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

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

REPORT AND RECOMMENDATION TO DENY DEFENDANT'S MOTION TO SUPPRESS EVIDENCE

Before the court is defendant's motion to suppress evidence seized on May 9, 2010, on the ground that he was stopped without reasonable suspicion and was arrested without probable cause. I find that defendant's arrest was lawful, the seizure of the drugs from the truck was lawful, and the seizure of both the firearm and the Crown Royal Bag from 4401 Askew was lawful. Therefore, defendant's motion to suppress should be denied.

I. BACKGROUND

On May 9, 2010, police attempted to stop defendant for running a stop sign. He fled in a truck which he later abandoned. Police observed defendant walking near 4401 Askew, and he fled on foot as police approached. Officers apprehended defendant and recovered a firearm from the roof of 4401 Askew where defendant was arrested, a Crown Royal bag from the yard of 4401 Askew where defendant fled on foot, and illegal drugs from defendant's truck. The Crown Royal bag contained drugs, ammunition, and other contraband.

On May 10, 2010, a criminal complaint was filed charging defendant with possession with intent to distribute cocaine base, in violation of 21 U.S.C. §§ 841(a) and (b)(1)(A). On May 26, 2010, an indictment was returned charging defendant with the same drug charge. That same day a superseding indictment[1] was filed charging defendant with one count of

[1]The superseding indictment was sealed as it also named 21 other defendants.

conspiracy to distribute cocaine and crack cocaine, in violation of 21 U.S.C. § 846; two counts of distributing cocaine base, in violation of 21 U.S.C. §§ 841(a) and (B)(1)(C); one count of possession with intent to distribute cocaine base, in violation of 21 U.S.C. §§ 841(a) and (b)(1)(A); and one count of possessing a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. § 924(c).

On August 30, 2011, defendant filed the instant motion to suppress (document number 451). On October 7, 2011, the government filed a response (document number 480) arguing that police had probable cause to arrest defendant, that defendant lacks standing to challenge the seizure of items from 4401 Askew, that the search of defendant's truck was valid pursuant to the automobile exception and it was a lawful inventory search.

On October 13, 2011, I held a hearing on defendant's motion. The government appeared by Assistant United States Attorneys Brent Venneman and Sydney Sanders. The defendant was present, represented by Assistant Federal Public Defender Laine Cardarella. The following witnesses testified:

1. Master Patrolman Michael Eickmann, Kansas City, Missouri, Police Department
2. Officer Serge Grinik, Kansas City, Missouri, Police Department

In addition, the following exhibits were admitted:

P. Ex. 1	Photograph of the intersection of 41st and Chestnut
P. Ex. 2	Map of the area around 41st and Chestnut
P. Ex. 3-8	Photographs of 4401 Askew
P. Ex. 9-10	Photographs of 4414 Askew
P. Ex. 11	Photograph of Glock .22
P. Ex. 12	DVD of dashcam video[2]

[2]The video begins approximately five minutes before defendant first ran the stop sign (Tr. at 29).

P. Ex. 13 Kansas City, Missouri, Police Department Vehicle Towing and Inventory Policy

P. Ex. 14 Tow-in report

P. Ex. 15 Property report concerning green leafy substance

P. Ex. 16 Property report concerning white rocky substance

II. EVIDENCE

On the basis of the evidence presented at the suppression hearing, I submit the following findings of fact:

1. On May 9, 2010, at approximately 8:30 p.m. Officers Michael Eichmann and Serge Grinik were in a marked patrol car at 41st and Chestnut monitoring traffic due to a complaint received by the police department earlier that evening that drivers were running the stop sign (Tr. at 6-7, 40). Officer Eichmann observed a white Dodge truck run the stop sign by making a left turn without stopping (Tr. at 8-9). Officer Eichmann was 500 to 600 feet away when he observed the infraction and saw only one person in the truck (Tr. at 9, 31).

2. Officer Eichmann activated his lights and siren and attempted to pull over the truck (Tr. at 9). The driver of the truck fled southbound on Chestnut at a high rate of speed, running the stop signs at 43rd and Chestnut and at 45th and Chestnut (Tr. at 9). The truck turned left onto 45th Street, and at that point Officer Eichmann lost sight of the truck (Tr. at 9). Officer Eichmann turned left on 44th Street and turned off his lights and siren (Tr. at 10).

3. Officers Eichmann and Grinik were at the intersection of 44th and Montgall when they saw the truck coming northbound the wrong way on a one way street and with the headlights turned off (Tr. at 10, 30). The truck turned eastbound toward the patrol car (Tr. at 10, 43). Officer Eichmann backed up so that the truck would not hit him, and when the truck went by he and Officer Grinik saw the driver looking at them (Tr. at 11, 43). A street light at the intersection illuminated the cab of the truck as it passed the police car (Tr. at 12). The

driver of the truck was wearing a white ball cap, braids, and a dark coat (Tr. at 11, 30). The truck was less than a foot from the driver's side of the patrol car when it passed (Tr. at 12). Officer Eichmann was able to observe the driver of the truck who was in view for a couple seconds (Tr. at 12). There were no other people visible in the truck (Tr. at 13).

4. Officer Eichmann saw the truck head eastbound at a high rate of speed (Tr. at 12-13). Officer Eichmann again activated his lights and siren and attempted to stop the truck (Tr. at 13). The truck fled at a high rate of speed, leaving the road twice (Tr. at 13). The officers followed the truck but lost sight of it at 44th and Benton (Tr. at 13). Police department policy requires officers to abandon a high-speed chase unless the person is being pursued on a violent felony (Tr. at 34). The officers abandoned the pursuant and were canvassing the area looking for the truck when they received a disturbance call -- approximately two minutes after they lost sight of the truck (Tr. at 13-14, 34). The caller stated that a black male with a while hat and braids was knocking on the door at 4414 Askew after having arrived in a Dodge truck (Tr. at 14-15).

5. The officers were heading westbound on 44th Street toward 4414 Askew when they observed the driver of the truck, later identified as defendant, walking alone on the outside of the chainlink fence on the south side of 44th Street (Tr. at 15-16, 17, 30, 42, 44, 59). The man walking was wearing a white ball cap and had his hair in braids (Tr. at 30, 31, 42). The fence was at 4401 Askew, which is adjacent to 4414 Askew (Tr. at 14, 16). The patrol car had its lights and siren activated at that time (Tr. at 32). When they stopped the patrol car, defendant took off running eastbound (Tr. at 15, 18). Officer Grinik exited the patrol car and yelled, "Stop! Police!" (Tr. at 44). Defendant continued to run, and Officer Grinik chased him (Tr. at 43-44). Defendant ran from the north side of the house at 4401 Askew where he had been walking by the fence around to the back of the house (Tr. at 45).

Officer Eichmann had put his car in reverse and backed up in an attempt to cut off defendant (Tr. at 18). He stopped his car on the east side of the driveway of 4401 Askew (Tr. at 18). Defendant ran behind the two cars parked in the driveway of 4401 Askew (Tr. at 19). Officer Grinik chased defendant on foot until he caught up with him between the second and third windows of the house (Tr. at 19, 46; P. Ex. 8). Defendant was standing by the house when Officer Grinik turned the corner and saw him (Tr. at 46, 57). Officer Grinik had his gun drawn and he ordered defendant onto the ground several times (Tr. at 46). Officer Eichmann secured the patrol car and then ran in the direction defendant had run (Tr. at 19). He planned to arrest defendant for felony eluding and for driving through four stops signs and driving the wrong way on a one-way street (Tr. at 19). Officer Grinik and another officer were able to get defendant's hands behind his back and placed him in handcuffs (Tr. at 20, 47).

6. Officer Grinik conducted a search of defendant's person and located three cell phones, a picture identification from the State of Illinois which did not belong to defendant, keys to the Dodge truck, and approximately $1,500 in cash (Tr. at 47-48, 58).

7. Approximately three or four minutes after defendant was placed under arrest, Officer Eichmann recovered a Crown Royal bag near the chainlink fence where he had observed defendant when he fled (Tr. at 20). The Crown Royal bag was in perfect condition and was closed tightly (Tr. at 21). It was on the inside of the chainlink fence (Tr. at 35). There were no other items around the bag (Tr. at 21).

8. Officer Eichmann opened the bag and observed six clear plastic bags containing a large beige rock-like substance, a digital scale with residue, a weed grinder, approximately $80 in U.S. coins covered in white residue, and a bag of nine live rounds of ammunition (Tr. at 21). There was no identifying information on the Crown Royal bag (Tr. at 21).

9. After the bag was recovered, Sergeant Bergquist shined his flashlight "high and low" and discovered a Glock handgun on the roof of 4401 Askew (Tr. at 22, 38). The gun had one live round in the chamber and ten live rounds in the magazine (Tr. at 23). The gun was in a nylon holster (Tr. at 23). There were no other items found on the roof of 4401 Askew (Tr. at 23). Consent to search was obtained from the owner of the residence before the gun was recovered (Tr. at 23).

10. About 30 minutes after defendant was arrested, Officers Eichmann and Grinik observed the Dodge truck parked in front of 4414 Askew (Tr. at 23-24, 41). They could see that the lid on top of the middle console was missing (Tr. at 27, 48). Cocaine and marijuana were lying in plain view in the console (Tr. at 27, 48). Officer Grinik entered the truck and recovered the drugs (Tr. at 48). He searched the truck before it was towed (Tr. at 49).

III. PROBABLE CAUSE TO ARREST

In his pro se motion, defendant argues that his arrest was not supported by probable cause because (1) the officer did not have an independent positive identification of the person driving the white truck, and (2) there is no "physical nexus" tying defendant to the drugs in the truck or in the Crown Royal bag or to the gun found on the roof. Defendant's argument is without merit.

"[E]xcept in those situations in which there is at least articulable and reasonable suspicion that a motorist is unlicensed or that an automobile is not registered, or that either the vehicle or an occupant is otherwise *subject to seizure for violation of law*, stopping an automobile and detaining the driver in order to check his driver's license and the registration of the automobile are unreasonable under the Fourth Amendment." Delaware v. Prouse, 440 U.S. 648, 663 (1979) (emphasis added). In this case, police attempted to stop defendant because he was observed running stop signs and then fleeing from police.

Missouri Statute section 575.150 provides as follows:

1. A person commits the crime of resisting or interfering with arrest, detention, or stop if, knowing that a law enforcement officer is . . . attempting to lawfully detain or stop an individual or vehicle, or the person reasonably should know that a law enforcement officer is . . . attempting to lawfully detain or lawfully stop an individual or vehicle, for the purpose of preventing the officer from effecting the arrest, stop or detention, the person:

(1) Resists the arrest, stop or detention of such person by . . . fleeing from such officer; . . .

2. This section applies to:

(1) Arrests, stops, or detentions, with or without warrants;

(2) Arrests, stops, or detentions, for any crime, infraction, or ordinance violation; . . .

3. A person is presumed to be fleeing a vehicle stop if that person continues to operate a motor vehicle after that person has seen or should have seen clearly visible emergency lights or has heard or should have heard an audible signal emanating from the law enforcement vehicle pursuing that person.

* * * * *

Resisting an arrest, detention or stop by fleeing in such a manner that the person fleeing creates a substantial risk of serious physical injury or death to any person is a class D felony. . . .

Defendant was observed by officers driving at a high rate of speed through stop signs despite being chased by a marked police car with lights and siren activated. Defendant's actions constituted a felony under Missouri law. Contrary to defendant's argument, the police were not required to have "independent positive identification" before they were permitted to arrest defendant for resisting arrest.

To find probable cause to make a warrantless arrest, the facts and circumstances within the officers' knowledge must be sufficient to justify a reasonably prudent person's belief that the suspect has committed or is committing an offense. United States v. Roberson, 439 F.3d 934, 939 (8th Cir. 2006). There is no requirement that the police have proof beyond a reasonable doubt that the person arrested was the person who committed the crime observed. In United States v. Davidson, 527 F.3d 703, 705 (8th Cir. 2008) (reversed in part on

sentencing issue), an officer spotted a Ford Taurus that matched the description of a vehicle reported stolen the day before. The officer followed the vehicle, but quickly lost sight of it. A short time later, he saw the vehicle and a white man in a black hooded sweatshirt standing beside it. The man entered the car and drove away. The officer followed and activated his lights and siren. The driver sped away, and the officer found it abandoned a short time later. When he located the car, the officer saw one set of fresh footprints in the snow near the driver's side, leading away from the car. A witness came out of his house and told the officer that the driver ran in the same direction indicated by the footprints. The officer followed the trail of footprints and found a black hooded sweatshirt in the snow. A detective observed Davidson standing on a street corner a few blocks from where the officer found the abandoned car. When Davidson saw the detective, he ran back in the direction of the officer. Recognizing that he was surrounded, Davidson stopped and put up his hands. No one else was in the area at the time. Under these circumstances, the Eighth Circuit held:

> The circumstantial evidence of Davidson's whereabouts in relation to the footprints, together with the consciousness of guilt suggested by Davidson's flight from Detective Lewis, are sufficient to lead a reasonably prudent person to believe that Davidson had been driving the stolen vehicle. Accordingly, we conclude that there was probable cause for the arrest[.]

