

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

UNITED STATES OF AMERICA,)
)
 Plaintiff)
)
 v.) Criminal No. 00-53-B
)
 DARREN JOHN HAWKINS,)
)
 Defendant)

**RECOMMENDED DECISION ON
DEFENDANT'S MOTION TO SUPPRESS**

Defendant Darren John Hawkins, a/k/a Darren Wood, filed a Motion to Suppress alleging that certain items, namely a peanut butter jar containing cocaine and methamphetamine, were taken from his person on July 14, 2000, in violation of the Fourth Amendment to the U.S. Constitution. An evidentiary hearing was held on November 16, 2000. I now recommend that the Court adopt my proposed findings of fact and **DENY** the Motion to Suppress.

Proposed Findings of Fact

On July 14, 2000, at approximately 12:35 p.m. Officer Christopher Hashey of the Old Town Police Department observed a motorcycle operating erratically on Stillwater Avenue in Old Town, Maine. Officer Hashey activated his emergency warning lights and attempted to stop the motorcycle, which was traveling in the opposite direction. By the time Hashey turned around and caught up with the motorcycle he observed it turn into a Dairy Queen ice cream parlor. Officer Hashey turned off his emergency lights and

turned into the Dairy Queen in an attempt to speak with the operator. As Hashey turned into the Dairy Queen he observed the motorcycle exit the Dairy Queen parking lot at a high rate of speed, driving over the lawn as it entered Stillwater Avenue, and began traveling west at a high rate of speed, estimated to be in excess of 75 m.p.h.

Officer Hashey activated his emergency lights and siren and pursued the motorcycle, which was accelerating away from Hashey. Hashey then lost sight of the motorcycle. About the time Hashey lost sight of the motorcycle, he observed a Coke truck partially in the roadway by Pembroke Drive and Stillwater Avenue, with the motorcycle nowhere in sight. As Hashey approached the Coke truck, he observed that the motorcycle had collided with the truck. The distance from the Dairy Queen to the scene of the accident was approximately one-quarter mile. Hashey observed that the defendant was lying unconscious face down on the pavement, partially under the motorcycle, which was partially under the truck. The above-referenced facts have been stipulated by the parties. Additionally, I propose the following facts based on testimony presented at the evidentiary hearing.

Officer Hashey remained at the scene with the unconscious individual later identified as the Defendant. Hashey immobilized Defendant's neck and waited for rescue to arrive. Once the rescue ambulance did arrive, Defendant was quickly put in the ambulance. In the process, Defendant's helmet was removed and Officer Hashey recognized him as someone the officer had dealt with on prior occasions. After Defendant was placed in the ambulance, the ambulance attendant, Andrew Fish, called Hashey into the ambulance where Hashey observed a baggy of what appeared to be marijuana attached to Defendant's leg. Hashey took custody of the marijuana and once

the ambulance was in route to Bangor, he radioed the Bangor Police Department and requested that an officer from that Department take a blood kit to the hospital to obtain a blood alcohol test from the Defendant.

Officer Hashey did not formally place Defendant under arrest for eluding an officer or for any other traffic charge or drug violation at that time. The officer believed that Defendant was close to death, based upon what he had observed at the scene. Hashey waited more than a week, until Defendant's discharge from the hospital and transfer to the Penobscot County Jail pursuant to Federal charges, before he caused the citations to issue for the state charges. Hashey did not take Defendant into custody or travel with him to the hospital because he was satisfied that Defendant did not pose a risk of flight or danger. Likewise, he did not rush to file the state criminal charges because he was aware that Defendant was in Federal custody.

After Defendant was placed in the care of the ambulance crew, Andrew Fish was primarily responsible for him. Fish attended to medical problems that required cutting portions of Defendant's clothing that had become saturated with gasoline as a result of the motor vehicle accident. In the course of that activity, Fish discovered the baggy of marijuana previously described and turned it over to Hashey. Fish agreed with Hashey's assessment that Defendant appeared close to death and he felt that it was critical to get him to the hospital as quickly as possible. He felt that there was no delay occasioned by turning the baggy over to Hashey at the scene and it is his common practice to turn over drugs or weapons found on an accident victim to the nearest law enforcement officer.

Once Defendant had been admitted to the hospital, Fish returned to his ambulance to collect Defendant's remaining clothing and personal belongings. Upon doing so, Fish

noticed that the Defendant's leather jacket was unusually heavy and had something in one of the pockets. Fearing that Defendant might have had a firearm or other weapon, Fish reached into the pocket. He discovered a glass jar with a yellow cover containing a brown plastic bag. Fish did not know what was in the brown plastic bag, but he felt it appropriate to turn the jar and its contents over to the Bangor Police officer who had arrived at the hospital by that point in time.

