

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 10-00162-06-CR-W-FJG
)	
NARICCO T. SCOTT,)	
)	
Defendant.)	

**GOVERNMENT’S RESPONSE IN OPPOSITION TO
DEFENDANT NARICCO SCOTT’S MOTION TO SUPPRESS
EVIDENCE SEIZED ON MAY 09, 2010**

The United States of America, by Beth Phillips, United States Attorney, and the undersigned Assistant United States Attorney, both for the Western District of Missouri, respectfully submits this response to the defendant’s Motion to Suppress, (Doc. No. 451) which was filed August 30, 2011.

I. FACTUAL BACKGROUND

On May 9, 2010, at 8:40 p.m., Kansas City, Missouri, Police Department (KCPD) Officers Grinik and Eickman were conducting traffic enforcement activity at a stop sign at 41st Street and Chestnut due to recent citizen complaints of drivers failing to stop at the intersection. The officers observed a white Dodge pick-up with Missouri license number 4DG-743, driven by Naricco Scott, fail to stop at the stop sign. The officers attempted to stop the Dodge truck but it drove away at a high rate of speed while committing additional stop sign violations. As the officers attempted to locate the truck in the area, they were almost struck by Scott at 44th and Montgall as he drove the wrong way down a one way street. Officer Eickman backed up to prevent the front of the truck from colliding with the driver’s side of the patrol car. As the truck turned towards the patrol vehicle at

the corner of the intersection, Officer Eickman was able to observe Naricco Scott in the driver's seat. Scott sped away and Eickman and Grinik began an area canvass to locate him.

While conducting the area canvas, the dispatcher notified the officers of a 911 call from a residence at 4414 Askew. The caller stated that a black male had parked a Dodge pick-up truck in his driveway. The caller further stated that the truck's driver was attempting to gain entry into the caller's residence. The caller stated that the black male driver told him that he was running from the police and that he wanted to enter the caller's house.

Officers Eickman and Grinik immediately drove to 4414 Askew and additional officers responded to assist. As Eickman and Grinik drove westbound on 44th Street past the house at 4401 Askew they saw Scott walking east on the south side of 44th Street in front of 4401 Askew. The officers tried to contact Scott but he ran away. Officer Grinik chased Scott on foot and eventually took him into custody at the rear of the house at 4401 Askew. Scott resisted arrest by refusing to place his hands behind his back for Officer Grinik. A records check revealed that Scott had an outstanding arrest warrant from Jackson County Circuit Court and four warrants from Kansas City Municipal Court. A search of Scott incident to arrest revealed the keys to the white Dodge pick-up truck officers had pursued that was now parked in the driveway of 4414 Askew.

Officers Rains and Madera contacted the 911 caller at 4414 Askew. The caller stated he heard the Dodge pick-up truck pull into his driveway. The caller then stated that a black male carrying a purple Crown Royal bag knocked on his door and offered money to be able to hide from the police in the caller's house.

Officers next searched for evidence in the area in front of 4401 Askew where they had initially seen Scott on foot. The officers located a purple Crown Royal bag lying on the ground next

to the fence at 4401 Askew. From the Crown Royal bag, officers recovered approximately 126 grams of crack cocaine, a digital scale and 9 live rounds of 9mm ammunition. Sergeant Bergquist observed a handgun on the roof of 4401 Askew while illuminating the roof with his flashlight. A consent to search was obtained from the owner of 4401 Askew. Officers retrieved the handgun from the roof of the residence. The handgun was identified as a loaded Glock pistol.

Prior to conducting an inventory search of the Dodge pick-up truck parked in the driveway of 4414 Askew, Officer Grinik observed what appeared to be a bag of crack cocaine in the truck's open center console. The truck was subsequently searched and Grinik conducted an inventory of its contents prior to towing pursuant to KCPD Towing and Protective Custody Procedure. Officer Grinik located approximately 7 grams of a green leafy substance and approximately 20 grams of crack cocaine from the middle console.

II. ARGUMENT

A. KCPD Officers had probable cause to arrest and search Scott.

An officer has probable cause to make a warrantless arrest when facts and circumstances are sufficient to lead a reasonable person to believe that the defendant has committed or is committing an offense. *United States v. Torres-Lona*, 491 F.3d 750, 755-56 (8th Cir. 2007) (citing *Beck v. Ohio*, 379 U.S. 89, 91 (1964)). There need only be a probability or substantial chance of criminal activity, rather than an actual showing of criminal activity. *Id.* at 756 (citing *United States v. Mendoza*, 421 F.3d 663, 667 (8th Cir. 2005)). Following a lawful arrest, "There is ample justification . . . for a search of the arrestee's person and the area 'within his immediate control' - construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence." *Chimel v. California*, 395 U.S. 752, 763 (1969).

