

Miranda v. Arizona, 384 U.S. 436 (1966)². At both the evidentiary hearing on this motion and in its responsive pleading, the Government is on record as agreeing that it cannot use any admissions made by the defendant as part of its case in chief. (Docket No. 19, Gov't's Resp. at 6). Accordingly I now recommend that the court adopt these proposed findings of fact, **DENY** the motion as it relates to the seizure of the evidence from defendant and the van and **GRANT** the motion as it relates to post-Miranda statements made by the defendant.

Proposed Findings of Fact

At approximately 11:45 p.m. on November 17, 2004,³ Officer Shawn Querze of the Fort Kent Police Department was on routine patrol in a remote rural area on Route One/Frenchville Road outside Fort Kent, Maine. Querze noticed a vehicle parked in the driveway of an abandoned trailer on the St. John River side of the Frenchville Road. The vehicle had its lights off and was facing toward the river. At this location the river forms the boundary between Canada and the United States. Querze, a six-year veteran of the Fort Kent police, had driven by this property frequently and had never seen a vehicle in this driveway. He pulled in behind the vehicle and parked, effectively blocking the driveway.

Querze had his headlights on and he could see that the vehicle was a green utility van with Massachusetts plates. At first he could not tell if the vehicle was occupied. He got out of his police vehicle and approached the van. It was cold, there was some snow

² It is my understanding that this portion of the motion is directed at the statements made by Nguyen after he was advised of Miranda and requested an attorney. I do not understand the motion as seeking to suppress the initial exchange between Querze and Nguyen nor do I see any basis for finding that exchange to be a custodial interrogation.

³ Officer Querze indicated in response to a leading question that these events began on November 17. However, the complaint and the docket entries indicate that it would have been 11:45 p.m. on November 16. Nguyen arrived in Bangor and made his initial appearance before me the morning of November 18.

on the ground, and the driveway had not been plowed. Upon approaching the van Querze did observe someone sitting inside. Querze asked the van's occupant what he was doing there and the occupant indicated that he was just getting some shut eye before he began a long drive to Boston. The driver, Nguyen, told Querze he had just dropped off a friend at the college in Fort Kent and was headed back to Boston. Querze asked for identification and the occupant produced a paper driver's license from Quebec and Canadian citizenship papers, indicating that he was a naturalized Canadian citizen. He did not produce a registration for the van.

The officer returned to his vehicle and ran a records check to ascertain the van's registration. He learned that it was registered to an insurance company in Massachusetts. Querze became more suspicious because he knew from police "intelligence" information that there had been some drug running/smuggling in the area, across the St. John River from Canada. The smuggling operations allegedly involved vehicles from Massachusetts and New York driven by individuals from Quebec. After checking the registration and learning that the van was registered to an insurance company, Querze returned to speak again with Nguyen. At this point Nguyen finally produced the registration. Querze questioned Nguyen about what he was doing in the area. Nguyen said a friend in Massachusetts owned the vehicle and had allowed him to drive another friend, David Rothman, to Fort Kent. Nguyen said he was in Boston on his honeymoon. He had just gotten married and his new wife remained behind in Boston. According to Nguyen, even though he was on his honeymoon, he agreed to bring Rothman to Fort Kent because he needed a ride. Nguyen had only known Rothman for two weeks.

Querze returned to his radio and tried to verify information about Rothman through sources at the University of Maine at Fort Kent, but they had no records pertaining to a David Rothman. About this time Officer Martin, a co-worker of Querze's, arrived at the scene. Martin spoke with Nguyen and was told that he had dropped his friend at the emergency room of the Fort Kent hospital. Querze was unable to obtain any information from the hospital regarding Rothman. Querze approached Nguyen for a third time and Nguyen told him that he had indeed dropped his friend off at the hospital, to be picked up by someone else. At this point Querze told Nguyen that his story just did not make sense and that he intended to call the border patrol agents to the scene. Querze and Martin had spent approximately five minutes with Nguyen before the call to border patrol and then they waited approximately twenty-five minutes for the agents to arrive.

During that twenty-five minute period the officers did not have much contact with Nguyen. Querze sat in his cruiser and used his night vision goggles to scan the area along the river. Clearly Nguyen was not free to leave. Querze reflected that the most direct route of travel from Fort Kent back to Boston would begin on Route 11, not Route 1, and that this location on the riverbank was approximately five to seven miles in the wrong direction from the normal route of travel from Fort Kent to Boston. When the border patrol agents arrived Querze did not question Nguyen, but he informed the agents of what he had learned. As the border patrol agents took over the investigation, Querze got out of his vehicle and walked along the riverbank looking for additional evidence.

Brian Perkins, Senior Agent with the Border Patrol was one of the agents who responded to the call for assistance. He proceeded directly to the Frenchville Road, taking approximately twenty-five minutes to get there. Officer Querze briefed him

concerning the information he and Officer Martin had learned from Nguyen. Perkins approached the van and spoke with Nguyen, asking him about his citizenship. Nguyen's Canadian certificate of naturalization had a child's picture on it, indicating that Nguyen had been a Canadian citizen for some years. Nguyen told Perkins the same story about being on his honeymoon in Boston and bringing his new friend to Fort Kent. He said he planned to return to Boston. He thought the property looked abandoned and would be a nice place to sleep for awhile. When Perkins asked Nguyen why he chose that particular place, Nguyen said he had been driving around for awhile and it looked like a good place. The officer pointed out that there was a rest area just a short way up the road. Perkins asked Nguyen if he would consent to a search of his van and Nguyen indicated that he would. The search produced over \$ 130,000.00 in currency. Perkins then took Nguyen into custody and transported him to the border patrol station. At the time Perkins received the call for assistance from Fort Kent he did not know the nature of the investigation and only learned of the details upon his arrival at the scene.

