

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) Criminal Action No. 10-00320-12-CR-W-DGK
)
 DESHAUN L. CERUTI,)
)
 Defendant.)

MOTION TO SUPPRESS EVIDENCE AND ARREST

COMES NOW THE ACCUSED, DESHAUN CERUTI, by and through counsel, and moves this Court for an order suppressing the evidence obtained by law enforcement in his arrest. In support thereof, Defendant shows:

FACTS

1. Law enforcement officers allege that Mr. Ceruti ordered the purchase of one ounce of crack cocaine and two pounds of marijuana by telephone from Juan Marron between May 19 and May 31, 2010.
2. On June 1, 2010, officers allege that they followed Mr. Ceruti from the home of Juan Marron to the home of Mr. Ceruti's mother.
3. Officers stopped Mr. Ceruti's sports utility vehicle in the driveway of his mother's home and told Mr. Ceruti that he was stopped because his vehicle was similar to one involved in a robbery the previous day.

4. Mr. Ceruti was told to exit his vehicle; he immediately was put on the ground and handcuffed.
5. Law enforcement officers searched the vehicle and allegedly found two pounds of marijuana and twenty-eight grams of cocaine in a plastic shopping bag in the vehicle.

ARGUMENTS AND AUTHORITIES

6. Controlled Substances

a. Officers Did not Obtain Consent to Search the Vehicle

In this case, law enforcement officers stopped the vehicle in which Mr. Ceruti was travelling. The officers told Mr. Ceruti to get out of the sports utility vehicle. Mr. Ceruti obliged. Immediately, Mr. Ceruti was placed on the ground and handcuffed. Officers claimed that a vehicle matching the description of the one in which Mr. Ceruti travelled had been involved in a robbery.

Officer did not obtain a search warrant to look in the vehicle. Officers did not request and did not obtain consent from Mr. Ceruti to search the vehicle in which he had been travelling. The officers violated Mr. Ceruti's Fourth Amendment constitutional right to be free from unreasonable search and seizure.

In *United States v. Jacquez*, 421 F.3d 338 (5th Cir. 2005) there was a report that a "red vehicle" had been involved in an earlier incident in the area fifteen minutes prior to the stop of Mr. Jacquez's vehicle by law enforcement officers. The Court concluded that the officers did

not provide reasonable suspicion to stop the defendant. In that case, Mr. Jacquez consented to the search and the Court determined that the subsequent consent to search was not valid.

Therefore, in review of federal caselaw, even if Mr. Ceruti had consented to the search, it would have been invalid as the initial stop was unjustified.

Additionally, law enforcement officers failed to contact the registered owner of the sports utility vehicle in order to obtain consent. Officers did not obtain consent and there is no exception to the warrant requirement presented by the evidence.

b. No Search Incident to Arrest

As stated above, Mr. Ceruti was handcuffed upon exiting the sports utility vehicle. He, being outside of the vehicle and restrained, could not reach evidence or any other thing contained within the sports utility vehicle.

The Eighth Circuit has addressed persons in Mr. Ceruti's position. In *United States v. Bloomfield*, 40 F.3d 910, 916 (8th Circ. 1994), the Court explained that in "determining the difference between an investigative stop and an arrest de facto", there are important factors to consider: "time, whether there were unnecessary delays and whether the suspect is handcuffed or confined to a police car". Mr. Ceruti asserts that he was placed under arrest upon exiting his vehicle.

Further, there is no evidence that Mr. Ceruti could reach his vehicle. *Chimel v. California*, 395 U.S. 752 (1969) states that since the basis for the search incident to arrest is a need to keep the defendant from reaching a weapon or eliminating evidence, the search by law enforcement

officers extends to the area within the defendant's immediate control. Mr. Ceruti had control of no area due to his restraint. Therefore, officers cannot use this exception to search the vehicle.

Therefore, law enforcement officers violated Mr. Ceruti's Fourth Amendment constitutional rights when they entered the sports utility vehicle and confiscated the alleged controlled substances charged by Indictment herein.

7. Arrest

Mr. Ceruti asserts that law enforcement officers did not have probable cause to arrest him on the stated charges and he should be released. The evidence of the arrest, at minimum, should be suppressed. The Government, through discovery, has submitted recordings of numerous telephone calls initiated and received by Juan Marron, a co-defendant in this Indictment. Based upon the documents provided through discovery, the Government seeks to introduce evidence at trial that Mr. Ceruti was engaged in conversations on or about May 4-5, 2010 and May 5-14, 2010, wherein Juan Marron attempted to cause David Montoya to sell Mr. Ceruti cocaine in amounts of one kilogram and one-half kilogram respectively. Moreover, the Government seeks to introduce evidence that Mr. Ceruti spoke to Juan Marron by telephone about his arrest and the officers' seizure of the alleged controlled substances.

An attempt is not a complete transaction and there is no evidence that law enforcement officers recovered cocaine from Mr. Ceruti even remotely close to these amounts.

Further, there is no evidence that 1) Mr. Ceruti ever spoke to Juan Marron by telephone and 2) that Mr. Ceruti spoke to Juan Marron by telephone in order to purchase controlled substances. The telephone recordings that have been supplied by the Government never refer to Mr. Ceruti

by name or otherwise. There is no name reference because there is no telephone call between Mr. Ceruti and Juan Marron between May 19 and May 31, 2010. The Government wants to infer that Mr. Ceruti spoke to Juan Marron by virtue that Mr. Ceruti later visited the home of Juan Marron; this is a huge leap. Even if the Court deems Mr. Ceruti spoke to Juan Marron by telephone, there is no language on the telephone calls from which a reasonable person would infer there was a pending drug transaction.

Without more information from the Government, Plaintiff should not be allowed to introduce the audio recordings as statements against Mr. Ceruti's interest and Mr. Ceruti's arrest should be suppressed.

WHEREFORE, Mr. Ceruti prays this Court will grant his motion to suppress with regard to the alleged controlled substances and arrest and will provide such further relief this Court deems fair and just.

Respectfully submitted,

/s/ Kelly M. Connor-Wilson

Kelly M. Connor-Wilson, KS-000362

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Motion was served on AUSA Bruce Rhoades and all defense attorneys of record by CM/ECF this 24th day of June, 2011.

/s/ Kelly M. Connor-Wilson

Kelly M. Connor-Wilson