

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

UNITED STATES OF AMERICA,)	
)	
Plaintiff)	
)	
v.)	CRIM No. 94-14-P-H
)	
AARON D. JAMISON and)	
EUGENE M. MARTIN,)	
)	
Defendants)	

RECOMMENDED DECISION ON MOTIONS TO SUPPRESS

The defendants are charged in a two-count superseding indictment with (1) conspiring to distribute and possess with intent to distribute substances containing cocaine and cocaine base in violation of 21 U.S.C. 846 and (2) possession with intent to distribute, and aiding and abetting the possession with intent to distribute, cocaine base in violation of 21 U.S.C. 841(a)(1) and 18 U.S.C. 2. Both defendants seek the suppression of physical evidence seized from a Ford Aerostar van at approximately 11:00 p.m. on January 25, 1994 in Berwick, Maine. In addition, defendant Martin seeks to suppress a statement he made during a telephone call on January 26, 1994 subsequent to his arrest. An evidentiary hearing was held on April 11, 1994.¹ I recommend that the following findings of fact be adopted and that the motions to suppress be denied.

¹ The record consists of the testimony of witnesses presented at the hearing as well as the original criminal complaint and supporting affidavit and transcribed testimony offered at the detention hearing held before me on February 3, 1994.

I. Proposed Findings of Fact

At approximately 9:00 p.m. on January 25, 1994 Roxanne Sullivan was arrested after selling crack cocaine to a Maine Drug Enforcement Agency ("MDEA") special agent working in an undercover capacity. Soon thereafter she agreed to cooperate with the authorities. In this regard, she disclosed that her source was "A" or Aaron, later identified as defendant Jamison, indicated that he worked with another individual nicknamed "Diesel", later identified as Martin, and revealed that Jamison concealed his supply of crack cocaine in a Pledge wax can with a false bottom.

In the presence of an MDEA agent Sullivan next placed a call to Jamison's pager from a pay phone near the Berwick Police Station and left a call-back message. The call was returned at approximately 10:30 p.m. by Martin. She asked to speak to "A" and within seconds Jamison was on the phone. She indicated she wanted to purchase another "eight ball" of crack cocaine, explaining that the customer to whom she sold the contraband she purchased earlier that evening from Jamison wanted more. When Jamison asked her if she could come to Portsmouth, New Hampshire, she made clear that she could not travel that far from home and needed to take delivery at the Berwick Cumberland Farms store location. Jamison told Sullivan to call him back in fifteen minutes, which she did. During the second conversation he agreed to meet Sullivan at Cumberland Farms in Berwick right away. Both telephone conversations were recorded.

At this point MDEA agents searched Sullivan and her vehicle for other contraband and currency, outfitted her with a body wire and supplied her with prerecorded bills. It was agreed that when Sullivan took delivery of the cocaine she would say "is this an eight ball," which would be the signal for the agents to make an arrest. An agent drove with her in her vehicle to Cumberland Farms. Other agents proceeded to the Cumberland Farms location and set up surveillance.

Within minutes of their arrival, the defendants pulled up in a Ford Aerostar van. Martin was in the driver's seat, Jamison in the front passenger-side bucket seat and one Harry Jamison in the middle of the third row of seats. Sullivan, continually under surveillance, approached and

entered the vehicle through a sliding door and sat in the center of the middle row. Harry Jamison moved to the third-row seat. Before the door closed an agent observed Jamison reach down as if to pick up something from the floor. Once inside, Sullivan discussed the quality of the crack she had received earlier, the fact that her customer was very pleased and wanted another "eight ball" and counted out loud the quantity of money she delivered to Jamison. Jamison, in turn, gave her two aluminum packets of crack cocaine. She then asked the magic question and the agents, who had been monitoring the transmitted and recorded conversation, descended on the vehicle. Approximately 15 minutes had elapsed from the time of the second telephone conversation with Jamison.