In this case, Scott was identified as the individual who fled from Officers Grinik and Eickman during the traffic stop of a white Dodge pick-up with Missouri license number 4DG-743. During the pursuit, the officers were able to observe Scott as the driver of the truck when he nearly hit their patrol car and subsequently violated several more traffic laws.

Furthermore, after momentarily losing sight of Scott, Officers Grinik and Eickman were directed to the immediate area of 44th and Askew where a 911 caller had reported that an individual driving a white truck was attempting to gain entrance to his residence. As they approached the intersection of 44th and Askew, Eickman and Grinik observed Scott walking east on the south side of 44th Street in front of 4401 Askew. The officers recognized Scott as the driver of the Dodge pick-up and attempted to arrest him. After a brief foot chase, Scott was apprehended and found to be in possession of the keys to the pick-up truck that was parked in the driveway of 4414 Askew.

“Evidence of the flight of an accused after a crime has been committed is admissible in that it tends to prove consciousness of guilt.” *United States v. Eggleton*, 799 F.2d 378, 380-81 (8th Cir. 1986) (citing *United States v. Peltier*, 585 F.2d 314, 323 (8th Cir. 1978)).

“Deliberately furtive actions and flight at the approach of strangers or law officers are strong indicia of *mens rea*, and when coupled with specific knowledge on the part of the officer relating the suspect to the evidence of crime, they are proper factors to be considered in the decision to make an arrest.” *United States v. Slipka*, 735 F.2d 1064, 1066, (8th Cir. 1984) (quoting *United States v. Martinez-Gonzales*, 686 F.2d 93, 99-100 (2d Cir. 1982)); *United States v. Green*, 670 F.2d 1148, 1152 (D.C.Cir.1981).

Scott argues that rules established in *Terry* are applicable in this case. However, this was not a *Terry* stop. The search of Scott and his clothing was incident to an arrest based on officers’

observations of Scott's violation of numerous traffic laws and fleeing and eluding police. Moreover, should the principles established in *Terry* be applicable in this case, the officers would still have been justified in their search of his person because Scott matched the appearance of the individual whom they had seen violating the law. He also attempted to flee when the officers attempted to approach him on foot immediately following the vehicle pursuit. This gave the officers probable cause to believe Scott was involved in criminal activity beyond merely traffic violations and amounted to more than that of a hunch. Thus, the subsequent search of his person was justified and did not violate Scott's Fourth Amendment rights.

B. Scott lacks standing to challenge the seizure of items from 4401 Askew.

The Fourth Amendment protects “the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” U.S. Const. Amend. IV. “A person who is aggrieved by an illegal search and seizure only through the introduction of damaging evidence secured by a search of a third person's premises or property has not had any of his Fourth Amendment rights infringed.” *Rakas v. Illinois*, 439 U.S. 128, 134 (1978) (citing *Alderman v. United States*, 394 U.S. 165, 174 (1969)). Stated differently, “Fourth Amendment rights are personal and may not be asserted vicariously” *United States v. Gomez*, 16 F.3d 254, 256 (8th Cir. 1994) (citation omitted).

The burden rests on a defendant to prove that he has a legitimate expectation of privacy that was violated by the challenged search. *United States v. Muhammad*, 58 F.3d 353, 355 (8th Cir. 1995). In *Minnesota v. Carter*, 525 U.S. 83 (1998), the United States Supreme Court stated that “[i]n order to claim the protection of the Fourth Amendment, a defendant must demonstrate that he personally has an expectation of privacy in the place searched, and that his expectation is reasonable” *Id.* at 88. “If a defendant fails to prove a sufficiently close connection to the relevant places

or objects searched he has no standing to claim that they were searched or seized illegally.” *United States v. Stallings*, 28 F.3d 58, 60 (8th Cir. 1994) (quoting *Gomez*, 16 F.3d at 256). “The ownership, possession and/or control of the area searched or item seized is relevant to the analysis.” *United States v. Green*, 275 F.3d 694, 699 (8th Cir. 2001) (quoting *Gomez*, 16 F.3d at 256) .

In the present case, Scott has not established a subjective expectation of privacy for the property located at 4401 Askew. The firearm and Crown Royal bag were left abandoned in plain view. The firearm was recovered from the roof of the residence at 4401 Askew and the Crown Royal bag was resting on the ground along a chain link fence on the perimeter of the property. The owner of the property consented to allowing the officers to recover the Glock pistol. Scott cannot demonstrate a personal nor a socially recognized reasonable expectation of privacy in either location and accordingly, his motion must be denied. *See United States v. Schroeder*, 129 F.3d 439, 442 (8th Cir. 1997) (citations omitted).

