

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA, :
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 Plaintiff, :
 :
 :
 v. :
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 :
SALAHUDDIN MUHAMMAD, :
 :
 :
 Defendant. :

Criminal Action No. 02-128 JJF

Colm F. Connolly, Esquire, United States Attorney, Adam Safwat, Esquire, Assistant United States Attorney, UNITED STATES ATTORNEY'S OFFICE, DISTRICT OF DELAWARE, Wilmington, Delaware. Attorneys for Plaintiff.

Jan A.T. van Amerongen, Jr., Esquire of JAN A.T. VAN AMERONGEN, LLC, Wilmington, Delaware. Attorney for Defendant.

MEMORANDUM OPINION

April 7, 2004

Wilmington, Delaware

Farnan, District Judge.

Presently before the Court is the Motion To Suppress The Fruits Of The Seizure Of The Person filed by Defendant Salhuddin Muhammed. (D.I. 33.) For the reasons discussed, the Court will deny the Motion.

I. Nature and Stage of the Proceedings

The Defendant, Salahuddin Muhammed has been charged with knowing possession of a firearm in violation of 18 U.S.C. §§ 922(g) (1) and 924(a) (2). (D.I. 2.) The Defendant moves, pursuant to the Fourth Amendment of the United States Constitution, to suppress the evidence obtained as a result of the seizure of his person on August 20, 2002.

The Court held an evidentiary hearing on the motion on September 5, 2003, and ordered the parties to submit memoranda. This Memorandum Opinion constitutes the Court's findings of fact and conclusions of law.

II. Legal Standard on a Motion to Suppress

Rule 41 of the Federal Rules of Criminal Procedure provides that a "defendant may move to suppress evidence in the court where the trial will occur, as Rule 12 provides." Fed. R. Crim. P. 41. Rule 12 provides that suppression motions must be made prior to trial. Fed. R. Crim. P. 12. A defendant who files a motion to suppress ordinarily carries the burden of proof.

United States v. Acosta, 965 F.2d 1248, 1257 n. 9 (3d Cir. 1992)

(citing Rakas v. Illinois, 439 U.S. 128, 130 n. 1 (1978)).

III. Findings of Fact

1. On August 20, 2002, Deputy U.S. Marshal William David ("Marshal David") and Detective James Unger ("Detective Unger") of the New Castle County Police were attempting to locate the Defendant who was wanted on various charges, including reckless endangering in the first degree, cocaine trafficking, and possession of a firearm during the commission of a felony.

(Transcript of Hearing on Motion to Suppress ("Tr.") at 6.)

Marshal David was in possession of a warrant that had been issued for the Defendant's arrest. (Tr. at 37.)

2. In the first or second week of August, Marshal David and Detective Unger reviewed photographs of the Defendant in order to familiarize themselves with his appearance. (Tr. at 7-9.)

3. In their attempt to locate the Defendant, Marshal David and Detective Unger reviewed the Defendant's phone records which indicated that Defendant had recently placed several calls to Christiana Hospital. (Tr. at 12-13.)

4. In furtherance of their search for the Defendant, Marshal David and Detective Unger questioned Christiana Hospital employees who stated that someone resembling the photographs of Defendant recently visited a woman in the hospital's maternity ward. (Tr. at 13-14.) Marshal David and Detective Unger previously received information that Shania Hilton, an

acquaintance of the Defendant, had recently given birth. (Tr. at 40.)

5. Based on this information, Marshal David and Detective Unger proceeded to Ms. Hilton's residence where they conducted a surveillance. (Tr. at 14-15.) The surveillance conducted was during the nighttime. Marshal David and Detective Unger parked their vehicle underneath a streetlight approximately seventy-five yards away from Ms. Hilton's residence. (Tr. at 44, 46.)

6. Ms. Hilton's residence had a porch light that shined onto the driveway. Marshal David and Detective Unger observed a dark-colored Lexus in Ms. Hilton's driveway. The license plate on the Lexus identified it as the Lexus the Defendant had previously been stopped in by police officers. Marshal David was also informed by New Castle County Police that Defendant was known to operate the Lexus parked in Ms. Hilton's driveway. (Tr. at 15, 43-46.)

7. While conducting their surveillance, Marshal David and Detective Unger observed a male matching the Defendant's physical description exiting Ms. Hilton's house and entering the Lexus. Marshal David and Detective Unger could not see the face of the individual entering the Lexus; however, the Lexus subsequently exited the driveway and drove past Marshal David's and Detective Unger's vehicle, at which time they positively identified the driver as the Defendant. (Tr. at 16, 48.) The Lexus had a light

tint on the driver's side window and a four to five inch strip of tint on the front windshield. (Tr. at 64-65.)

8. Marshal David and Detective Unger followed the Lexus and observed the Defendant drive through a stop sign without stopping. (Tr. at 16.) Marshal David and Detective Unger followed the Lexus to a gas station where the Defendant stopped at a gas pump. (Tr. at 17.) While at the gas pump, the Defendant realized he was being followed and quickly left the area. Marshal David and Detective Unger attempted to follow the Defendant, but lost sight of the Lexus for approximately one minute. Marshal David and Detective Unger subsequently returned to the gas station and observed the Lexus once again at the gas station. (Tr. 17-18.) Marshal David and Detective Unger drove their vehicle, a Chevy Tahoe, within three feet of the front of the Lexus, shining their lights into the front windshield of the Lexus. At this point, the driver of the Lexus looked directly at Marshal David's and Detective Unger's vehicle, and they once again identified the driver as the Defendant. (Tr. 18, 55-56.)

9. Once the Defendant was confronted by Marshal David and Detective Unger, the Defendant quickly reversed through the gas station parking lot, attempting to escape from them. (Tr. at 18.) Marshal David rammed the Lexus twice with his vehicle, attempting to disable the Lexus. The Lexus was not disabled from Marshal David's efforts and sped onto incoming traffic and

through various roadways until stopping at a Burlington Coat Factory parking lot. At this point, the Defendant jumped out of the Lexus and ran into the store. (Tr. 21-23.)

10. As he was running through the store, the Defendant threw a gun toward the rear of the store. The police eventually recovered the firearm. (Tr. at 24.)

11. The Defendant ran to a stairway in the back of the store, ran up the stairs near the store manager's office and hid in the ceiling. (Tr. at 24-25.) Once police officers entered the store and were informed that the Defendant had been seen running toward the rear stairway, the police searched near the manager's office. During this search, the Defendant came crashing through the ceiling tiles onto the floor. (Tr. at 25.) The Defendant was arrested and the police found a gun magazine in the ceiling that was compatible for use with the firearm the Defendant threw when first entering the store. (Tr. at 25-26.)

12. The Defendant was charged with additional crimes from his alleged unlawful possession of a firearm and attempted escape from Marshal David and Detective Unger. (Tr. at 26.)

IV. Conclusions of Law

1. The Fourth Amendment to the United States Constitution provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . ." U.S. Const.

amend. IV. Unreasonable seizures have long been understood to include seizures of the person. California v. Hodari D., 499 U.S. 621, 624 (1991) (citing Henry v. United States, 361 U.S. 98, 100 (1959)).

2. The Court concludes that the Defendant's contention that he was seized in violation of the Fourth Amendment because Marshal David and Detective Unger did not have sufficient evidence to determine that the individual exiting Ms. Hilton's house was the Defendant is without merit. The Defendant cites no case, and the Court has found none, requiring law enforcement officers to indisputably identify a suspect who is named in an arrest warrant prior to executing that warrant.¹

3. The Court concludes that the circumstances in this case justified Marshal David's and Detective Unger's conclusion that it was the Defendant who was exiting Ms. Hilton's house. Marshal David's and Detective Unger's investigation revealed that the Defendant had made several calls to the hospital, that he had visited a woman who recently gave birth at the hospital's maternity ward, and that a friend of the Defendant, Ms. Hilton,

