

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**

**I. INTRODUCTION**

Defendant Leslie Salmond moves to suppress all evidence and statements obtained as a result of his arrest on or about July 18, 2002. (D.I. 19) An evidentiary hearing was held on February 19, 2003. (D.I. 30) State Police Corporal William Crotty testified as a government witness and Lashawn Willing Salmond, defendant's wife, testified on his behalf. Post-hearing briefing is complete. (D.I. 31, 32, 34) The court has jurisdiction pursuant to 18 U.S.C. § 3231. For the reasons that follow, defendant's motion to suppress is denied.

**II. BACKGROUND**

Pursuant to Federal Rules of Criminal Procedure 12(e), the following constitutes the court's essential findings of fact. The government's one witness, Delaware State Police Corporal William Crotty, testified that he has been employed by the

Delaware State Police for approximately seven years. (D.I. 30 at 3) He is a member of the Governor's Task Force Unit which concentrates police activity in high crime areas and with repeat offenders. (Id.) According to Crotty, sometime prior to July 18, 2002, the owner of the Red Rose Inn ("Inn")<sup>1</sup> complained to Delaware State Police that illicit drug activity and prostitution were occurring around the Inn and was interfering with his business. (Id. at 45) The owner asked Delaware State Police to arrest unregistered guests, uninvited visitors or anyone at the Inn without a lawful purpose. (Id. at 16) Crotty believed this request was made because the area around the Inn was "plagued with criminal activity." (Id. at 16)

On July 18, 2002 at approximately 2:00 a.m., Crotty was conducting stationary surveillance from his parked car in the parking lot of the Inn. (Id. at 4,6) He was seated in the driver's seat of the vehicle. (Id. at 28) It was a warm and clear morning and the parking lot was well-illuminated. (Id. at 6-7) Crotty's car was about five parking spaces away from the only other vehicle in the parking lot, a red Mitsubishi Gallant ("Gallant"). (Id. at 25)

Crotty testified that after about five minutes of surveillance, his attention was directed to two men standing

---

<sup>1</sup>The Red Rose Inn is located at 1515 North DuPont Highway, New Castle County, Delaware.

along the rear alley near the Inn. (Id. at 4, 8, 25) The two men were talking. (Id. at 26) Crotty indicated the police were concerned with this area because it was "one of [the] hot areas where normal criminal activity occurs." (Id. at 4) After a few minutes, Crotty observed one man walk away and toward the Gallant. (Id. at 8) Crotty described this man as black, medium height, slender built and wearing a white T-shirt and dark colored pants.<sup>2</sup> (Id. at 8, 26) When defendant reached the front driver's wheel area of the Gallant, he bent down, awkwardly, keeping his back erect and squatting at the knees. (Id.) Contemporaneous with the bending, Crotty observed defendant moving his hands around his waistband and pulling up his shirt. (Id. at 9, 33) Defendant then removed something from his pants and placed it around the wheel area of the Gallant. (Id. at 33) Defendant was approximately 25 feet away from where Crotty was stationed. (Id. at 32) Crotty admitted that his view of defendant became partially obstructed by the Gallant when defendant bent down. (Id. at 29-30)

Crotty testified that defendant then walked back to where the unidentified man was still standing. (Id. at 9) After a brief conversation between them, the unidentified man walked over to the wheel area of the Gallant and bent down to examine the

---

<sup>2</sup>Crotty identified him as defendant. (Id. at 8) For purposes of this order, the man with defendant will be referenced as "unidentified man."

area. (Id.) The unidentified man's movements were brief and Crotty said he did not adjust his waistband or shirt in the same manner as defendant. (Id. at 10, 34) This man then returned to defendant and both left the area. (Id. at 10)

Because Crotty believed the behavior of the two men was unusual, he walked over to investigate. (Id. at 10) Using his flashlight for illumination, Crotty discovered a green bath towel underneath the Gallant's front driver's side wheel. (Id. at 10, 30) Wrapped inside the towel was a large black revolver with a wooden handle. (Id. at 10, 30) The handgun was loaded and had an obliterated serial number. (Id. at 10) Crotty then secured the gun in his car trunk and radioed information about the gun and the two men to other members of his surveillance team. (Id. at 11)

Crotty stated that Delaware Probation Officer Mark Lewis observed the two men walking down the rear alley near where Lewis was stationed. (Id.) Lewis said that the men were conversing with a female prostitute and walking toward the Inn. (Id. at 11, 14) Contemporaneously, other surveillance team members were searching for the two men in other areas around the Inn. (Id. at 14) By the time Lewis moved his vehicle to the area where the men and the prostitute were walking, the prostitute was exiting the Inn with another man. (Id.) Lewis recognized this man as a state probationer whose supervision required that he be home by

10:00 p.m. each night. Because Lewis concluded this probationer was in violation of the terms of his release, he stopped the couple and searched the man. Lewis discovered an Inn room key 244 in the probationer's possession. (Id.)

Crotty testified that "in accordance with [probation's] policy," he and Lewis responded to room 244 to conduct an administrative search. (Id. at 14-15, 37) A third individual responded to Lewis' knocks and invited them inside the room. (Id. at 15) On one of the double beds in the room, Crotty observed a female prostitute and the man who had unlocked the door. (Id. at 15) On the other bed, Crotty noticed the covers were pulled to the top of the bed over someone or something. (Id. at 15) Crotty removed the covers and discovered defendant and the unidentified man. (Id. at 15, 16, 40) Crotty questioned the occupants. Defendant denied knowing who rented the room and told Crotty that he was just hanging out in the room. (Id. at 16, 47, 49) Because the other three people also could not provide a valid reason for being in the room, Crotty placed all four suspects under arrest for criminal trespass and transported them to State Police Troop 2. (Id. at 17)

At the police station, Crotty advised defendant of his Miranda rights and defendant signed a waiver indicating that he understood and chose to waive these rights. (Id. at 17, 19; Gov't Ex. 3) Crotty interviewed defendant at about 2:30 a.m.