Discussion

In assessing the Fourth Amendment reasonableness of Officer Querze's conduct, I am guided by the principles set forth in United States v. Chhien:

Reasonable suspicion, as the term implies, requires more than a naked hunch that a particular person may be engaged in some illicit activity. By the same token, however, reasonable suspicion does not require either probable cause or evidence of a direct connection linking the suspect to the suspected crime. Reasonable suspicion, then, is an intermediate standard – and one that defies precise definition. Its existence must be determined case by case, and that determination entails broad-based consideration of all the attendant circumstances. In mulling those circumstances, an inquiring court must balance "the nature and quality of the intrusion on personal security against the importance of the governmental interests alleged to justify the intrusion." To keep this

balance true, the court must make a practical, commonsense judgment based on the idiosyncrasies of the case at hand.

266 F.3d 1, 6 (1st Cir. 2001) (citations omitted). In Chhien, an officer stopped a motor vehicle for following another vehicle too closely and displaying a blue tinted headlight in violation of state law. After that formal traffic stop the officer prepared a “warning” for the operator and engaged in a pat down search of Chhien, revealing \$2,000.00 in cash. His suspicions thus aroused, the officer further questioned Chhien and his passenger, all the while detaining them by the side of the road. Ultimately the officer’s detention led to the "plain view" discovery of crack cocaine. Id. at 4.

By way of contrast, the present case does not involve a motor vehicle traffic stop at all. Officer Querze pulled off the roadway onto the private driveway of an abandoned residence to investigate the presence of an unknown vehicle with out-of-state license plates parked in the yard late at night, in close proximity to the Canadian border. That he should deem it appropriate to investigate this circumstance seems to me to go without saying. A police officer simply approaching a car already stopped by the driver’s own volition does not infringe upon any protected Fourth Amendment interest. In the present case the fact that the officer pulled in the driveway blocking the only means of egress may indicate that a "seizure" occurred from the inception of the encounter, but certainly not the type or length of seizure that would transform an investigatory stop into a *de facto* arrest. United States v. Sharpe, 470 U.S. 675, 686-88 (1985) (identifying the standard to be considered in evaluating "whether a detention is too long in duration to be justified as an investigative stop" and determining that a twenty-minute detention for investigatory purposes was reasonable under the circumstances). The First Circuit Court of Appeals has observed that blocking a vehicle does not necessarily elevate an investigatory stop

into a *de facto* arrest requiring probable cause. United States v. Quinn, 815 F.2d 153, 156 (1st Cir. 1987).

In the present case Officer Querze had abundant suspicion to justify each of his measured responses. Any officer on routine patrol would be suspicious of a van parked late at night in the driveway of an abandoned residence. Once Querze ascertained that the sole occupant of the vehicle was a Canadian citizen from Quebec, his proximity to the St. John River took on heightened significance based upon other investigations by the authorities. When Nguyen responded to Querze's questions with a story that, if not preposterous, certainly strained credulity, it was logical for Querze to call upon the Border Patrol to assist in the investigation. Senior Agent Perkins arrived at the scene and within a very few moments obtained the defendant's consent to search the vehicle. Given what the officers knew about the location and drug smuggling activities, the discovery of the cash justified the further detention of Nguyen. Nothing prior to the discovery of the currency converted this legitimate investigatory stop into a full blown *de facto* arrest. The intrusion by the officers was neither threatening nor forceful. The law enforcement interests, including legitimate concerns about the security of the border between the United States and Canada, more than justified each step in this investigation.

Conclusion

Based upon the foregoing, I recommend that the court **DENY** the motion as it relates to the seizure of the evidence from defendant and the van and **GRANT** the motion as it relates to post-Miranda statements made by the defendant.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which *de novo* review by the district court is sought, together with a supporting memorandum, and request for oral argument before the district judge, if any is sought, within ten (10) days of being served with a copy thereof. A responsive memorandum and any request for oral argument before the district judge shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

/s/ Margaret J. Kravchuk
U.S. Magistrate Judge

Dated: February 15, 2005

Case title: USA v. NGUYEN

Magistrate judge case number: 1:04-mj-00064-MJK Date Filed: 12/07/2004

Assigned to: JUDGE JOHN A.
WOODCOCK, JR

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Pending Counts

31:5332.F - BULK CASH
SMUGGLING INTO OR OUT
OF THE UNITED STATES -
31:5332(a)(1)
(1)

21:841A=MD.F - POSSESSION
WITH INTENT TO
DISTRIBUTE MARIJUANA -
21:841(a)(1)
(2)

Disposition

Highest Offense Level (Opening)

Felony

Terminated Counts

None

Disposition

**Highest Offense Level
(Terminated)**

None

Complaints

31:5332.F - BULK CASH
SMUGGLING

Disposition

Plaintiff

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