¹ The only case cited by the Defendant in support of his contention that he was "seized" in violation of the Fourth Amendment, Stansbury v. California, 511 U.S. 318 (1994), is not helpful. In Stansbury, the Supreme Court addressed whether a person being questioned by law enforcement is in custody for the purposes of Miranda v. Arizona, 384 U.S. 436 (1966). In the Court's view, Stansbury has no bearing on whether Marshal David and Detective Unger had a reasonable basis to conclude that the person exiting Ms. Hilton's residence was the Defendant.

had recently given birth. Further, Marshal David and Detective Unger previously reviewed photographs of the Defendant, familiarizing themselves with his appearance, and had information indicating that the Defendant actively used the Lexus parked in Ms. Hilton's driveway. Finally, Marshal David and Detective Unger were able to positively identify the Defendant when he drove past them on the street of Ms. Hilton's residence and in the gas station parking lot. On this record, the Court concludes that Marshal David and Detective Unger had a reasonable basis to believe the Defendant was the individual who exited Ms. Hilton's residence. Cf. United States v. Brown, 467 F.2d 419, 424 (D.C. Cir. 1972) (holding that law enforcement's entry into a third party's residence to execute a warrant was constitutional because the police had a reasonable basis to believe the individual named in the warrant was located therein).

4. In addition to the foregoing, the Court is not persuaded that the Defendant was "seized" for the purposes of the Fourth Amendment when Marshal David drove his Chevy Tahoe to, and stopped directly in front of, the Lexus at the gas station. Therefore, contrary to Defendant's contentions, there was no seizure prior to his arrest at the Burlington Coat Factory that could serve as the basis for a violation of his Fourth Amendment rights.

5. According to the Supreme Court, a "seizure" for Fourth

Amendment purposes occurs when there is: 1) physical force applied to the suspect to restrain movement; or 2) submission by the suspect to an officer's assertion of authority. Hodari D., 499 U.S. at 626. A show of authority by law enforcement to which a suspect does not yield is insufficient. Id.

6. In Hodari D., two officers were patrolling a high-crime area of Oakland, California, when they observed a group of individuals surrounding a car. Id. at 622. When the officers approached in their vehicle, the individuals fled. Id. at 623. One of the officers pursued one of the individuals, Hodari, on foot and when Hodari turned around and saw the officer giving chase, he threw an object later recovered and identified as a rock of crack cocaine. Id. Shortly thereafter, the officer tackled Hodari and placed him under arrest. Id.

7. In subsequent juvenile proceedings, Hodari moved to suppress the crack cocaine. The question before the Supreme Court was whether Hodari was "seized" within the meaning of the Fourth Amendment at the time he threw the drugs. Id.

8. The Supreme Court concluded that Hodari was not seized when he saw the officer chasing him because he did not submit to the officer's show of authority. Id. at 626. Accordingly, the Supreme Court held that the crack cocaine recovered by the police was not the fruit of any seizure, and therefore, denied Hodari's motion to exclude the evidence. Id. at 629.

9. The Court concludes that under the principles set forth in Hodari D., Marshal David's confrontation of the Defendant in the gas station parking lot does not constitute a seizure for Fourth Amendment purposes. At no point during Marshal David's and Detective Unger's confrontation of the Defendant at the gas station did the Defendant comply with their show of authority. To the contrary, the Defendant accelerated in reverse out of the gas station in an attempt to avoid arrest. Therefore, the Court concludes that prior to his fall through the ceiling at the Burlington Coat Factory and subsequent arrest, the Defendant was not "seized" for the purposes of the Fourth Amendment. Id. at 626.²

CONCLUSION

For the reasons discussed, the Motion Of Defendant Muhammed To Suppress The Fruits Of The Seizure Of The Person (D.I. 33) will be denied.

An appropriate Order will be entered.

² Further, because Marshal David and Detective Unger had not seized the Defendant prior to his running into the Burlington Coat Factory, the Court concludes that the firearm the Defendant threw when attempting to escape is not the fruit of any seizure. Id. at 629.

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ORDER

At Wilmington, this 7 day of April, 2004, for the reasons discussed in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED that the Motion Of Defendant Muhammed To Suppress The Fruits Of The Seizure Of The Person (D.I. 33) is **DENIED.**

 JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE