IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Criminal Action No. 01-37-JJF
	:	
MICHAEL LACY,	:	
	:	
Defendant.	:	

Colm F. Connolly, Esquire, United States Attorney, and Shannon Thee Hanson, Esquire, Assistant United States Attorney, UNITED STATES ATTORNEY'S OFFICE, DISTRICT OF DELAWARE, Wilmington, Delaware.
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Attorney for Defendant.

MEMORANDUM OPINION

May 10, 2002
Wilmington, Delaware.

FARNAN, District Judge.

Presently before the Court is Defendant Michael Lacy's "Motion To Suppress Tangible Evidence." (D.I. 15). For the reasons set forth below, the Motion will be denied in part and granted 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 one count of possession of a firearm with an obliterated serial number, in violation of 18 U.S.C. § 922(k) and 924(a)(1)(B). (D.I. 1). Defendant moves pursuant to Federal Rule of Criminal Procedure 12 and the Fourth Amendment of the United States Constitution to suppress any statements or tangible evidence seized at the time of his arrest on May 5, 2001, as well as any statements made at the time of his arrest on June 19, 2001.[1] (D.I. 15).

The Court held a hearing on the Motion on September 5, 2001, and ordered the parties to submit proposed findings of fact and

[1]Subsequent to the Hearing on September 5, 2001 regarding Defendant's Motion To Suppress Tangible Evidence (D.I.15), the United States conceded that it "cannot meet its burden regarding compliance with Miranda concerning Mr. Lacy's June 19, 2001 statements. Accordingly, the government will not seek to introduce these statements in its case-in-chief." (D.I. 26 at 18). In light of this concession, the Court will not set forth findings of fact and conclusions of law with regard to Mr. Lacy's June 19, 2001 statements and will grant the Defendant's Motion To Suppress Mr. Lacy's June 19, 2001 statements.

conclusions of law. (D.I. 25-27). This Memorandum Opinion sets forth the Court's findings of fact and conclusions of law regarding the evidence and statements obtained on May 5, 2001.

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 search 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).

III. FINDINGS OF FACT

1. On May 5, 2001, at approximately 2:40 a.m., Wilmington Police Department Patrolmen Christian Flagherty and James Edward Myers were on routine patrol in the 16th District of Wilmington, Delaware in the area of West Fifth and Jefferson Streets. (Transcript of Hearing on Motion To Suppress ("Tr.") at 4, 6).

2. Patrolman Flagherty, a three-year veteran of the police force, was acting as a Field Training Officer for Patrolman Myers, who had recently joined the force in August 2000. (Tr. at 5). As part of the field training, Patrolman Flagherty was demonstrating the importance of looking ahead and down the street when turning the patrol car onto a new street. (Tr. at 5). As a result, when Patrolman Flagherty made the westbound turn from the 500 block of West Fifth Street, he immediately looked ahead to the next block. (Tr. at 5-6, 21). As he looked ahead, Patrolman Flagherty observed a group of six to eight males standing at the southwest corner of Fifth and Jefferson Streets. (Tr. at 6, 27).

3. Although it was dark, the corner of Fifth and Jefferson Streets was lighted with two streetlights, making it possible for Patrolman Flagherty to clearly see the group. (Tr. at 7). All of the individuals in the group, except one, were wearing white t-shirts. (Tr. at 7). Therefore, Patrolman Flagherty's attention was immediately drawn to the one person in the group who was not wearing white. (Tr. at 7).

4. Patrolman Flagherty observed that the only member of the group in a dark colored shirt, later identified as Mr. Lacy, was holding a short, stubby bottle, with a black label, containing an off colored liquid he believed to be an alcoholic beverage. (Tr. at 8). Patrolman Flagherty believed the individual was in

violation of a city ordinance against open alcohol containers on city streets. (Tr. at 9,10, 42). See Code City of Wilmington, Delaware ch. 36, art. II, § 36-40 (2001) (Consumption of alcohol on streets prohibited).

5. Patrolman Flagherty pulled the patrol car up directly next to the group on the southwest corner of Fifth and Jefferson. (Tr. at 9). He pointed at the individual holding the bottle described in Paragraph 4 and told Patrolman Myers to "get him." (Tr. at 9).

6. As Patrolmen Flagherty and Myers got out of their car, Mr. Lacy was walking away. (Tr. at 56). As the Patrolmen got closer to Mr. Lacy, he turned around to face them and began walking backwards. (Tr. at 58). Patrolmen Flagherty and Myers pointed directly at Mr. Lacy and told him to put his hands on their patrol car. (Tr. at 10, 34, 57). Mr. Lacy turned away, threw down the bottle he was carrying, and began running, westbound on Fifth Street. (Tr. at 10, 43).

