

JUL 15 2010

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NOT FOR PUBLICATION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.

ANDRES HERNANDEZ-VARGAS,

Defendant - Appellant.

No. 09-30336

D.C. No. 3:08-cr-05775-RBL-1

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Ronald B. Leighton, District Judge, Presiding

Submitted July 13, 2010**
Seattle, Washington

Before: RYMER and N.R. SMITH, Circuit Judges, and WALTER, Senior District
Judge.***

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

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

*** The Honorable Donald E. Walter, Senior United States District Judge
for the Western District of Louisiana, sitting by designation.

Andres Hernandez-Vargas appeals his conviction for possession of methamphetamine with intent to distribute, in violation of 21 U.S.C. § 841(a)(1) and 841(b)(1)(A). We affirm the district court's denial of Hernandez-Vargas's motion to suppress.

1. At the time of the seizure, the officers had received a tip from a reliable confidential informant and had corroborated that tip; this constitutes probable cause. *United States v. Trejo-Zambrano*, 582 F.2d 460, 463 (9th Cir. 1978).
2. The officers did not exceed the scope of the search permissible, because the officers could search the vehicle "as thorough[ly] as a magistrate could authorize in a warrant particularly describing the place to be searched." *United States v. Ross*, 456 U.S. 798, 800 (1982) (internal quotation marks omitted).
3. Hernandez-Vargas's comments made to Officer Wheeler are admissible, because they were voluntarily made during a routine traffic stop. *Berkemer v. McCarty*, 468 U.S. 420, 438–41 (1984).

Assuming without deciding that Hernandez-Vargas's subsequent comments to Officer Burns and Agent Grimm were taken in violation of his rights under *Miranda v. Arizona*, 384 U.S. 436 (1966), we find such error "harmless beyond a reasonable doubt." *Chapman v. California*, 386 U.S. 18, 24 (1967); *see, e.g.,*

United States v. Butler, 249 F.3d 1094, 1101 (9th Cir. 2001) (holding improper admission of comments harmless because of overwhelming evidence of guilt.)

AFFIRMED.