

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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JARREAU ANGELO AYERS, :
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 :
 Defendant. :

Criminal Action No. 00-60 JJF

Carl Schnee, Esquire, United States Attorney, and Shannon Thee Hanson, Esquire, Assistant United States Attorney, UNITED STATES ATTORNEY'S OFFICE, DISTRICT OF DELAWARE, Wilmington, Delaware. Attorneys for Plaintiff United States of America.

Penny Marshall, Esquire, Assistant Federal Public Defender, FEDERAL PUBLIC DEFENDER'S OFFICE, Wilmington, Delaware. Attorney for Defendant Jarreau Angelo Ayers.

MEMORANDUM OPINION

May 10, 2001
Wilmington, Delaware.

Farnan, District Judge.

Presently before the Court is Defendant Jarreau Angelo Ayers' ("Ayers") Motion to Suppress Statements and Tangible Evidence. (D.I. 17). For the reasons set forth below, the motion will be granted in part and denied in part.

I. Nature and Stage of the Proceedings

Defendant has been charged by indictment with being a felon in possession of a firearm, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2), and with knowing possession of a firearm with an obliterated serial number, in violation of 18 U.S.C. § 922(k) and 924(a)(1)(B). Defendant moves pursuant to Federal Rule of Criminal Procedure 12 and the Fourth Amendment of the United States Constitution to suppress any tangible evidence seized at the time of his arrest on June 10, 2000. Defendant further moves pursuant to the Fifth, Sixth and Fourteenth Amendments of the United States Constitution to suppress any and all statements taken from him on or about the time of his arrest.

The Court held a hearing on the motion on December 19, 2000, and ordered the parties to submit proposed findings of fact and conclusions of law. (D.I. 29, 30). This Memorandum Opinion sets forth the Court's findings of fact and conclusions of law regarding the instant Motion.

II. Legal Standard on a Motion to Suppress

Rule 41(f) of the Federal Rules of Criminal procedure provides "[a] motion to suppress evidence may be made in the court of the district of trial as provided in Rule 12." Fed. R. Crim. P. 41(f). Rule 12 provides that suppression motions should be made prior to trial. See Fed. R. Crim. P. 12(b)(3), (f).

Ordinarily, the burden of proof in a suppression motion is on the defendant. See United States v. Lewis, 40 F.3d 1325, 1333 (1st Cir. 1994). Where the arrest was made without a warrant, as is the case here, the burden shifts to the Government to demonstrate that the warrantless search was conducted pursuant to one of the exceptions to the warrant requirement. See United States v. Herrold, 962 F.2d 1131, 1137 (3d Cir. 1992). A motion to suppress presents a question of law to be determined by the trial judge. See United States v. Finefrock, 668 F.2d 1168, 1171 (10th Cir. 1982). The Court may resolve disputed questions of fact, and may consider hearsay. See United States v. Matlock, 415 U.S. 164, 173-75 (1974).

III. Findings Of Fact

1. At approximately 1:00 a.m. the morning of June 10, 2000, Wilmington Police Department Patrolmen Michael J. Duckett and Joseph O'Neill were en route to a "shots fired" complaint at 22nd and N. Pine Street in the City of Wilmington, Delaware. (Transcript of Hearing on Motion to Suppress ("Tr.") at 13). Officer O'Neill was driving the patrol car down 27th Street at approximately 25-30 miles per hour when the officers observed a

Pontiac Grand Am backing up at an accelerated speed towards the police car from the corner of 27th and Moore Streets. (Tr. at 14, 47, 96).

2. When the Grand Am was within approximately ten feet of the patrol car, Officer Duckett activated the emergency lights to make the driver aware of their presence and to avoid an accident. (Tr. at 14, 49, 69, 116).

3. From his position in the patrol car, Officer Duckett could see that the driver was a black male wearing a white T-shirt and that he appeared to be the only occupant of the car. (Tr. at 15, 51).

4. When the patrol car's lights were turned on, the Grand Am stopped backing up, and proceeded to go forward into drive, turning northbound on Moore Street at a high rate of speed. (Tr. at 14, 95). In response to this evasive maneuver, Officer Duckett attempted to stop the vehicle by activating the sirens as the patrol car followed the Grand Am north on Moore Street. (Tr. at 14, 15-16, 73-74, 117).

5. The officers notified Wilmington Police Communications by radio of their vehicle pursuit and gave a description of the vehicle at that time. (Tr. at 16).

6. The Grand Am continued northbound on Moore Street, crossing 28th Street. When the Grand Am reached 29th Street, the car turned eastbound on 29th Street and crossed over Market Street. The driver of the Grand Am disregarded stop signs at the intersections of 29th and Jessup Streets and 29th and Market Streets. (Tr. at 16-17, 76).