7. Both Patrolmen began chasing Mr. Lacy, yelling for him to stop. (Tr. at 11, 44, 59-60). Patrolman Flagherty was following Mr. Lacy on the sidewalk, while Patrolman Myers was to his left, running in the street. (Tr. at 11-12, 60).

8. As Mr. Lacy approached the intersection of Fourth and Madison Streets, Patrolman Flagherty noticed that Mr. Lacy placed his left hand in front of him, as if he were reaching for

something. (Tr. at 13-14). Patrolman Flagherty then saw Mr. Lacy stretch his arm and hand out to his left, and saw his hand hit an open passenger door of a parked car. Patrolman Flagherty then heard a "metal on metal bang sound," and believed that Mr. Lacy had dropped a gun. (Tr. at 13-14).

9. Patrolman Flagherty thought stopped pursuing Mr. Lacy to retrieve the discarded gun. (Tr. at 15). Using his flashlight, Patrolman Flagherty found the gun, a black Colt Z40 firearm, with the serial number scratched off. (Tr. at 16). Patrolman Flagherty picked up the gun, and removed the live round that was in the chamber. (Tr. at 16-17).

10. Although Patrolman Myers also heard a "metallic noise, [like] a piece of equipment hit the floor," as he was chasing Mr. Lacy, he did not see Mr. Lacy discard anything. (Tr. at 61, 67-68).

11. While Patrolman Flagherty retrieved the gun, Patrolman Myers continued pursing Mr. Lacy. (Tr. at 17, 30). Patrolman Myers eventually caught Mr. Lacy and arrested him. (Tr. at 17, 30).

12. Neither Patrolmen instructed Mr. Lacy as to his rights. (Tr. at 33, 34).

13. After arresting Mr. Lacy, Patrolman Flagherty transported Mr. Lacy to Wilmington Hospital for treatment of a laceration to the palm of his left hand. (Tr. at 17-18).

14. To identify Mr. Lacy, Patrolman Flagherty asked Mr. Lacy for his name and date of birth at the hospital. (Tr. at 18). Mr. Lacy responded that his name was Michael Stevenson and gave a false date of birth. (Tr. at 18). Patrolman Flagherty was unable to confirm the information Mr. Lacy gave him. (Tr. 18, 19). Patrolman Flagherty included these questions and Defendant's answers in his police report. (Tr. at 46-47).

15. Patrolman Flagherty did not ask Mr. Lacy any additional questions, but Mr. Lacy volunteered that if he (Mr. Lacy) had not been drunk the police would not have caught him. (Tr. at 20, 35). Mr. Lacy also stated that he had never been in trouble and that he was a "rough rider." (Tr. at 20). These statements were not included in Patrolman Flagherty's police report because the statements were not made in response to any questioning. (Tr. at 46-51)

16. At some point while at Wilmington Hospital, Mr. Lacy asked that he be provided legal counsel. (Tr. at 36, 49).

17. Following treatment at Wilmington Hospital, Mr. Lacy was transported to the Wilmington police station and was ultimately identified through a fingerprint check. (Tr. at 19).

IV. CONCLUSIONS OF LAW

A. Tangible Evidence Obtained On May 5, 2001.

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. The Supreme Court has held that a "seizure" under the Fourth Amendment (whether in the context of an arrest or an investigative stop) requires either (1) physical force applied by the police on the suspect; or (2) submission by the suspect to the officers' assertion of authority. California v. Hodari D., 499 U.S. 621, 626-627 (1991). A show of authority by the police to which the subject does not yield is insufficient. Id.

5. In Hodari, officers patrolling late at night in a high crime area of Oakland, California, came upon four to five youths gathered around a car. When the youths saw the police car approach, they took flight. The officers became suspicious and gave chase. Officer Pertoso followed defendant Hodari on foot, and

as he caught up to Hodari, Hodari discarded a small rock of cocaine. A moment later, Officer Pertoso tackled Hodari and placed him under arrest. Hodari D., 499 U.S. at 522-23.

6. Hodari moved to suppress the rock of cocaine, arguing that the officers did not have sufficient reasonable suspicion to stop him under Terry v. Ohio. 392 U.S. 1 (1968). The critical question was whether Hodari had been "seized" within the meaning of the Fourth Amendment at the time he dropped the drugs. The Supreme Court concluded that since Hodari did not comply with the officers' alleged show of authority, he was not "seized" for Fourth Amendment purposes until he was tackled. Hodari D., 499 U.S. at 629.

