

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,            )  
  )  
          Plaintiff,                    )  
  )  
                  v.                    ) Criminal Action No. 02-105-SLR  
  )  
LESLIE SALMOND,                    )  
  )  
          Defendant.                 )

**MEMORANDUM ORDER**

At Wilmington this 10th day of January, 2003, having reviewed the papers submitted;

IT IS ORDERED that defendant's request for an evidentiary hearing (D.I. 19) is granted, for the reasons that follow:

1. **Background.** Defendant Leslie Salmond moves to suppress all evidence and statements made as a result of his arrest for criminal trespass on or about July 18, 2002.<sup>1</sup> (D.I. 19, 21, 24) The government has filed its opposition. (D.I. 20, 22, 23) The court has jurisdiction pursuant to 18 U.S.C. § 3231. The sole issue is whether an evidentiary hearing is required to resolve the issues raised by defendant's motion to suppress.

2. **Standard of Review.** The United States Court of Appeals for the Third Circuit has concluded that a defendant moving to

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<sup>1</sup>Although defendant's moving papers refer to suppression of all evidence, the focus of his arguments is primarily on the post-arrest statements. (D.I. 19)

suppress evidence is not entitled to an evidentiary hearing unless his moving papers demonstrate a colorable claim for relief. See United States v. Voigt, 89 F.3d 1050, 1067 (3d Cir. 1996); United States v. Brink, 39 F.3d 419, 424 (3d Cir. 1994) (remanding for a hearing where defendant claimed facts that, if true, could implicate his Sixth Amendment rights). The Court has defined "colorable" as containing more than "bald-faced allegations of misconduct." Voigt at 1067. Moreover, there "must be issues of fact material to the resolution of the defendant's constitutional claim." Id.; see also, United States v. Sophie, 900 F.2d 1064, 1071 (7th Cir. 1990); United States v. Panitz, 907 F.2d 1267, 1273-74 (1st Cir. 1990). The decision to grant a hearing rests within the sound discretion of the trial court. See United States v. Howell, 231 F.3d 615, 620 (9th Cir. 2000), cert. denied, --- U.S. ----, 122 S.Ct. 76 (2001).

3. **Facts.** Both defendant and the government describe some of the events in issue in a relatively similar fashion. (D.I. 18, 20) On or about July 18, 2002, two state police officers were surveying the south parking lot of the Red Rose Inn, New Castle, Delaware.<sup>2</sup> They observed defendant and another man standing in front of a vehicle. Officer Crotty saw defendant

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<sup>2</sup>State Police Officers Crotty and Lewis. (D.I. 20)

lean forward toward the front driver's tire of the car.<sup>3</sup> After defendant and the other man left that area and proceeded toward the Red Rose motel, Officer Crotty approached the car and discovered a towel behind the driver's front tire. Wrapped inside the towel, Officer Crotty found a handgun. Subsequently, defendant was located in the motel and arrested. (D.I. 19, ¶1-5; D.I. 20 at 2 ¶1-2)

4. Defendant claims that there are material facts in dispute, related to his arrest for criminal trespass, which can only be resolved in an evidentiary hearing. Specifically, the police report states that defendant was arrested for criminal trespass because he was an unregistered guest at the motel.<sup>4</sup> Defendant indicates, however, that he was an invited guest of a registered motel guest and, therefore, the arrest was without probable cause. Defendant submits that all evidence, particularly his post-arrest statements, acquired pursuant to an

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<sup>3</sup>While both agree on this point, defendant adds that the officer observed the other man also lean forward in a similar manner. (D.I. 19 ¶3)

<sup>4</sup>Neither the government nor defendant has provided copies of the police report, Miranda waiver nor any other discovery which might illuminate the areas in dispute. Instead, both have relied upon the arguments of counsel to establish facts, which initially were clear but have grown more ambiguous. While the agreed upon and uncontested statements of counsel can establish facts for the court, the statements of counsel cannot be a substitute for an evidentiary hearing when there are material facts in dispute. See United States v. Smith, 495 F.2d 668, 670 (10th Cir. 1974). Cf. Radich v. Goode, 886 F.2d 1391, 1394-95 (3d Cir. 1989).