7. The patrol car remained approximately a half block to one block behind the Grand Am during the pursuit of the vehicle. (Tr. at 77, 97-98).

8. The Grand Am started to fishtail at the 100 block of E. 29th Street. The left rear tire of the vehicle struck the curb on the north side of the street, shearing it off. As a result, the Grand Am became airborne and hit a conversion van parked on the south side of the block. After hitting the conversion van, the car slid eastbound and hit another parked vehicle halfway down the block. The Grand Am came to rest in the middle of 29th Street. (Tr. at 18, 78-79).

9. Immediately after the accident, the officers observed the occupant of the Grand Am get out of the vehicle and start running eastbound on 29th Street. Before the patrol car had come to a full stop, Officer Duckett exited the patrol car and continued to chase the suspect on foot. During the foot pursuit, Officer Duckett informed Wilmington Police Communications of his position and a description of a person wearing a light T-shirt and dark shorts. (Tr. at 18-19).

10. After Officer Duckett exited the patrol car, Officer O'Neill tried to avoid hitting either the Grand Am or his partner by driving the patrol car onto a grassy area in the 100 block of

29th Street. The patrol car slid on the grass and struck a "Do Not Enter" sign. (Tr. at 62, 79).

11. The suspect continued to run from police, turning southbound on Jessup Street. As the suspect approached Carter Street, Officer Duckett lost sight of him and requested a police unit at the corner of Carter and Jessup Streets to aid in the pursuit. (Tr. at 19).

12. Upon observing a person come out of an alleyway that fit the description of the suspect, assisting Wilmington Police Department officers took the person into custody. Officer Duckett subsequently identified the man taken into custody as the person he had been chasing. This person was later identified as Jarreau Angelo Ayers. (Tr. at 19-20).

13. After identifying Ayers as the person he had been chasing, Officer Duckett went back to the Grand Am to look for owner registration and/or insurance information on the car. Officer O'Neill, who briefly joined in the foot pursuit after the police car accident, also went back to the accident scene. (Tr. at 30-31, 81).

14. Officer Duckett approached the Grand Am and looked into it through the passenger's side window. The streetlights illuminated the inside of the car. Officer Duckett saw a silver revolver, later identified as a Ruger Security Six .357, located on the driver's side floorboard in plain view. (Tr. at 31, 82).

15. Officer Duckett retrieved the gun from the Grand Am, determined that it was loaded, unloaded the firearm, and placed it and six .357 rounds in the trunk of the police car. Officer Duckett then searched the interior of the Grand Am, including the glovebox, but found no other items. (Tr. at 31-33; Government Hearing Exhibits 1, 2).

16. At the police station, Officer O'Neill took custody of the firearm and the six rounds of ammunition, tagged them as evidence, and placed them in the evidence locker. (Tr. at 82-85). Upon further examination, Officers Duckett and O'Neill determined that the serial number on the .357 Ruger revolver was previously scratched out and was unreadable. (Tr. at 34-35; Gov. Hearing Exh. 1).

17. At the scene of the accident, the police officers ran the license number of the Grand Am and learned that the car was registered to a Leonard Thornton who resided at 122 West 35th Street, Wilmington, Delaware. The car had not been reported stolen. (Tr. at 37).

18. Officers Duckett and O'Neill interviewed Ayers at the police station the night he was arrested. Only the officers and Ayers were present in the interview room. (Tr. at 40).

19. At the time of his interview, Ayers was wearing a pair of black shorts and no shirt. Ayers appeared to the officers to be functioning normally and he did not complain of

any injuries from the auto accident. (Tr. at 40-41, 87-88).

20. Officer Duckett never previously used a written form to inform defendants of their Miranda rights, and he did not use such a form with Ayers. (Tr. at 42, 54, 56, 68).

21. Officer O'Neill testified that Officer Duckett advised Mr. Ayers of his Miranda rights. Officer O'Neill specifically denied personally mirandizing Ayers. (Tr. at 89-90, 100, 114). Officer O'Neill testified that his notes, taken during Ayers' interview, and his independent recollection of that interview indicate that Officer Duckett mirandized Ayers. (Tr. at 89-90, 101, 114).

22. Officer O'Neill acknowledged reviewing Officer Duckett's report the next day after the incident. Officer Duckett's report states that Officer O'Neill advised Ayers of his Miranda rights. Officer O'Neill did not attempt to change the report after his review. (Tr. at 100, 109, 114-115).