7. Thus, the fact that a police officer commands a fleeing individual to stop does not constitute a seizure unless and until the individual stops in accordance with the order. Id. Therefore, the cocaine that Hodari abandoned while he was running was not the fruit of a seizure, and his motion to suppress was denied. Id.

8. The facts of the present case are properly analyzed under the rule set forth by Hodari. In the present case, Patrolmen Flagherty and Myers were on routine patrol when Patrolman Flagherty saw a group of men standing together on a corner in a high crime neighborhood late at night. (Tr. at 4, 6, 27-28). Patrolman Flagherty's attention was drawn to Defendant who stood out from the group because of his dark colored clothing. (Tr. at 6-7).

9. Patrolman Flagherty saw that Defendant had a "stubby" bottle in his hand containing a bright, off-colored liquid, which Patrolman Flagherty believed, based on his years of experience, to be an alcoholic beverage. (Tr. at 8). Patrolman Flagherty had a reasonable belief that Defendant was committing the crime of possessing an open container of alcohol. (Tr. at 9). Code City of Wilmington, Delaware ch. 36, art. II, § 36-40 (2001) (Consumption of alcohol on streets prohibited). On these facts, the Court concludes that Patrolman Flagherty, based on his observations and the rational inferences from those observations, had a reasonable suspicion, sufficient to stop Mr. Lacy.

10. As soon as the officers parked their car and approached Defendant, with the intent to question Mr. Lacy regarding his activity, Mr. Lacy began to walk away from them. (Tr. at 9, 56). When the Patrolmen pointed Defendant out and told him to put his hands on the patrol car, Defendant turned around to face the officers and then began walking backwards. (Tr. at 10, 34, 57-58). Defendant then turned away, threw the bottle, and ran from the scene. (Tr. at 10, 43).

11. Both Patrolmen gave chase on foot, and Patrolman Flagherty testified that Defendant either threw or had a gun dislodged from his hand. (Tr. at 15). In either case, Defendant

abandoned the gun and continued running. (Tr. at 15). Patrolman Myers apprehended Defendant shortly thereafter. (Tr. at 62-63).

12. At no point prior to Defendant's abandonment of the gun did the officers apply physical force to him. (Tr. at 11, 59). At no point prior to Defendant abandoning the gun did he submit or in any way yield to the Patrolmen's show of authority. (Tr. at 11, 59). To the contrary, the chase was the direct product of Defendant's failure to yield to the Patrolmen's commands. Accordingly, just as in Hodari, Defendant was not "seized" for Fourth Amendment purposes at the time he abandoned the gun.

13. Defendant contends that he was seized before he fled (D.I. 25 at 6), attempting to contrast this situation with Hodari by stating that Defendant did not immediately flee upon seeing the police car. (Tr. at 10). Although Patrolman Flagherty testified that he did believed Defendant was not free to leave when he was told to put his hands on the patrol car, it is clear that Defendant did not submit to the Officers' "show of authority." Hodari D., 499 U.S. at 621.

14. The Third Circuit recently held that a suspect's momentary compliance with an officer's original order to stop is not sufficient to trigger a Fourth Amendment seizure. United States v. Valentine, 232 F.3d at 359. In United States v. Valentine, the Third Circuit explained, that a suspect has not

submitted to an officer's show of authority when the suspect pauses for a few moments and identifies himself, before eventually fleeing from the officers. Id. In the instant case, Defendant did not pause for a few moments, nor did he identify himself, and therefore, the Court concludes under the law of United States v. Valentine, that Defendant did not submit to the Officer's show of authority.

15. The Court concludes that because Defendant did not comply with the Officer's show of authority, he was not "seized" for Fourth Amendment purposes until he was apprehended and arrested by Patrolman Myers.

16. Therefore, because Defendant was not seized prior to his arrest, the firearm that Defendant abandoned prior to his arrest is not the fruit of a seizure, illegal or otherwise, and accordingly, Defendant's Motion To Suppress the firearm (D.I. 14) will be denied.

B. May 5, 2001 Arrest.

1. Because the Defendant was not seized within the meaning of the Fourth Amendment prior to the time he was arrested by Patrolman Myers, the arrest of Defendant must be supported by adequate probable cause.

