

SEP 25 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JUAN GARCIA-SANDOVAL,

Defendant - Appellant.

No. 08-50408

D.C. No. 3:07-cr-01315-IEG-1

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Irma E. Gonzalez, Chief District Judge, Presiding

Argued and Submitted September 4, 2009
Pasadena, California

Before: FISHER and GOULD, Circuit Judges, and ENGLAND, District Judge.**

Juan Garcia-Sandoval appeals the district court's judgment entered on a conditional guilty plea given after denial of a motion to suppress. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

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

**The Honorable Morrison C. England, Jr., United States District Judge for the Eastern District of California, sitting by designation.

We review a district court's denial of a motion to suppress de novo and the district court's underlying factual findings for clear error. *United States v. Delgado*, 545 F.3d 1195, 1200 (9th Cir. 2008).

The district court properly concluded that Garcia-Sandoval was subject to an investigative stop rather than an arrest when officers took precautionary measures during a 4:00 a.m. stop of a vehicle that had been reported stolen. *See Allen v. City of Los Angeles*, 66 F.3d 1052, 1056-57 (9th Cir. 1995) (holding police use of "reasonable methods to protect themselves and others in potentially dangerous situations" does not convert investigative stop into an arrest). Garcia-Sandoval does not contest that police had reasonable suspicion sufficient to carry out a *Terry* stop. Therefore, the stop did not violate Garcia-Sandoval's Fourth Amendment rights.

The district court also properly determined that the officer who spoke with Garcia-Sandoval did not unduly prolong the detention by asking a series of questions concerning identity. *See United States v. Christian*, 356 F.3d 1103, 1106 (9th Cir. 2004) ("[D]etermining a suspect's identity is an important aspect of police authority under *Terry*." (citing *Michigan v. Summers*, 452 U.S. 692, 700 n.12 (1981))). Nor did the officer prolong the detention by asking a series of biographical questions after Garcia-Sandoval was unable to produce identification

or provide his social security or driver's license numbers. *See United States v. Turvin*, 517 F.3d 1097, 1101-02 (9th Cir. 2008) (holding "brief pause" to ask unrelated questions reasonable based on hunch not amounting to reasonable suspicion).

Finally, the district court found that Garcia-Sandoval was not in custody for *Miranda* purposes. Even assuming he were in custody, however, *see United States v. Craighead*, 539 F.3d 1073, 1082 (9th Cir. 2008), given the totality of the circumstances, any *Miranda* error was harmless, *see United States v. Brobst*, 558 F.3d 982, 996-97 (9th Cir. 2009) (holding *Miranda* error harmless when conviction based on separate, untainted statements).

AFFIRMED.