

FEB 10 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOSE ARMANDO RODRIGUEZ-
MARTINEZ,

Defendant - Appellant.

No. 08-50082

D.C. No. 3:06-cr-02572-JAH-1

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
John A. Houston, District Judge, Presiding

Submitted February 6, 2009**
Pasadena, California

Before: HALL, SILVERMAN and CALLAHAN, Circuit Judges.

Jose Armando Rodriguez-Martinez appeals from the district court's order denying his motion to suppress evidence obtained when Border Patrol agents stopped his vehicle using a tire deflation device. We have jurisdiction pursuant to

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

28 U.S.C. § 1291. We review the district court's denial of the suppression motion de novo, *United States v. Crawford*, 372 F.3d 1048, 1053 (9th Cir. 2004) (en banc), the factual findings for clear error, *Ornelas v. United States*, 517 U.S. 690, 699 (1996), and we affirm.

The Border Patrol agents had probable cause to stop Rodriguez-Martinez's vehicle after the agents saw him, in tandem with another vehicle, drive into the United States from Mexico at a spot other than a recognized border crossing point. That fact alone justifies the stop. *See United States v. Hernandez-Garcia*, 284 F.3d 1135, 1140 (9th Cir. 2002).

Moreover, the district court did not err in ruling that the agents' use of a tire deflation device to stop the vehicle was not "excessive force" or unreasonable under the circumstances. *See id*; *Scott v. Harris*, 550 U.S. 372, 127 S. Ct. 1769, 1778 (2007).

AFFIRMED.