(Id. at 20) During the interview, defendant denied knowledge of the handgun. Defendant also told Crotty that he was an invited guest of the room 244 registered guest. (Id. at 45) Crotty questioned the others and obtained conflicting information. (Id. at 20, 21) Crotty then placed the three men in a room together, advised them to sort out their stories and left to observe them from a monitoring room. (Id. at 21)

Crotty testified that, almost immediately, the two men turned to defendant and urged him to admit that the handgun belonged to him. (Id. at 21) After about five minutes, Crotty returned to the room and defendant told him that the gun belonged to him and that he wished to accept responsibility for it. (Id. at 21) Crotty advised defendant that only the responsible person should accept responsibility for the gun. (Id. at 22) While defendant responded affirmatively that the gun was his, Crotty continued to ask specific questions about the gun in order to determine the veracity of defendant's statements. (Id.) After defendant answered the questions correctly, Crotty charged him with the weapons offense at bar.<sup>3</sup> The others were charged with criminal trespass. (Id. at 23) Defendant was not charged with criminal trespass because Crotty believed it was more appropriate

---

<sup>3</sup>The grand jury for the District of Delaware returned a one count indictment against defendant on August 27, 2002, charging with being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1) and § 924(a)(2). (D.I. 1)

to charge him with only the more serious weapons offense. (Id. at 22)

Defendant presented his wife, Lashawn Willing Salmond, as his only witness. (Id. at 51) Mrs. Salmond testified that she has been married to defendant since 1999 and was living with him at the time of his arrest. (Id. at 51) She recalled seeing him around 5:00 p.m. on July 18, 2002, just prior to his leaving for the evening. (Id. at 52) She said he was wearing a white T-shirt and blue windbreaker shorts made of a flimsy material with a string waistband. (Id.) She remembered clearly what he was wearing because she had taken out and ironed his clothes for that evening. (Id. at 53) She testified that defendant had known the room 244 registered guest for some time prior to the day in question. (Id. at 53-54)

### **III. STANDARD OF REVIEW**

It is indisputable that an arrest must be based on probable cause. United States v. Massac, 867 F.2d 174, 175 (3d Cir. 1989). Probable cause to arrest exists if the facts and totality of the circumstances known to the officer warrant a prudent person in similar circumstances to conclude that criminal activity is afoot. Henry v. United States, 361 U.S. 98 (1959); United States v. Belle, 593 F.2d 487, 497 (3d Cir. 1979). The Supreme Court has more recently cautioned that probable cause is an ambiguous legal standard. Illinois v. Gates, 462 U.S. 213,

232 (1983). Probable cause is a "fluid concept" contingent upon an evaluation of "probabilities in particular factual contexts" that are not easily reduced to a definite set of legal rules. Id. Although the 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 480, 482-83 (3d Cir. 1995). Probable cause can be found in the absence of the actual observance of criminal conduct as long as a prudent person would reasonably conclude that the defendant acted unlawfully. United States v. Burton, 288 F.3d 91, 98 (3d Cir. 2002). Moreover, it requires only a probability or a substantial chance of illegal conduct instead of an actual showing of such conduct. Id.

#### **IV. DISCUSSION**

Defendant contends that there was neither probable cause to arrest for criminal trespass nor carrying a concealed dangerous weapon. (D.I. 31, 34) Officer Crotty never witnessed defendant holding, removing nor placing the weapon near the Gallant's front tire. Defendant asserts that his unusual hand movements are insufficient to establish probable cause. See United States v. Carter, 1999 WL 1007044 (D. Del. 1999). Further, he argues that the testimony of his wife establishes that he was an invited guest in room 244.

The uncontradicted record reflects that Crotty saw defendant

remove something from his waistband and place it behind the Gallant's car tire. Although Crotty's view was partially obstructed by the Gallant, the court finds this insignificant in light of the other events witnessed by Crotty. Specifically, the court credits Crotty's testimony as credible and consistent. It is unrefuted that Crotty was conducting surveillance in a high crime area. It was a clear night and the area was well-lit. After defendant removed something from his pants, the unidentified man conversed with him and then walked over to see what defendant had placed behind the wheel. While the unidentified man's movements were similar to defendant's, Crotty did not see him remove anything from his waistband. This conduct suggests that the unidentified man was only visually inspecting the towel and not placing it under the tire. Immediately after the men left the area, Crotty walked over and discovered the gun. There was no intervening event suggesting removal and placement that could have broken the chain between defendant's movements and the discovery of the gun. Considering the totality of these circumstances, the court finds it reasonable for a prudent officer to infer that there was probable cause to arrest defendant for the weapons offense.<sup>4</sup>

Finding probable cause for the arrest related to the weapon,

---

<sup>4</sup>Having found probable cause present on the concealed weapons offense, it is unnecessary to examine the validity of the arrest for criminal trespass.

there is no basis to suppress the gun nor any statements provided by defendant as fruit of an unlawful search. Wong Sun v. United States, 371 U.S. 471 (1963). Defendant does not suggest that his Miranda waiver was invalid or the product of coercion. There was nothing presented to refute Crotty's testimony of the events surrounding the confession nor to refute the signed Miranda waiver presented to the court. (Gov't Ex. 3)

#### **IV. CONCLUSION**

Therefore, at Wilmington this 6th day of May, 2003;

IT IS ORDERED that:

1. Defendant's motion to suppress (D.I. 19) is denied.
2. The court will initiate and conduct a telephone

conference on **Monday, May 19, 2003 at 8:30 a.m.**

Sue L. Robinson  
United States District Judge