23. Officer Duckett has no independent recollection of who mirandized Ayers, despite the fact that his report states that Officer O'Neill advised Ayers of his Miranda rights. Officer Duckett specifically indicated that he did not read Ayers his Miranda rights. (Tr. at 41-42). According to Officer Duckett, Officer O'Neill advised Ayers of his Miranda rights.

IV. Conclusions of Law

A. Legality of Arrest

1. The Fourth Amendment provides: "[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.

2. An officer may make a limited investigatory stop of a person when the officer has a reasonable suspicion, based on express facts taken together with rational inferences from those facts, that the person has engaged, or is about to engage, in criminal activity. See Terry v. Ohio, 392 U.S. 1, 21, 30 (1968). Such a stop can be justified by a motivation less than the probable cause necessary for arrest. See United States v. Brown, 159 F.3d 147, 149 (3d Cir. 1998).

3. Where the stop exceeds the limited investigatory purpose detailed in Terry v. Ohio and becomes confinement, such confinement must be justified by probable cause to believe that a crime has been committed. See Florida v. Royer, 460 U.S. 491, 501 (1983). The Court of Appeals for the Third Circuit has held that probable cause is "defined in terms of facts and circumstances sufficient to warrant a prudent man in believing that the [suspect] had committed or was committing an offense. This standard is meant to safeguard citizens from rash and

unreasonable interferences with privacy and to provide leeway for enforcing the law in the community's protection. We have stated that [t]he determination that probable cause exists for a warrantless arrest is fundamentally a factual analysis that must be performed by the officers at the scene. It is the function of the court to determine whether the objective facts available to the officers at the time of arrest were sufficient to justify a reasonable belief that an offense [had been] committed. A court must look at the totality of the circumstances and use a common sense approach to the issue of probable cause." Sharrar v. Felsing, 128 F.3d 810, 817-18 (3d Cir. 1997) (citations and internal quotations omitted).

4. In analyzing the officers' probable cause to stop Defendant, the Court must determine when Ayers was stopped, within the meaning of Fourth Amendment jurisprudence. The Court of Appeals for the Third Circuit held that "there can be no Fourth Amendment violation until a seizure occurs . . . [and] if the police make a show of authority and the suspect does not submit, there is no seizure." United States v. Valentine, 232 F.3d 350, 358 (3d Cir. 2000); see Brower v. County of Inyo, 489 U.S. 593, 596-97 (1989) (holding that seizure did not occur during 20 miles in which police car, with flashing lights, chased suspect, and instead only occurred when suspect's car crashed into a police blockade); United States v. Washington, 12 F.3d 1128, 1132 (D.C. Cir. 1994) (holding that defendant was not seized when he stopped his car at curb in response to police commands, but then sped away when officer approached on foot). Here, Ayers did not respond to the officers' attempts to stop the Grand Am through use of the patrol car's lights and sirens. Instead, Defendant eventually crashed the Grand Am into two parked cars, and then fled on foot. The Court concludes that Defendant Ayers was not "stopped" within the meaning of the Fourth Amendment prior to the time he was arrested in the alleyway by Wilmington Police Officers. Accordingly, the arrest or "seizure" of Ayers must be supported by adequate probable cause.

5. At the time Ayers' was seized, the officers were aware of the following facts:

a. Ayers was initially seen driving the Pontiac Grand Am backwards at a high rate of speed on E. 27th Street at approximately 1:00 a.m. on June 10, 2000. (Tr. at 14, 73, 93-94, 116).

b. Once the officers activated their emergency lights to avoid a collision, Ayers stopped backing up, went forward into drive, and drove away from the officers' patrol car. (Tr. at 14, 95).

c. During their pursuit of the Grand Am, the officers saw Ayers disregard several stop signs, in possible violation of 21 Del. C. § 4164. (Tr. at 16-17, 76).

d. Ayers did not respond to the officers' attempts to stop the Grand Am through use of the patrol car's lights and sirens. Instead, Defendant eventually crashed the Grand Am into two parked cars, in possible violation of 21 Del. C. §§ 4168 and 4169 (unreasonable speed; violating speed limits), and then fled on foot, in possible violation of 21 Del. C. § 4201(a). (Tr. at 14-17, 23-25, 73-74, 76-79, 117).

6. Because the officers observed and/or heard about Ayers' actions from the first sighting at 27th and Moore Streets, through the subsequent pursuit, the crash on E. 29th Street, and his flight from the scene, the Court concludes that the officers had sufficient probable cause to believe that "an offense had been or was being committed" by Ayers to justify his arrest. See Mosley v. Wilson, 102 F.3d 85, 94-95 (3d Cir. 1996). Accordingly, any "fruits" seized incident to the lawful arrest will not be suppressed.