C. **Evidence from Scott’s pick-up truck was lawfully recovered pursuant to the automobile exception and a vehicle inventory search.**

The automobile exception authorizes officers to search a vehicle without a warrant if they have probable cause to believe the vehicle contains evidence of criminal activity. *United States v. Hill*, 386 F.3d 855, 858 (8th Cir. 2004). Probable cause exists where there is a fair probability that contraband or evidence of a crime will be found in a particular place. *United States v. Donnelly*, 475 F.3d 946, 954 (8th Cir. 2007). Here, officers had been involved in a high-speed pursuit with Scott following his failure to stop at two stop signs and numerous other traffic violations. Scott also had outstanding warrants from Jackson County Circuit Court and Kansas City Municipal Court. After his arrest, the police located a loaded Glock pistol on the roof of the house that Scott ran behind. Additionally, a Crown Royal bag containing a large amount of crack cocaine and drug paraphernalia

was located along the fence of the property at 4401 Askew, the very location that officers had first seen Scott on foot. These facts justified the officers' belief that evidence of drug crimes would be discovered in the pick-up truck that Scott had been driving.

It remains settled law even after *Arizona v. Gant*, 556 U.S. 332 (2009), that an inventory search of an impounded vehicle also constitutes an exception to the Fourth Amendment's warrant requirement, provided that both the impoundment and the ensuing inventory search are based on standardized criteria that guides the exercise of police discretion. *United States v. Frasher*, 632 F.3d 450, 454 (8th Cir. 2010); *see, e.g., Florida v. Wells*, 495 U.S. 1, 3-5 (1990); *Colorado v. Bertine*, 479 U.S. 367, 371-76 (1987); *South Dakota v. Opperman*, 428 U.S. 364, 368-69 (1976).

"Accord[ing] deference to police care taking procedures designed to secure and protect vehicles and their contents within police custody," the Court has recognized that an inventory search is constitutionally reasonable as long as officers exercise their discretion whether or not to impound a vehicle, "according to standard criteria and on the basis of something other than suspicion of evidence of criminal activity." *Colorado v. Bertine*, 479 U.S. 367, 374-75 (1987).

"The police are not precluded from conducting inventory searches when they lawfully impound the vehicle of an individual that they also happen to suspect is involved in criminal activity." *See, e.g., United States v. Pappas*, 452 F.3d 767, 771 (8th Cir. 2006) (quoting *Marshall*, 986 F.2d 1171, 1175-76 (8th Cir.1993)). Additionally, an otherwise valid inventory search does not become impermissible simply because officers hope or expect to uncover incriminating evidence during the course of the search. To the contrary, the Eighth Circuit has routinely held that if an inventory search or impoundment would have been conducted anyway pursuant to established police inventory practice, and if the search is conducted in accordance with that standardized policy, the fact that an officer harbors an investigative motive as well does not invalidate the search. *See United*

States v. Hall, 497 F.3d 846, 851 (8th Cir. 2007) (Even if the officer suspects he might uncover evidence in a vehicle, the police can still tow a vehicle and inventory the contents, as long as the impoundment is otherwise valid.) (citing *United States v. Petty*, 367 F.3d 1009, 1013 (8th Cir. 2004)); *United States v. Garner*, 181 F.3d 988, 991-92 (8th Cir. 1999); *United States v. Wallace*, 102 F.3d 346, 348 (8th Cir. 1996).

In this case, Officer Grinik and Eikman observed Scott violating several traffic laws as he attempted to evade them during a traffic stop. Thus, his arrest was justified. The subsequent inventory search of the white Dodge pick-up that Scott had been driving was reasonable under the standards set forth in *United States v. Hall*. Pursuant to KCPD towing and protective custody procedure, “Vehicles will be towed when the vehicle is known or believed to have been used in the commission of a crime and has evidentiary value, unless it is processed at the scene and can be released to the owner/operator.” (Proc. Inst. A-1)¹.

The towing policy requires police officers to conduct a content inventory for the towing and protective custody of all vehicles. (Proc. Inst. 1). When conducting a content inventory, police officers are permitted to open any locked or closed compartments. (Proc. Inst. 1). The evidence of 7 grams of green leafy substance and approximately 20 grams of crack cocaine contained in from the vehicle’s center console should not be suppressed, as it was obtained in accordance with a reasonable inventory search and the automobile exception to the search warrant requirement.

¹The Kansas City Police Department policy manual regarding a vehicle inventory search is entitled “Procedural Instruction: Towing/Protective Custody of Vehicles and Contents”.

III. CONCLUSION

For the foregoing reasons, the United States respectfully requests that the Court deny the defendant's Motion to Suppress.

Respectfully submitted,

Beth Phillips
United States Attorney

By /s/ ***Brent Venneman***

Brent Venneman #17316
Assistant United States Attorney

Charles Evans Whittaker Courthouse
400 East Ninth Street, Fifth Floor
Kansas City, Missouri 64106
Telephone: (816) 426-2771

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was delivered on October 7, 2011, to the CM-ECF system of the United States District Court for the Western District of Missouri for electronic delivery to all counsel of record.

Laine C.Cardarella
Office of the Federal Public Defender
818 Grand, Suite 300
Kansas City, Missouri 64106

/s/ ***Brent Venneman***

Brent Venneman
Assistant United States Attorney