

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA, :
 :
 Plaintiff, :
 :
 v. :
 :
 Criminal Action No. 03-38 JJF :
 :
SETH W. DAVIS, :
 :
 Defendant. :
 :

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

Eleni Kousoulis, Esquire of the FEDERAL PUBLIC DEFENDER'S OFFICE, Wilmington, Delaware.
Attorney for Defendant.

MEMORANDUM OPINION

October 3, 2003
Wilmington, Delaware.

FARNAN, District Judge

Pending before the Court is a Motion To Suppress Evidence And Statements (D.I. 12) filed by Seth Davis. This Memorandum Opinion shall constitute the Court's findings of fact and conclusions of law pursuant to the Federal Rules of Criminal Procedure. FED.R.CRIM.P. 12(d).

I. Findings of Fact

On January 23, 2003, Sun National Bank in Newark Delaware was robbed. Patrol Officer Michael Patrick Murphy was working about 15 to 20 minutes away from the bank at the time and heard a police broadcast about the robbery. The broadcast stated that a black male was seen fleeing the scene of the robbery in a white Ford Bronco with "Rodeo" written in black letters down its side. The broadcast also reported that the bank robber claimed to possess a gun during the robbery but did not display a gun and that a dye-pack exploded as the robber exited the bank. Officer Murphy testified he assumed the vehicle described was actually an Isuzu Rodeo and not a Ford Bronco because the vehicles are similar and Ford does not make a vehicle called a Rodeo.

After hearing the broadcast, Officer Murphy continued with his patrol activities and, while driving north on Route 7, saw a black male driving south in a white Isuzu Rodeo. The Rodeo had black letters down its side that said "Rodeo." Officer Murphy

turned his car to follow the Rodeo.

Officer Murphy testified he noticed that the Rodeo did not have a license plate. Officer Murphy stopped the vehicle and approached with his firearm out, believing the vehicle was the same as the one described in the robbery and because, without the license number of the vehicle, he could not immediately determine whether the car was stolen. Officer Murphy testified that, on approaching the car, he observed the defendant, Seth Davis, in the driver's seat with his hands in his lap. Mr. Davis was the only occupant of the car and had several 10 and 20 dollar bills in his lap.

Officer Murphy testified he asked Mr. Davis for his registration and insurance information and Mr. Davis responded that he didn't have it. Officer Murphy asked where Mr. Davis was coming from and Mr. Davis didn't respond. Officer Murphy then asked Mr. Davis to exit the vehicle.

Officer Murphy testified he asked Mr. Davis to exit because he believed the vehicle was the one described in the report of the robbery and because he needed Mr. Davis out of the car so that he could safely obtain the vehicle identification number from the vehicle's dashboard. According to Officer Murphy, checking this number was necessary to determine whether the car was stolen and required turning his back on Mr. Davis. As Mr. Davis exited the car, the money that had been on Mr. Davis's lap

fell out of the Rodeo and onto the ground. Officer Murphy, in order to ensure his safety when he checked the vehicle identification number, conducted a pat down of Mr. Davis.

While patting down Mr. Davis, Officer Murphy noticed a bulge in the front pocket of Mr. Davis's jacket. According to Officer Murphy, this bulge did not feel like a gun. Officer Murphy asked Mr. Davis what was inside the pocket and Mr. Davis said that it was money. Officer Murphy could see into the pocket from where he was standing and noticed that the contents were, in fact, money and that the money had "pinkish-purplish" dye on it. Officer Murphy testified he believed this to be dye from the dye-pack that exploded during the bank robbery.

Officer Murphy handcuffed Mr. Davis and placed him under arrest. Mr. Davis did not make any statements after being handcuffed.

II. Conclusions of Law

The Fourth Amendment right to be free from unreasonable searches and seizures is a personal right and a defendant must establish standing in order to assert that right. See United States v. Padilla, 508 U.S. 77, 81-82 (1993); Government of Virgin Islands v. Williams, 739 F.2d 936, 938 (3d Cir.1984). Ordinarily, once standing is established, a defendant who files a motion to suppress carries the burden of proof. See United States

v. Lewis, 40 F.3d 1325, 1333 (1st Cir.1994). However, where a search is conducted without a warrant, as is the case here, the burden shifts to the Government to demonstrate by a preponderance of the evidence 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). One such exception exists where a police officer has reasonable suspicion of criminal activity based on "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." Terry v. Ohio, 392 U.S. 1, 21 (1968).

The Government has established that Mr. Davis was driving without a license plate and, therefore, that probable cause existed to stop Mr. Davis. In addition to driving a vehicle without a license plate, Mr. Davis was unable to state where he had previously driven, and unable to produce registration or insurance information. The Court concludes that Officer Murphy possessed probable cause to order Mr. Davis to exit the car and to pat down Mr. Davis. Based on the similarity between Mr. Davis and the description of the bank robber, the similarity between the "Rodeo" driven by Mr. Davis and the "Rodeo" reportedly used in the bank robbery, the stained money that was in Mr. Davis's possession, and Mr. Davis's proximity in time and place to the scene of the crime, the Court concludes there was probable cause

for Officer Murphy to arrest Mr. Davis.

For the reasons discussed, the Defendant's Motion To Suppress will be denied.

An appropriate Order will be entered.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA, :
 :
 Plaintiff, :
 :
 v. :
 :
 Criminal Action No. 03-38 (JJF)
 :
SETH W. DAVIS, :
 :
 :
 Defendant. :
 :

ORDER

At Wilmington this 3rd day of October, 2003, for the reasons discussed in the Court's Memorandum Opinion issued this date.

IT IS HEREBY ORDERED that Defendant Seth Davis's Motion To Suppress Evidence And Statements (D.I. 12) is **DENIED**.

 JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE