

U. S. v. SOKOLOW (1989)
Court Considers Drug Courier Profiles

Stopping Drug Suspects

SUMMARY:

By a vote of seven to two, the Court ruled that law enforcement officers may stop and briefly detain someone for investigative purposes simply because he or she appears to meet certain characteristics attributed to criminal behavior. The decision in the case of *U. S. v. Sokolow* (57 U.S.L.W. 4401) was handed down April 3, 1989.

BACKGROUND:

In July 1984, Andrew Sokolow went to the United Airlines ticket counter at Honolulu International Airport, where he purchased two round trip tickets for a flight to Miami, leaving later that day. He paid for the tickets with \$2,100 in cash taken from a large roll of \$20 bills he pulled from his pocket. He also gave the ticket agent his home phone number. The tickets were purchased in the names of "Andrew Krag" and "Janet Norian."

According to the court records, the ticket agent said that Sokolow appeared nervous. Sokolow, 25, was dressed in a black jumpsuit and wore gold jewelry. Neither he nor Janet Norian, who was accompanying him, checked any luggage.

After the two left for the flight, the ticket agent contacted the police. Upon further investigation, it was determined that Sokolow was using a different name from that listed for the phone number he gave the agent and that no "Andrew Krag" was listed in Hawaii. Investigators also found that he was to return to Hawaii in only three days (even though the round trip to and from Miami takes 20 hours) and would make stopovers in Denver and Los Angeles.

Sokolow was observed by Drug Enforcement Administration agents in Los Angeles, where he also was said to appear very nervous. After the couple returned to Honolulu, they were stopped by an agent at the airport as they were about to get into a cab. They were advised of their constitutional rights and had their carry-on luggage examined by a narcotics detector dog, who gave an alert indicating the presence of drugs. Officers then secured a search warrant, opened the bags, and found over 1,000 grams of cocaine in one of them.

Sokolow was indicted and, after the district court denied his motion to suppress the cocaine and other evidence, entered a conditional guilty plea to charges of possession of cocaine with intent to distribute. A federal appeals court overturned his plea, finding that the agents did not have a reasonable suspicion that he was involved in criminal activity to justify stopping him in Honolulu.

The appeals court used a two-part standard, saying that it was relevant to determine if Sokolow fit certain personal characteristics only if there also was evidence of ongoing criminal behavior. The presence of suspicious personal characteristics, by itself, was insufficient to justify a stop, the appeals panel said.

The U. S. government appealed to the Supreme Court, which heard arguments in the case on January 10, 1989.

ANALYSIS:

In 1968, in *Terry v. Ohio*, 392 U. S. 1, the Supreme Court held that police can stop and briefly detain a person if they have a “reasonable suspicion supported by articulable facts that criminal activity may be afoot.” Under this standard, they must have more than a hunch — they must have some specific facts to justify their suspicion.

Having this degree of reasonable suspicion is much less difficult to meet than the “probable cause” required before a search and seizure can be conducted under the Fourth Amendment.

Those who meet the reasonable suspicion standard can only be briefly detained, while those who have met the probable cause standard can be searched and any evidence found can be seized. However, as the Sokolow case shows, a brief detention can sometimes uncover sufficient information to justify a search warrant and a full-scale search.

Unfortunately, neither the reasonable suspicion standard nor the probable cause standard conform to a neat set of legal rules, so that an agent could look at the checklist and say that if people met certain criteria they could be stopped for reasonable suspicion, but if they met a different set of criteria they could be searched based on probable cause. Instead, this is an evolving area of the law based on a string of cases in the area.

In Sokolow, Chief Justice Rehnquist spoke for the majority. He noted that each of the acts Sokolow performed, taken by themselves, might have been totally innocent. However, when taken together, they warranted further investigation.

There was nothing illegal about Sokolow paying for his plane tickets with \$2,100 in cash, traveling to Miami — a city known for its drug activity — traveling a total of 20 hours to stay two days in Miami in July, appearing nervous, and not checking any luggage, Rehnquist said. But the totality of these events did raise suspicion.

In a 1983 case relied on by the majority — *Florida v. Royer*, 460 U. S. 491 — the justices held that totally innocent behavior may nevertheless provide a basis for reasonable suspicion of criminal activity.

But Sokolow's lawyers claimed he was stopped because he fit a so-called "drug courier profile," a standard used by agents since 1974 to identify drug smugglers based on certain attire and behavioral patterns.

If police were suspicious of him because he fit this mold, Sokolow's lawyers claimed, then police could have continued to watch him but they could not legally stop him without more concrete suspicion of actual criminal activity.

The majority stated that the fact that agents may have relied on criteria listed in the drug courier profile was irrelevant, since the factors they noted in Sokolow's behavior had evidentiary value whether or not they were found in the courier profile. The Court said the appropriate standard required police to look at the totality of the circumstances in deciding whether or not a stop can lawfully be conducted.

The Court also disposed of Sokolow's last contention. His lawyers said that the police erred in detaining him at the airport. They said police were obliged to use the "least obtrusive means" of verifying their suspicions and should have merely spoken with him rather than forcibly detaining him.

Not so, said the Court. Sokolow and his companion were about to get into a cab, and police were required to make a quick decision on how to proceed. To say after the fact that they made the wrong decision would hamper their ability to investigate and put courts in the position of second-guessing.

In upholding the stop of Sokolow, the Court gave law enforcement officials in Miami, Dallas, New York, and other key points of entry a valuable tool for controlling the entry of illegal drugs into the country.

Justices Marshall and Brennan, the dissenters in the case, noted that the concept of reasonable suspicion was derived from the standard of probable cause. It is to be used only for brief detentions aimed at stopping on-going crimes or preventing crimes that are imminent.

The dissenters claimed there simply was no evidence that Sokolow was in the process of committing a crime or was about to engage in criminal activity. He was stopped, they said, primarily because he appeared nervous, which in this era of proliferating plane crashes and near collisions could be a totally normal state of behavior.

EXCERPTS FROM THE MAJORITY DECISION:

"Any one of these factors is not by itself proof of any illegal conduct and is quite consistent with innocent travel. But we think taken together they amount to reasonable suspicion."

“The reasonableness of the officers’ decision to stop a suspect does not turn on the availability of less intrusive investigatory techniques. Such a rule would unduly hamper the police’s ability to make swift on-the-spot decisions . . . and it would require courts to indulge in unrealistic second-guessing.”

EXCERPTS FROM THE DISSENT:

Justice Marshall: “. . . Nothing about the characteristics shown by airport traveler Sokolow reasonably suggests that criminal activity is afoot. The majority’s hasty conclusion to the contrary serves only to indicate its willingness, when drug crimes or anti-drug policies are at issue, to give short shift to constitutional rights.”