Id.

Similarly, in this case police observed a man driving a white Dodge truck. The man was seen running stop signs and he fled when police attempted to pull him over. A nearby resident reported that a man had parked a white Dodge truck in the driveway and tried to pay the resident money for allowing the man to hide from police in the residence. Police observed a man walking near where the resident had made the report, and the pedestrian looked like the same man who had been driving the car -- he was wearing the same kind of ball cap and had his hair in braids. Finally, he ran from police when they attempted to stop him, which suggests

consciousness of guilt.[3] These facts are sufficient to lead a reasonably prudent person to believe that defendant had been driving the white Dodge truck, and therefore police had probable cause to arrest him.

IV. SEARCH OF DEFENDANT'S TRUCK

Searches conducted without a warrant are per se unreasonable, subject to a few well-established exceptions. United States v. Williams, 616 F.3d 760, 764 (8th Cir. 2010). The government bears the burden of establishing that an exception to the warrant requirement applies. Coolidge v. New Hampshire, 403 U.S. 443, 455 (1971).

The plain-view exception to the Fourth Amendment's prohibition against unreasonable searches and seizures "'allows a police officer to seize evidence without a warrant when (1) the officer did not violate the Fourth Amendment in arriving at the place from which the evidence could be plainly viewed, (2) the object's incriminating character is immediately apparent, and (3) the officer has a lawful right of access to the object itself.'" United States v. Abumayyaleh, 530 F.3d 641, 648-49 (8th Cir. 2008) (quoting United States v. Hughes, 940 F.2d 1125, 1126-27 (8th Cir. 1991)). "Neither probable cause nor reasonable suspicion is necessary for an officer to look through a window (or open door) of a vehicle so long as he or she has a right to be in close proximity to the vehicle." United States v. Bynum, 508 F.3d 1134, 1137 (8th Cir. 2007).

In this case, the officers did not violate the Fourth Amendment in approaching the truck as it was in the driveway of a citizen who had called to report that a man driving that truck

[3]In his motion, defendant first claims he ran from police because he saw only the gun pointed at him and was fleeing to save his own life. He then notes that he was "simply a pedestrian walking down the street" and indeed the testimony is that defendant fled from police and then as the police car approached the area, defendant walked down the street with his head down. Defendant's explanation that he was running for his life is not plausible since the officer was in uniform and had exited from a marked patrol car with lights and siren activated. In any event, defendant chose not to testify; therefore, this "explanation" of his running from police is not in evidence.

was attempting to hide from police. The incriminating character of the drugs was immediately apparent to the officers. Defendant was then under arrest for possession of controlled substances (P. Ex. 14) and an investigative hold was placed on the vehicle (Tr. at 59).

The Supreme Court has recognized an exception to the warrant requirement for searching a vehicle lawfully impounded by law enforcement officers. Cady v. Dombrowski, 413 U.S. 433, 446-48 (1973). "Impoundment of a vehicle for the safety of the property and the public is a valid 'community caretaking' function of the police," which does not require a warrant. United States v. Petty, 367 F.3d 1009, 1011-12 (8th Cir. 2004) (quoting Cady v. Dombrowski, 413 U.S. at 441).

The impounding of a vehicle passes constitutional muster so long as the decision to impound is guided by a standard policy --even a policy that provides officers with discretion as to the proper course of action to take -- and the decision is made "on the basis of something other than suspicion of evidence of criminal activity." Colorado v. Bertine, 479 U.S. 367, 375 (1987). These parameters are designed "to ensure that impoundments and inventory searches are not merely a ruse for general rummaging in order to discover incriminating evidence." United States v. Petty, 367 F.3d at 1012 (internal quotation omitted).

