

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

February 6, 2008

Charles R. Fulbruge III
Clerk

No. 07-40269

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

J. UBLESTER PINEDA,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
No. 1:05-CR-137-ALL

Before REAVLEY, SMITH, and BARKSDALE, Circuit Judges.

PER CURIAM:*

Ublester Pineda was convicted in a bench trial of possession with intent to distribute over 50 grams of methamphetamine and was sentenced to 90

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

months of imprisonment and five years of supervised release. He argues that the district court erred in denying his motion to suppress evidence of the methamphetamine that was obtained in a search of the vehicle he was driving. He contends that the search exceeded the scope of his consent when, after a manual search of the vehicle, he was detained pending the arrival of a canine unit to do a sniff test, during which the methamphetamine was discovered.

Pineda conceded in his motion to suppress that he consented to a search of his vehicle, and he did not contend then, nor does he on appeal, that he withdrew that consent or objected in any way either before or during the canine search. Furthermore, nothing in the record indicates that the officer conducting the search said or did anything that would have led Pineda to believe that he could not have withdrawn his consent. Accordingly, the district court did not err in determining that the search was within the scope of the consent. *United States v. McSween*, 53 F.3d 684, 688 (5th Cir. 1995).

AFFIRMED.