The defendants were promptly arrested and the vehicle was searched after the occupants were removed. One agent found what appeared to be a Pledge wax can on the floor of the van between the two front bucket seats. It had a false bottom which was removed revealing several plastic packages containing crack cocaine. Two hundred and fifty dollars in cash was also found on the floor in the same general location. The prerecorded bills furnished Sullivan by the agents were among the bills found.

At approximately 7:15 the next morning Martin placed a telephone call at the York County Jail in the presence of a corrections officer to a New York City number. The officer heard Martin tell the person to whom he was speaking that "the stuff is in the van" and indicated to that person that he or she should get there as soon as possible.

II. Legal Discussion

The defendants assert an absence of probable cause supporting their arrest or the suspicion of the presence of contraband in their vehicle and contend that the warrantless search of the van was therefore illegal. They seek suppression of the physical evidence seized from the van as fruits of the unlawful search. In addition, Martin asserts that statements made by him during the telephone conversation that took place at the York County Jail while he was being detained are fruits of his

unjustified arrest. The government, conceding the defendants' privacy interest in the vehicle and its contents, and therefore their standing to bring these motions, argues that probable cause supported both the arrest and the suspicion of contraband in the van.

“Probable cause to make an arrest exists where the facts and circumstances of which the arresting officer has knowledge would be sufficient to permit a reasonably prudent person, or one of reasonable caution, to conclude that an offense has been, will be, or is being committed.” *United States v. Cruz Jimenez*, 894 F.2d 1, 4 (1st Cir. 1990). “Probability is the touchstone [T]he government need not show the quantum of proof necessary to convict.” *United States v. Jorge*, 865 F.2d 6, 9 (1st Cir.), cert. denied, 490 U.S. 1027 (1989) (quoting *United States v. Miller*, 589 F.2d 1117, 1128 (1st Cir. 1978)) (emphasis in original).

The suppression hearing record leaves no doubt that probable cause existed for the defendants' arrest. Prior to their January 25, 1994 arrest, the drug agents had been informed by Sullivan that Jamison supplied her with the cocaine she sold to an undercover agent earlier the same evening and that he worked with Martin. With Sullivan's consent, telephone conversations with both defendants setting up a buy at Cumberland Farms were monitored and recorded. In this connection, the agents were aware of Jamison's stated preference to meet Sullivan in Portsmouth, New Hampshire and his apparent reluctance to return to Berwick and of his ultimate agreement to meet her at the Berwick Cumberland Farms store. They observed the defendants' van pull up to Cumberland Farms just when it was expected. They observed three men already in the van and Sullivan enter the van. Before the sliding door closed, an agent noticed that the person occupying the front passenger seat, who was later identified as Jamison, reached down as if to pick up something. Through a body wire transmission, the authorities heard Sullivan state that her customer liked the crack she had received earlier in the evening and that he wanted another “eight ball”, jargon in the drug trade for a certain quantity of crack. The agents also heard her count out money. Finally, she asked the question that she and the agents had agreed would be the signal to effect an arrest after she took delivery of the cocaine.

Because the agents had probable cause to arrest the defendants, they were entitled to search and seize the contents of the passenger compartment of the van incident thereto. *United States v. Maguire*, 918 F.2d 254, 259 (1st Cir. 1990), *cert. denied*, 111 S. Ct. 1421 (1991). They were also justified in searching the vehicle for concealed weapons or destructible contraband. *Id.*

The same facts and circumstances, plus the information the agents had received from Sullivan that Jamison concealed his cocaine supply in a false-bottom Pledge wax can, independently supported the warrantless search of the van inasmuch as they supplied the agents' reasonable cause to believe that the van contained contraband. *Id.* at 259-60; *see also California v. Acevedo*, 111 S. Ct. 1982, 1991 (1991).

Since Martin's asserted basis for the suppression of his telephone statements made on January 26, 1994 at the York County Jail is the claimed illegality of his arrest, that claim must fail as well.

III. Conclusion

For the foregoing reasons, I recommend that the defendants' motions to suppress be denied.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

Dated at Portland, Maine this 13th day of April, 1994.

David M. Cohen
United States Magistrate Judge