George Spencer was the Bangor police officer who was dispatched to Eastern Maine Medical Center at the request of the Old Town Police Department. He had been told of the motor vehicle chase involving the Old Town Police Department and knew that his instructions were to obtain a blood alcohol test. Upon his arrival at the hospital, Andrew Fish turned the leather jacket and its contents over to him. The officer examined the coat and discovered, in addition to the jar and its unknown contents, a black glove and a small electronic scale. He did not prepare any formal inventory of the items but quickly turned the jacket and all of its contents over to Officer Robert Hutchings of the Maine Drug Enforcement Agency ("MDEA"). Hutchings arrived at the hospital shortly after Spencer did.

Officer Hutchings went to EMMC when he heard through the Bangor Police that an individual had been apprehended in Old Town with marijuana taped to his leg. Hutchings removed the jacket and its contents from trunk of Spencer's cruiser. Once Hutchings had the jar in his custody he opened it and discovered that the contents of the opaque plastic bag consisted of clear plastic bags, one of which possibly contained cocaine. Hutchings confirmed the existence of the cocaine not only by smell but also by conducting a field test on the substance. Hutchings believed that Defendant had been

arrested as a result of the incident in Old Town. He proceeded to take the items seized to his office where he logged and inventoried them and sent the appropriate substances to the lab for further chemical testing.

The parties have further stipulated that the medical records in this case establish that Defendant was unconscious on July 14 and 15, 2000. He was conscious during the period July 16-19, 2000. A review of the docket entries in this case indicates that Defendant made his initial appearance before this court on drug charges on July 19, 2000, and was ordered temporarily detained. Having presided at that hearing, I note that the clerk's minutes accurately report the hearing was held at Eastern Maine Medical Center. Defendant remained hospitalized on that date.

Discussion

The government argues that the search was a valid search incident to an arrest and that it was also a valid inventory search. The Government further suggests that the doctrine of inevitable discovery is applicable to this case. Defendant counters that because he was never served with any criminal citation in connection with the state motor vehicle violations until over one week after the incident, there was no "arrest" on July 14, 2000, and therefore there can be no search incident to arrest.

Turning first to the search incident to arrest rationale, I am satisfied that if the accident had not occurred and Officer Hashey had successfully apprehended Defendant at the conclusion of the chase, Officer Hashey would have immediately, validly arrested Defendant for eluding an officer and would have justifiably discovered the jar and its contents in a search incident to arrest. *See U.S. v. Robinson*, 414 U.S. 218, 235 (1973) (holding that a police officer has the authority to conduct a "full search" of an arrestee

incident to a lawful arrest.) Furthermore, the officer would have transferred Defendant to the Penobscot County Jail where Defendant would have surrendered all of his personal belongings prior to incarceration. *See Hudson v. Palmer*, 468 U.S. 517, 538 (1984) (“The fact of arrest and incarceration abates all legitimate Fourth Amendment privacy and possessory interests in personal effects”) (O'Connor, J., concurring).

In the present case, Defendant was not formally arrested nor taken into police custody because he was seriously injured in the motor vehicle accident. He was unconscious and appeared near death and had been transported to the nearest medical facility. Warrantless searches incident to a custodial arrest are “justified by the reasonableness of searching for weapons, instruments of escape, and evidence of crime when a person is taken into official custody and lawfully detained.” *United States v. Edwards*, 415 U.S. 800, 802-03 (1974). Searches of the person and those articles “immediately associated” with the person may be made either at the time of the arrest or when the accused arrives at the place of detention. *See Edwards*, 415 U.S. at 803. The jar in this case was immediately associated with the person of Defendant and subject to search of its contents just as a female’s purse would be. *See Curd v. City Court of Judsonia*, 141 F.3d 839, 843 (8th Cir. 1998) (collecting cases). The timeliness requirement of the search incident to arrest is also satisfied, in that the search occurred within a very short time after Defendant’s apprehension, approximately the same length of time that would have elapsed had the search occurred at the lock-up facility in Bangor rather than at the hospital in Bangor.

The only element missing is the fact of a formal arrest. Cases addressing the issue hold that substantially contemporaneous formal arrest is required to support a search

incident to arrest. However, “where the formal arrest followed quickly on the heels of the challenged search of petitioner’s person, we do not believe it particularly important that the search preceded the arrest rather than vice versa.” *Rawlings v. Kentucky*, 448 U.S. 98, 111 (1980), *See also U.S. v. Bizer*, 111 F.3d 214, 219-20 (1st Cir. 1997) (holding that probable cause to arrest made search immediately prior to formal arrest a valid search pursuant to arrest). The doctrine, therefore, is not grounded solely on the rigid formalism of an actual arrest.