2. At the time Defendant was arrested, Patrolman Myers was aware of the following facts:

a. Patrolman Myers and his partner, Patrolman Flagherty observed a group of six to eight males standing at the southwest corner of Fifth and Jefferson Streets at 2:40 in the morning, in a high crime neighborhood. (Tr. at 6, 27).

b. Patrolman Flagherty pointed to Defendant, and said to Patrolman Myers, "that individual has an open container of alcohol." (Tr. at 56).

c. As the Patrolmen got out of their car and approached Defendant, he turned around to face them and began walking backwards. (Tr. at 58). Patrolmen Flagherty and Myers pointed directly at Defendant, and told him to put his hands on their patrol car. (Tr. at 10, 34, 57).

d. Defendant then turned away, threw down the bottle, appearing like an alcoholic beverage, and began running westbound on Fifth Street. (Tr. at 10, 43).

e. Both Patrolmen immediately began chasing Defendant, yelling for him to stop; Defendant did not comply. (Tr. at 11, 44, 59-60).

f. Patrolman Myers heard a "metallic noise, [like] a piece of equipment hit the floor," as he was chasing Defendant. (Tr. at 61,67-68).

3. The Court concludes that Patrolman Myers had sufficient probable cause to believe that "an offense had been or was being committed" by Mr. Lacy to justify his arrest. See Mosley v. Wilson, 102 F.3d 85, 94-95 (3d Cir. 1996).

4. Accordingly, the Court concludes that Mr. Lacy's arrest was legal.

C. May 5, 2001 Statements.

1. On May 5, 2001, after his arrest, Defendant made the following statements at Wilmington Hospital: (1) Mr. Lacy told Patrolman Flagherty that his name was Michael Stevenson and gave a date of birth; (2) Mr. Lacy stated that if he had not been drunk the police would not have caught him; (3) Mr. Lacy stated he had never been in trouble; and (4) Mr. Lacy stated that he was a "rough rider." (Tr. at 18-20, 33-35).

2. The government may not use statements in its case-in-chief obtained as a result of custodial interrogation by law enforcement officers, unless the defendant has been advised of, and validly waived, his rights: (1) to remain silent, and that any statements can be used as evidence against him; and (2) to the presence of retained or appointed counsel during questioning. Miranda v. Arizona, 384 U.S. 436, 444 (1966) (hereinafter "Miranda warnings").

3. In addition to Miranda warnings, the government bears the burden of proving that the defendant's statements were voluntarily given. Colorado v. Connelly, 479 U.S. 157, 167 (1986). On this point, the Supreme Court has stated, "coercive police activity is a necessary predicate to the finding that a confession is not 'voluntary.'" Id.

4. The government, however, is not required to provide Miranda warnings before questions regarding biographical data, necessary to complete booking or pretrial services. See Pennsylvania v. Muniz, 496 U.S. 582, 600-02 (1990); see also United States v. Horton, 873 F.2d 180 (1989).

5. Furthermore, Miranda warnings are not required before a volunteered or spontaneous statement that is not made in response to questioning, even if the suspect is in custody. Miranda v. Arizona, 384 U.S. 436, 444 (1966).

6. Mr. Lacy was not given Miranda warnings prior to making the May 5, 2001 statements at issue. (D.I. 26 at 16).

7. However, the Court finds that Patrolman Flagherty's questions regarding Defendant's name and date of birth, were "routine booking type" questions designed to elicit biographical data, not incriminating responses. Therefore, because Miranda warnings do not apply to such biographical questions, Defendant's

false statements made in response to such questions will not be suppressed.

8. After the biographical questioning, the Patrolmen did not question Defendant further. (Tr. at 46-51). The Court finds that Defendant's other statements, about being drunk, never being in trouble before, and being a "rough rider" were made without any additional questioning from the police. Therefore, the Court concludes Defendant's statements at Wilmington Hospital were voluntary and not a product of custodial interrogation. Therefore, because Miranda does not apply to such voluntary, unsolicited statements, Defendant's statements will not be suppressed.

V. CONCLUSION

For the reasons stated, Defendant's "Motion To Suppress Tangible Evidence" (D.I. 15) will be denied in part and granted in part. An appropriate Order will be entered.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,	:	
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Plaintiff,	:	
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v.	:	Criminal Action No. 01-37-JJF
	:	
MICHAEL LACY,	:	
	:	
Defendant.	:	

O R D E R

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

(1) Defendant's Motion To Suppress Tangible Evidence (D.I. 15) seized on May 5, 2001 is **DENIED**.

(2) Defendant's Motion To Suppress (D.I. 15) Mr. Lacy's May 5, 2001 Statements is **DENIED**.

(3) Defendant's Motion To Suppress (D.I. 15) Mr. Lacy's June 19, 2001 Statements is **GRANTED** with respect to the Government's case-in-chief.

MAY 10, 2002
DATE

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE