* is not entirely clear. For example, is a person's statement "I, John Doe, am in the country without legal documents" identity evidence or a confession? Nonetheless, Hernandez-Pacheco does not argue that the relevant evidence here is anything but evidence of his identity that would fall under *Farias-Gonzalez*.

Jarquin, the tipster's niece/goddaughter's would-be boyfriend, had entered the country illegally. The facts checked out against a database search, so ICE officers staked out Menendez-Jarquin's house. Although in hindsight, it may have made more sense for the officers to go to Menendez-Jarquin's place of employment, the decision to go to his house was reasonable under the circumstances. The Court, for example, finds credible the officers' testimony that ICE usually causes a disruption when it appears unannounced at a place of employment. In any event, based on the tip, the officers believed the house had only two residents. After stopping the first person to leave the house without finding Menendez-Jarquin, the officers logically suspected the next person to leave the house would be their target. Soon, a second person left the house and climbed in a car, which the officers pursued. Although Defendant points out that he and Menendez-Jarquin look different—they are different heights and weights, for example—the officers were surveilling the house from across the street in low light. Under the circumstances, it was reasonable for the officers to suspect that their target had left the house in a car and, therefore, it was reasonable for them to stop the car.

Up to the point the officers stopped the car, they had been guided by reasonable suspicions. But even a proper stop may be improperly prolonged. No set time limit exists for a stop, although few may exceed an hour. *See United States v. Acosta*, 363 F.3d 1141, 1147 (11th Cir. 2004). Instead, a stop's proper duration is

based on the facts presented to the officers and whether the officers are actively investigating those facts. *Id.* Here, the stop lasted only three or four minutes before the officers uncovered that one of the car's passengers was present in the country illegally. During this interval, the officers asked the passengers routine questions, such as who they were. Although the officers' decision to stop the car involved a hunt for Menendez-Jarquin, their interactions with Hernandez-Pacheco raised similar suspicions about him. Hernandez-Pacheco—who was the person who left the house where the officers' target lived—produced a foreign ID and could not provide a local one. They thought he might be in the country illegally, and he quickly confirmed their suspicions by admitting it.

It is unfortunate that the officers detained the driver and passengers of the vehicle while they arrested Hernandez-Pacheco. And, as noted above, the officers could have gone about searching for Menendez-Jarquin in a different way. But their actions were reasonable nonetheless.

DONE and ORDERED this 10th day of December 2019.

/s/ Andrew L. Brasher
ANDREW L. BRASHER
UNITED STATES DISTRICT JUDGE