7. Moreover, Officer Duckett's seizure of the .357 Ruger revolver falls within the "plain view" exception to the Fourth Amendment's warrant requirement. Under the "plain view" doctrine, objects falling in the "plain view" of an officer who has a right to be in a position to have that view are subject to seizure without a warrant. See New York v. Class, 475 U.S. 106 (1986) (evidence seen while looking for vehicle identification number); Texas v. Brown, 460 U.S. 730 (1983) (contraband on car seat in plain view of officer who had stopped car and asked for driver's license); Harris v. United States, 390 U.S. 234 (1968) (officer who opened door of impounded automobile and saw evidence in plain view properly seized it).

8. The plain view doctrine is limited, however, by the probable cause requirement, i.e., officers must have probable cause to believe that items in plain view are contraband before they may seize them. See Arizona v. Hicks, 480 U.S. 321 (1987).

9. Based on the facts recited above, the Court concludes that Officer Duckett had the right to be in the public thoroughfare looking into the Pontiac Grand Am that had just been involved in a police pursuit and accident. The Court also concludes that Officer Duckett had the requisite probable cause to believe that the gun was contraband based on the information before him at the time he saw the gun. Thus, the Court concludes that the .357 Ruger revolver was lawfully seized because it falls within the plain view exception to the Fourth Amendment's warrant requirement.

B. Statements Made By Ayers.

1. The Fifth Amendment provides "[n]o person ... shall be compelled in any criminal case to be a witness against himself...." U.S. Const. amend. V.

2. The Supreme Court, in Miranda v. Arizona, 384 U.S. 436, 444, 445 (1966), stated "[o]ur holding ... briefly stated ... is

this: the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination. By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. As for the procedural safeguards to be employed, unless other fully effective means are devised to inform accused persons of their right of silence and to assure a continuous opportunity to exercise it, the following measures are required. Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed. The defendant may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly and intelligently. If, however, he indicates in any manner and at any stage of the process that he wishes to consult with an attorney before speaking there can be no questioning. Likewise, if the individual is alone and indicates in any manner that he does not wish to be interrogated, the police may not question him."

3. The Court has held in the past that it is the Government's burden, in accord with Miranda and its progeny, to prove that waiver of privilege was both: (a) voluntary; and (b) knowing and intelligent. First, the statements must be given voluntarily in the sense that it was the product of a free and deliberate choice rather than the result of intimidation, coercion or deception. Second, the waiver must be knowing and intelligent in the sense that it is made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it. See United States v. Durham, 741 F. Supp. 498, 502 (D. Del. 1990).

4. The Court concludes that the Government fails to meet its burden of proving that Ayers' waiver was voluntary, knowing and intelligent. The officers gave directly conflicting testimony regarding the verbal Miranda warnings. Officer Duckett testified that Officer O'Neill advised Ayers of his Miranda rights; yet, Officer O'Neill testified that Officer Duckett advised Ayers of his Miranda rights. Even after reviewing Officer Duckett's report that indicated that Officer O'Neill mirandized Ayers, Officer O'Neill did not attempt to revise the report. In addition, the officers did not use a written waiver form to inform Ayers of his Miranda rights, nor did they write down in their notes any response by Ayers to any specific waiver questions. In light of the Government's failure to meet its burden of proof, the Court will suppress any statements made by Defendant Ayers on or about the time of his arrest.

V. Conclusion

For the reasons stated, Defendant's Motion to Suppress Statements and Tangible Evidence (D.I. 17) will be granted as it pertains to any statements made by Defendant on or about the time of his arrest and will be denied as it pertains to any tangible evidence seized at the time of his arrest.

An appropriate Order will be entered.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA, :
 :
 Plaintiff, :
 :
 v. :
 :
JARREAU ANGELO AYERS, :
 :
 Defendant. :

ORDER

At Wilmington, this 10 day of May 2001, for the reasons set forth in the Memorandum Opinion issued this date, IT IS HEREBY ORDERED that:

(1) Defendant Jarreau Angelo Ayers' Motion to Suppress Statements and Tangible Evidence (D.I. 17) is **GRANTED** as it pertains to any statements made by Defendant on or about the time of his arrest, and **DENIED** as it pertains to any tangible evidence seized at the time of his arrest;

(2) Trial is scheduled to commence in the above-captioned case on **Thursday, June 14, 2001**, in Courtroom No. 2A on the 2nd Floor, Boggs Federal Building, Wilmington, Delaware.

(3) Counsel shall submit to the Court an agreed upon set of jury instructions, and any proposed special voir dire questions to be asked of the jury panel, at least five days prior to trial.

UNITED STATES DISTRICT JUDGE