The Ninth Circuit remarked in 1983 that “we have found no cases which expand *Murphy*¹ to the point of holding that a substantially contemporaneous formal arrest is not now required to support a search incident to arrest.” *United States v. Harvey*, 701 F.2d 800, 804, (9th Cir. 1983), *overruled by United States v. Chapel*, 55 F.3d 1416, 1418-19 (9th Cir. 1995). I have been able to do no better in 2000. However, the *Harvey* case does address the issue posed by this case, *i.e.*, what happens when the officers forego formal arrest and transportation to a custodial facility because Defendant is unconscious and must be hospitalized? *United States v. Harvey* actually involved two separate cases of individuals, Harvey and Chase. Neither consented to a blood test but nevertheless, without being formally charged, each was compelled to submit to the drawing of blood in the absence of a search warrant. The Court granted the suppression of the test result in Defendant Harvey’s case and denied it in Defendant Chase’s case. Both cases were analyzed under *Schmerber v. California*, 384 U.S. 757 (1966), where the Supreme Court held that a police officer who has validly arrested a suspect need not obtain a warrant in order to instruct medical personnel to draw a blood sample. The Ninth Circuit

¹ *Cupp v. Murphy*, 412 U.S. 291, 293-94 (1973) (holding that where probable cause existed to arrest Defendant for murder, forced taking of fingernail scrapings was permissible pursuant to the search incident to arrest exception to the warrant requirement).

mistakenly analyzed both defendants' cases as searches incident to arrest and proceeded to suppress the test results in Harvey's case because there had not been a formal arrest and to carve out an exception to that rule in Chase's case.²

Defendant Chase's exception is grounded in common sense and goes to the heart of this case. There the Ninth Circuit observed that "there is no compelling reason why a prior arrest is necessary when it is shown that the suspect could not appreciate the significance of such action." *Id.* at 805-06. Because the *Harvey* Court was mistakenly analyzing the seizure of blood from Defendant Chase as a search incident to arrest rather than an exigent circumstances search, the logic of their exception is easily transferable to the present case. The logic involves a three part analysis: (1) the Old Town Police officers had abundant probable cause to arrest Defendant and would have done so had he not been unconscious; (2) the MDEA officer who opened the peanut butter jar and found the drugs acted in accordance with established principles related to a search incident to an arrest, except that the unconscious defendant had not been formally arrested; and finally (3) the case law surrounding the doctrine of search incident to arrest is not so formalistic as to require an actual arrest prior to the search when the Defendant is unconscious for two days after the incident. If Officer Hashey went to the hospital on July 16, 2000, when the Defendant regained consciousness, and arrested him in his hospital bed (where he apparently remained for approximately one week), a "search incident to arrest" would have been inappropriate if it extended to a leather jacket and an opaque baggie in a closed jar. By that point in time, those items would no longer have been immediately associated with Defendant. However, when the ambulance attendant turned the items over to the

² *Harvey* was subsequently reversed in *United States v. Chapel*, 55 F.3d at 1418-19, when the Ninth Circuit recognized that *Schmerber* was not premised on a search incident to arrest, but rather exigent circumstances. See *Winston v. Lee*, 470 U.S. 753, 759 (1985).

police officers, not only were the items immediately associated with Defendant, but they were also seized contemporaneous in time with a “normal arrest.” The only thing missing from the July 14th scenario was the officer formally saying “I place you under arrest” to an unconscious defendant. Nothing in the case law requires that sort of formalistic approach.

I can see no basis upon which this search could be supported as an inventory search. The Government has not established an inventory or safekeeping policy to justify the seizure of the clothing and other items from the ambulance attendant. The ambulance attendant clearly testified that his normal practice would have been to turn the items over to the hospital for safekeeping and he departed from that norm only because of the suspected criminal activity. Nor do I find that the doctrine of inevitable discovery has anything to do with the issues before me. The police were not conducting any parallel investigation which would have inevitably led to the discovery of the drugs. *See U.S. v. Kirk*, 111 F.3d 390, 392 (5th Cir. 1997).

Conclusion

Based upon the foregoing, I now recommend that the Court adopt the proposed findings of fact and **DENY** Defendant’s Motion to Suppress.

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 of 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: December 4, 2000

Margaret J. Kravchuk
U.S. Magistrate Judge

U.S. District Court
District of Maine (Bangor)

CRIMINAL DOCKET FOR CASE #: 00-CR-53-ALL

USA v. HAWKINS
08/08/00

Filed:

Other Dkt # 1:00-m -00042

Case Assigned to: Judge GEORGE Z. SINGAL

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aka
DARREN WOOD
aka
DARREN ALLEN
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Pending Counts:

Disposition

21:841A=CD.F CONTROLLED
SUBSTANCE - SELL, DISTRIBUTE,
OR DISPENSE (Possession
with Intent to Distribute
Methamphetamine in Excess of
50 Grams in violation of
21:841(a)(1), (b)(1)(B) and
18:2)
(1)

21:841A=ND.F NARCOTICS - SELL,
DISTRIBUTE, OR DISPENSE
(Possession with Intent to
Distribute Cocaine in
violation of 21:841(a)(1),
(b)(1)(C) and 18:2)

(2)

Offense Level (opening): 4

Terminated Counts:

NONE

Complaints

Disposition

Count I: Possession w/intent
to distribute cocaine, Count
II: Possession w/intent to
distribute methamphetamine in
violation of 21 USC 841(a)(1)
and 18 USC 2
[1:00-m -42]

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