United States v. Nguyen

2002 | Cited 0 times | D. Minnesota | March 12, 2002

MEMORANDUM OPINION AND ORDER

I. INTRODUCTION

This matter is before the undersigned United States District Judge pursuant to Defendant Long Nam Tran's ("Tran") Objection [Doc. No. 157], and Plaintiff's ("Government") Objections [Doc. No. 158], to the January 4, 2002 Amended Report and Recommendation ("R&R") of Magistrate Judge Susan Richard Nelson [Doc. No. 152].

In the R&R, Judge Nelson recommended granting Defendants Anh Tuan Nguyen and Long Nam Tran's Motion to Suppress Evidence [Doc. Nos. 76, 77 & 78] regarding all statements obtained during the September 8, 2000 interview of Anh Tuan Nguyen, except for routine booking information. The R&R further recommended denying the Motions to Suppress regarding all other statements of Anh Tuan Nguyen and Long Nam Tran, as well as denying the suppression motions for the search of letters and identification procedures. Finally, the R&R recommended denying Defendant Van Thi Le's Motion for Suppression of Confessions or Statements in the Nature of Confessions [Doc. No. 111]. For the reasons set forth below, the R&R is adopted.

II. BACKGROUND

The factual background for this matter is adequately set forth in the R&R and is incorporated by reference for purposes of Defendant's and the Government's present objections.

III. DISCUSSION

A district court must make an independent, de novo evaluation of those portions of an R&R to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. See 28 U.S.C. § 636(b)(1)(C); D. Minn. LR 72.1(c)(2).

A. Motion to Suppress the letters

1. Reasonable expectation of privacy in the letters

The Government objects to Judge Nelson's finding that the Defendants Nguyen and Tran had a reasonable expectation of privacy in the letters. See Gov't Objections, at 7. Specifically, the

Government argues that Judge Nelson erred by concluding a reasonable expectation of privacy was created by the fact that the letters were mailed to legitimate business and residential addresses, and that Defendants were the intended recipients. See Gov't Objections, at 4. The Government objects to the R&R's finding that Defendants have standing to challenge the search of the letters on Fourth Amendment grounds, rather than the R&R's conclusion regarding the legality of the actual search. Because the search at issue falls within the "border search" exception to the Fourth Amendment, the reasonable expectation of privacy issue need not be addressed. See United States v. Bilir, 592 F.2d 735, 743 (4th Cir. 1979) (stating that there is no reasonable expectation of privacy at the border); United States v. Odland, 502 F.2d 148, 151 (7th Cir. 1974); United States v. Doe, 472 F.2d 982, 985 (2d Cir. 1973) ("It can hardly be contended that the sender or the addressee had a reasonable expectation of privacy with regard to a large package mailed from a foreign country,which is represented to contain non-dutiable merchandise.").

2. Border search

After a drug detection dog alerted to incoming international letter class mail, the United States Customs Service seized two large envelopes mailed from the Netherlands which appeared to contain something other than correspondence. Each letter contained 250 tablets of ecstacy. [1] Tran objects to the R&R's conclusion that the letters were searched at the "functional equivalent" of a United States border. See Def. Objections, at 1. Tran incorrectly asserts that the R&R was forced to rely on "twenty-six-year authority to justify the search as occurring at the 'functional equivalent' of the border." Id. The R&R cited a number of cases, including cases from the Second Circuit, Fifth Circuit, Seventh Circuit, Ninth Circuit and a United States Supreme Court case, as authority for the proposition that border searches can occur at the "functional equivalent" of the border. See R&R, at 18.

It is a longstanding principle that searches at the United States border are reasonable as a right of the sovereign to protect itself. United States v. Ramsey, 431 U.S. 606, 616 (1977); Almeida-Sanchez v. United States, 413 U.S. 266, 272, (1973). In addition, there is no constitutional violation when incoming mail is searched at the border by an authorized person, such as a customs inspector. United States v. Ani, 138 F.3d 390, 392 (9th Cir. 1998); United States v. Soto, 598 F.2d 545, 548-49 (9th Cir. 1979). "A border search need not take place at the actual border." United States v. Cardona, 769 F.2d 625 (9th Cir. 1985) (citing Almeida-Sanchez, 413 U.S. at 273; United States v. Duncan, 693 F.2d 971, 977 (9th Cir. 1982). Rather, "border searches may be conducted at places considered the 'functional equivalent' of a border." Id. As the Second Circuit has observed: An airport that serves as the final destination for a nonstop flight may be deemed to be the functional equivalent of the border because of:

(1) the existence of reliable indications that the thing to be searched is of international origin and has not been changed in any way since entering the United States; and (2) the degree of regularity with which searches at the point in question are conducted such that the intrusion is minimal, the

existence and function of the checkpoint are known in advance, and there is little discretionary enforcement activity. United States v. Gaviria, 805 F.2d 1108, 1112 (2nd Cir. 1986).

