

IN THE SUPREME COURT OF THE STATE OF NEVADA

BERNARDO GARFIAS-ESTRADA,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 37691

**FILED**

SEP 28 2001

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of trafficking in a controlled substance. The district court sentenced appellant to serve a prison term of 25 years with parole eligibility after 10 years.

Appellant contends that the district court erred in denying his motion to suppress methamphetamine evidence obtained in the course of a drug interdiction sweep on a bus in Winnemucca, Nevada. Specifically, appellant contends that the district court erred in denying his motion to suppress because: (1) the drug interdiction bus sweep was unconstitutional; and (2) appellant could not have voluntarily abandoned his bag containing the methamphetamine evidence because he was impermissibly seized at the time of the alleged abandonment. We address each of appellant's contentions in turn.

First, we conclude that the district court did not err in concluding that the warrantless, drug-interdiction bus sweep was constitutionally permissible. A warrant is not required, and a drug interdiction bus sweep is not considered a seizure within the purview of the Fourth Amendment, where citizen cooperation with the police is voluntary rather than mandatory.<sup>1</sup> In considering whether an individual's encounter with law enforcement was voluntary, our inquiry is whether a reasonable, innocent person would feel free to decline a request of an

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<sup>1</sup>See Stevenson v. State, 114 Nev. 674, 677-78, 961 P.2d 137, 139-40 (1998); see also Florida v. Bostick, 501 U.S. 429, 434-35 (1991).

officer and terminate the encounter.<sup>2</sup> The police officer's failure to inform a citizen that he has the right to refuse to answer questions or give consent to a search does not automatically render a bus sweep a seizure.<sup>3</sup> Rather, this court considers the totality of the circumstances of the police encounter to determine whether it was consensual.<sup>4</sup>

The record reveals ample evidence in support of a finding that the drug interdiction bus sweep was a voluntary encounter, rather than an unconstitutional seizure. A Nevada Highway Patrol Officer testified that the bus driver gave the police officers permission to enter the bus. Once on the bus, the officers announced that they were with the Narcotics Task Force, that they wanted to talk to the passengers for a couple of minutes, and that they would get them on their way as soon as possible. The police officers then proceeded to check the passengers' tickets and asked them if they had any luggage on the top of the bus. Notably, the law enforcement officers did not block the aisles in attempt to detain the passengers or prevent them from getting off the bus, and, in fact, several passengers actually got up and left the bus. The officers had no weapons displayed, were not in uniform, and testified that they used no physical force or threats to get the passengers to comply. The drug sweep lasted approximately five to ten minutes. Although the officers did not expressly announce that passenger cooperation was not mandatory, the totality of the circumstances indicate that the passengers were aware of the voluntary nature of the drug-interdiction bus sweep. Accordingly, the police officers did not seize the bus and did not violate of the Fourth Amendment.

Second, we conclude that the district court did not err in finding that appellant abandoned the bag because such abandonment did not occur in the context of improper police conduct or a Fourth Amendment violation. "A defendant who voluntarily abandons property has no standing to contest its search and seizure."<sup>5</sup> However,

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<sup>2</sup>See Bostick, 501 U.S. at 436-38.

<sup>3</sup>See U.S. v. Gonzales, 979 F.2d 711, 713 (9th Cir. 1992).

<sup>4</sup>See Bostick, 501 U.S. at 439; Stevenson, 114 Nev. at 677-78, 961 P.2d at 139-40.

<sup>5</sup>U.S. v. Stephens, 206 F.3d 914, 917 (9th Cir. 2000).

abandonment must be voluntary and will not be given effect where such abandonment is involuntary or arises in the context of an unlawful seizure.<sup>6</sup>

In the instant case, the record reveals that appellant's abandonment of the bag was voluntary and did not arise in the context of an unlawful seizure. The warrantless seizure of appellant that occurred subsequent to the initial bus sweep did not violate appellant's Fourth Amendment rights because law enforcement had reasonable suspicion to detain appellant for a brief period of time.<sup>7</sup> In fact, during the preceding bus sweep, appellant had shown them his ticket with the name Garfield crossed out and the name Garfias handwritten next to it. Thereafter, in the sweep of the luggage in the bus' undercarriage, the drug-sniffing dog alerted the police officers that there were controlled substances contained in a black suitcase with the name Garfield written on the luggage tag. This alert, as well as the officers' knowledge that appellant possessed a claim check with the name Garfield crossed out, gave the officers reasonable suspicion to reenter the bus and investigate whether appellant owned the suitcase.

Upon reentering the bus, Officer Michael Buxton testified that he and another officer approached appellant and asked him if he would exit the bus to speak with them. Buxton further testified that appellant voluntarily did so. After exiting the bus, the officers asked appellant if he owned the unopened bag at issue, and appellant said, "it was not his bag, he had no knowledge of the bag." There is no indication that law enforcement threatened appellant or otherwise coerced appellant into exiting the bus or into answering questions regarding the bag at issue. After appellant denied that he owned the bag, a police officer held up the bag so that all of the passengers on the bus could view it and asked if anyone owned or knew who owned the bag. There was no response. The officers then concluded that the bag was abandoned property and searched the bag.

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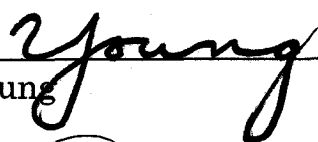
<sup>6</sup>See id.; see also U.S. v. Garzon, 119 F.3d 1446, 1451 (10th Cir. 1997).

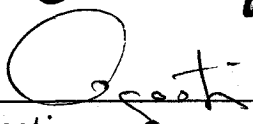
<sup>7</sup>See United States v. Sokolow, 490 U.S. 1, 7 (1989) (citing Terry v. Ohio, 392 U.S. 1 (1968)); see also United States v. Place, 462 U.S. 696 (1983).


Because law enforcement had reasonable suspicion at the time that they questioned appellant, his abandonment of his ownership right in the bag did not arise in the context of an unlawful seizure. Additionally, because there is no indication that law enforcement engaged in coercive or threatening tactics in investigating whether appellant owned the bag, appellant's abandonment of it was voluntary. Appellant's Fourth Amendment rights were not implicated when the officers conducted a warrantless search of the bag because appellant had, in the context of a lawful police investigation, abandoned the bag by telling officers that it was not his. Appellant therefore lacked standing to contest the seizure and subsequent search of bag, and the district court properly denied his motion to suppress.

Having considered appellant's contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Young

  
\_\_\_\_\_, J.  
Agosti

  
\_\_\_\_\_, J.  
Leavitt

cc: Hon. Richard Wagner, District Judge  
Attorney General  
Humboldt County District Attorney  
State Public Defender  
Humboldt County Clerk