illegal arrest must be suppressed. Wong Sun v. United States, 371 U.S. 471 (1963). Moreover, defendant argues that once the issue of the admissibility of a statement is raised, it becomes the government's burden to demonstrate, by a preponderance of the evidence, that the statement was voluntary. See Lego v. Twomey, 404 U.S. 477, 489 (1972). Defendant claims there has been no "affirmative indication of an understanding or voluntary waiver of the entire litany of constitutional rights." (D.I. 19, ¶13)

5. The government counters that defendant has filed a boilerplate motion to suppress that neither establishes that probable cause was lacking for his arrest nor that any post-arrest statements were made in violation of defendant's Fifth Amendment Rights.<sup>5</sup> (D.I. 20) Further, the government asserts that it is irrelevant whether the officers incorrectly charged defendant with criminal trespass because there were sufficient facts from which to draw probable cause to arrest for a weapon offense. Specifically, the government argues that when Officer Crotty witnessed defendant's actions near the car's tire and thereafter discovered the gun, there was probable cause to arrest for concealment of a deadly weapon .<sup>6</sup> See United States v.

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<sup>5</sup>The government indicates that defendant was supplied with a copy of his signed Miranda rights waiver form as well as the videotaped police interrogation of him on October 11, 2002. (Id. at ¶2)

<sup>6</sup>Although the government urges the court to disregard defendant's "new" contention because it was submitted after the

Glasser, 750 F.2d 1197, 1205 (3d Cir. 1984). Since these events are uncontested, the government maintains that a hearing is unnecessary. See United States v. Hawkins, 811 F.2d 210, 213-25 (3d Cir. 1987). Finally, the government asserts that the burden to demonstrate that defendant waived his Miranda rights rests with the government only when a defendant presents a viable claim based on specific and definite facts that his rights were violated. Howell, 231 F.3d at 621.

6. **Analysis.** The United States Supreme Court has described probable cause as a "fluid concept" contingent on the evaluation of probabilities in specific situations that cannot be whittled down to a set of precise legal rules. Illinois v. Gates, 462 U.S. 213, 232 (1983). Instead, the Court has focused on whether arresting officers possessed reasonably trustworthy information that would compel a prudent person to believe that the defendant had committed or was committing a crime. Beck v. Ohio, 379 U.S. 89, 91 (1964); United States v. Glasser, 750 F.2d 1197, 1205 (3d Cir. 1984). While the Third Circuit has indicated that this standard requires more than mere suspicion, it does not mandate that the "officer have evidence sufficient to prove guilt beyond a reasonable doubt." Orsatti v. New Jersey State Police, 71 F.3d

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motion deadline and, ostensibly, incorrectly by reply brief, the court considers defendant's assertion an elaboration of the original argument and has considered all of the filings made by both sides.

480, 482-83 (3d Cir. 1995). Further, probable cause can be evident even in the absence of the actual observance of criminal conduct when "a prudent observant would reasonably infer that a defendant acted illegally." United States v. Burton, 288 F.3d 91, 98 (3d Cir. 2002).

7. On the record before the court, it is impossible to determine whether there was probable cause to effectuate an arrest for the crime charged. It is, likewise, difficult to evaluate the adequacy of the Miranda warnings and waiver as well as the voluntariness of defendant's post-arrest statements. Accordingly, the court finds there are facts material to the issues implicated by defendant to warrant an evidentiary hearing.

8. **Conclusion.** For the reasons stated above, an evidentiary hearing on defendant's motion to suppress (D.I. 19) is scheduled for **Monday, January 27, 2003** at **9:30 a.m.** in courtroom no. 6B, sixth floor federal building, 844 King Street, Wilmington, Delaware.

Sue L. Robinson  
United States District Judge