Here, the evidence demonstrates that the search occurred at the "functional equivalent" of the border. The inspection of the letters, bearing stamps from the Netherlands, took place at O'Hare International Airport. O'Hare is a port of entry for international mail arriving on direct flights from foreign countries. The policy of the United States Customs Service is to inspect incoming foreign mail at its point of entry and then release it to the United States Postal Service to be delivered as domestic mail. There is no evidence that the letters arrived at any port of entry other than O'Hare. See United States v. King, 517 F.2d 350, 351 (5th Cir. 1975) (holding that letters inspected in Birmingham, Alabama were inspected at the functional equivalent of the border even though the letters first entered the United States in San Francisco). Because the letters were searched at the functional equivalent of the border, there was no constitutional violation. The evidence was lawfully seized.

B. Motion to Suppress statements of Long Nam Tran

Tran objects to the R&R's finding that he was not in custody during the questioning by Deputy Daniel J. Scheuermann of the Dakota County Sheriff's Office at Burnsville Center on July 28, 2000. See Def. Objections, at 2. The record in this matter establishes that statements made by Tran in the course of the July 28, 2000 interview with Deputy Scheuermann were not custodial statements, were not a product of coercion, and were not otherwise obtained in violation of Tran's constitutional rights. As such, the giving of the Miranda warning prior to questioning was not required.

A Miranda warning must be given whenever a suspect is questioned by police in a custodial interrogation. Dormire v. Wilkinson, 249 F.3d 801, 804 (8th Cir. 2001); Thatsaphone v. Weber, 137 F.3d 1041, 1044 (8th Cir. 1998)(citing Thompson v. Keohane, 516 U.S. 99, 102 (1995)).

Custody occurs either upon formal arrest or under any other circumstances where the suspect is deprived of his freedom of action in any significant way. . . . In determining whether a suspect is "in custody" at a particular time we examine the extent of the physical or psychological restraints placed on the suspect during the interrogation in light of whether a "reasonable person in the suspect's position would have understood his situation" to be one of custody. United States v. Griffin, 922 F.2d 1343, 1347 (8th Cir. 1990) (internal citations omitted).

"In determining whether an individual was in custody, . . . the ultimate inquiry is simply whether there [was] a formal arrest or restraint on freedom of movement of the degree associated with formal arrest." Thatsaphone, 137 F.3d at 1044 (citing Stansbury v. California, 511 U.S. 318, 322 (1994). This test has been described as a "totality of the circumstances" analysis. United States v. Sutera, 933 F.2d 641, 646 (8th Cir. 1991). Interrogation means express questioning as well as any words or actions by the police that the police should know are reasonably likely to elicit an incriminating response from

the suspect. Rhode Island v. Innis, 446 U.S. 291, 301 (1980).

The questioning of Tran at Burnsville Center was not a custodial interrogation. Tran was not in custody. Rather, he was free to leave at any time. No restraints were placed on Tran and he was not deprived of his freedom. The questioning took place in a public place, familiar to Tran and lasted less than ten minutes. Tran voluntarily agreed to talk with the police. There was no evidence that the police exerted coercive force, made any threats or acted improperly during the course of their exchange with Tran. Under these circumstances, a reasonable person in the place of Tran would not believe that he was in custody for purposes of Miranda. Therefore, Tran's statements were voluntary and are not suppressed.

IV. CONCLUSION

Based upon the foregoing, and upon independent review of all the files, records, and proceedings herein, IT IS HEREBY ORDERED that:

1. The R&R [Doc. No. 152] is ADOPTED;

2. Defendants Anh Tuan Nguyen and Long Nam Tran's Joint Motion to Suppress Evidence [Doc. Nos. 76, 77, & 78] is DENIED, because the letters were seized in a lawful border search;

3. Defendants Anh Tuan Nguyen and Long Nam Tran's Joint Motion to Suppress Evidence [Doc. Nos. 76, 77, & 78] is GRANTED regarding all statements obtained during the September 8, 2000 interview of Anh Tuan Nguyen, other than routine booking information, and DENIED regarding all other statements made by Anh Tuan Nguyen and Long Nam Tran.

4. Defendants Anh Tuan Nguyen and Long Nam Tran's Joint Motion to Suppress Evidence [Doc. Nos. 76, 77, & 78] is DENIED regarding identification procedures;

5. Defendant Van Thi Le's Motion for Suppression of Confessions or Statements in the Nature of Confessions [Doc. No. 111] is DENIED.

1. Methylenedioxymethamphetamine.