Law enforcement may search a lawfully impounded vehicle to inventory its contents without obtaining a warrant. See South Dakota v. Opperman, 428 U.S. 364, 376 (1976); United States v. Pappas, 452 F.3d 767, 771 (8th Cir. 2006) ("An inventory search by police prior to the impoundment of a vehicle is generally a constitutionally reasonable search."). The reasonableness of an inventory search is determined based upon the totality of the circumstances. United States v. Beal, 430 F.3d 950, 954 (8th Cir. 2005). Those circumstances include whether the search was conducted according to standardized procedures. South Dakota v. Opperman, 428 U.S. at 376.

When the driver of a car is arrested, the police may impound the vehicle and conduct an inventory search. United States v. Stephens, 350 F.3d 778 (8th Cir. 2003); United States v. Navarrete-Barron, 192 F.3d 786, 791-92 (8th Cir. 1999). Additionally, the Kansas City, Missouri, Police Department's towing policy provides that when a hold is placed on the vehicle, an inventory search shall be done (P. Ex. 13). A hold was placed on the truck at the request of the Drug Enforcement Unit once illegal drugs were observed in plain view in the truck, and therefore officers were justified in conducting an inventory search.

V. CROWN ROYAL BAG/GUN

In his motion defendant argues only that these items were fruits of his unlawful arrest (by citing Wong Sun v. United States, 371 U.S. 471 (1963)) and states that there is "no physical nexus" tying him to the gun or the Crown Royal bag.

"When a person abandons his [property], his expectation of privacy in the property is so eroded that he no longer has standing to challenge a search of [the property] on Fourth Amendment grounds." United States v. Liu, 180 F.3d 957, 960 (8th Cir. 1999). A warrantless search of abandoned property does not involve a constitutional violation, because "any expectation of privacy in the item searched is forfeited upon its abandonment." United States v. Chandler, 197 F.3d 1198, 1200 (8th Cir. 1999) (quoting United States v. Tugwell, 125 F.3d 600, 602 (8th Cir. 1997)). The court must consider the totality of evidence when determining whether property has been abandoned, focusing on two principal factors: whether the defendant has claimed or denied ownership of the item, and whether the defendant physically relinquished it. United States v. James, 353 F.3d 606, 616 (8th Cir. 2003). The government bears the burden of showing property has been abandoned. Id.

In this case, defendant has not claimed ownership of the firearm or the Crown Royal bag either in his motion or through evidence. The government presented uncontroverted

evidence is that the Crown Royal bag was found in the yard of 4401 Askew on the opposite side of the chain link fence where defendant was walking and then fled from police, and the firearm was found on top of the house at 4401 Askew directly above where defendant was apprehended. Defendant has not claimed ownership of these items, and the uncontroverted evidence establishes that if he had been in possession of them he physically relinquished those items.

A defendant moving to suppress bears the burden of proving that he personally has an expectation of privacy in the place searched and that his expectation is reasonable. Minnesota v. Carter, 525 U.S. 83, 88 (1998); United States v. Muhammad, 58 F.3d 353, 355 (8th Cir. 1995); United States v. Kiser, 948 F.2d 418, 423 (8th Cir. 1991), cert. denied, 503 U.S. 983 (1992). 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. Gomez, 16 F.3d 254, 256 (8th Cir. 1994). To establish a legitimate expectation of privacy, the defendant must demonstrate both a subjective expectation of privacy and that the subjective expectation of privacy is one that society is prepared to recognize as objectively reasonable. United States v. Muhammad, 58 F.3d at 355; United States v. Stallings, 28 F.3d 58, 60 (8th Cir. 1994). Defendant has failed to present any evidence of an expectation of privacy in the areas searched by police to recover the firearm and the Crown Royal bag. Indeed, those items were in plain view and police obtained consent to search from the resident of 4401 Askew -- the residence from where both the firearm and the Crown Royal bag were recovered.

VI. CONCLUSION

Based on the above-stated findings of fact and the law as discussed in sections III through V, I find that defendant's arrest was lawful, the seizure of the drugs from the truck

was lawful, and the seizure of both the Crown Royal bag and the firearm from 4401 Askew was lawful. Therefore, it is

RECOMMENDED that the court, after making an independent review of the record and the applicable law, enter an order denying defendant's motion to suppress.

Counsel are advised that, pursuant to 28 U.S.C. § 636(b)(1), each has 14 days from the date of this report and recommendation to file and serve specific objections.

/s/ Robert E. Larsen
ROBERT E. LARSEN
United States Magistrate Judge

Kansas City, Missouri
January 5, 2012