

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

UNITED STATES OF AMERICA,)
)
v.) Crim. No. 02-21-B-S
)
MICHAEL SILVIA,)
)
Defendant)

RECOMMENDED DECISION ON MOTION TO SUPPRESS

This matter is before the court on Michael Silvia's motion seeking to suppress both statements and tangible physical evidence. (Docket No. 14.) An evidentiary hearing was held on June 26, 2002. Based upon the evidence presented at that hearing I now recommend that the Court adopt my proposed findings of fact and **DENY** the motion.

Proposed Findings of Fact

On February 25, 2002, Maine State Police Trooper Scott Hamilton was parked at a crossover north of Exit 42 on Interstate 95 in Carmel, Maine. Sometime between 10 p.m. and 11 p.m. Hamilton clocked on radar a blue 1996 Dodge traveling at 89 miles per hour in a 65 miles per hour zone. Hamilton activated his blue lights and stopped the vehicle. Before leaving his cruiser he activated a video camera to record the circumstances of the motor vehicle stop.

As he approached the vehicle he requested that the female operator of the car produce her driver's license and other documentation. As he bent over to examine the paperwork Hamilton detected the odor of marijuana. He then went around the vehicle to the passenger side and asked the male passenger for identification. Hamilton also

requested that the male step from the vehicle, explaining that he had detected the odor of marijuana coming from the vehicle. Hamilton initiated conversation with the male passenger and requested that he step from the vehicle first because he felt that the passenger was more of a threat to officer safety than was the female operator. The passenger, identified as Michael Silvia, admitted to smoking marijuana and having marijuana in his possession. A small baggie was produced from his pants pocket.

Silvia and the female operator were directed to take a seat on the guardrail in front of the vehicle. Hamilton then conducted a thorough search of the passenger compartment of the vehicle. He did not seize anything from the vehicle's ashtray nor did he locate any marijuana paraphernalia in the car. However, he found two bags on the floor behind the driver's seat. He removed both bags from the vehicle and thoroughly searched them. The first bag did not contain any incriminating evidence. The second bag, bearing no identification markings, contained not only clothing and personal items that appeared to belong to a male, but also a .22 caliber handgun and a brown paper bag containing cocaine and additional marijuana. The female operator, in response to the trooper's inquiry, told him that the bag containing the drugs belonged "to a friend" and indicated that they were Silvia's.

At that point Hamilton placed Silvia under arrest and handcuffed his arms behind his back. Hamilton then called other officers, including Maine Drug Enforcement Agency (MDEA) personnel and additional back-up. Silvia was seated on the hood of his vehicle while Hamilton made these calls and spoke further with the female operator. Perhaps during this time-period, or perhaps later when seated in the vehicle, Silvia apologized to Hamilton for not telling him about the gun in the bag. Eventually Hamilton

had Silvia get into the cruiser. Once inside the cruiser Hamilton advised Silvia of his rights per Miranda v. Arizona, 384 U.S. 436 (1966) and Silvia, at least initially, waived those rights and agreed to speak with Hamilton. Hamilton did not have Silvia sign a written waiver of his Miranda rights because Silvia remained in handcuffs throughout the interview. Hamilton felt the presence of a gun, the lateness of the hour, and the quantity and types of drugs involved necessitated that Silvia remain in cuffs.

Silvia told Hamilton that he knew the gun was in the bag. He also said that he did not know that there were drugs inside the paper bag. Silvia then indicated that he did not want to answer anymore questions. Hamilton remained at the scene for approximately ten additional minutes. By that time another state police officer had arrived and joined them inside Hamilton's cruiser. The female operator was allowed to drive away after Hamilton secured the gun and drugs. No additional questions were asked after Silvia indicated that he did not wish to answer anymore questions.

Discussion

Silvia has moved to suppress the tangible physical items seized from his person and the vehicle as well as the statements that he made to Hamilton. I will address the two issues separately.

A. The Fourth Amendment and the Search of Silvia's Pockets and the Motor Vehicle

At the conclusion of the evidentiary hearing, the United States orally raised the issue of "standing" and argued that Silvia lacked "standing" to seek suppression of the items seized from the second bag, although presumably even the Assistant United States Attorney would recognize that Silvia had "standing" to challenge the evidence seized from his pockets. In Rakas v. Illinois, 439 U.S. 128, 139-140 (1978) and Minnesota v.

Carter, 525 U.S. 83, 87-88 (1998) the United States Supreme Court replaced the “standing” inquiry with a new vocabulary tailored to Fourth Amendment expectations of privacy. United States v. Sturgis, 238 F.3d 956, 958 (8th Cir. 2001). Carter specified that “a defendant must demonstrate that he personally has an expectation of privacy in the place searched, and that his expectation is reasonable.” 525 U.S. at 88. See also Sturgis, 238 F.3d at 958 (quoting Carter, 525 U.S. at 88).

In the present case Hamilton testified that the female operator of the vehicle told him the bag belonged to Silvia and also that Silvia allegedly apologized for not telling him about the gun. Additionally there was strong circumstantial evidence that the bag was Silvia’s: two occupants, two travel bags, one containing items belonging to a male. For purposes of this motion, Silvia has shown a reasonable expectation of privacy in the bag.

There does not appear to be any serious challenge to the notion that the original traffic stop in this case was supported by a reasonable and articulable suspicion of a traffic violation. See United States v. Chhien, 266 F.3d 1, 5-6 (1st Cir. 2001). Nor can it be argued that once Hamilton detected the odor of marijuana his subsequent action in asking Silvia to get out of the vehicle and questioning him about marijuana use could be termed anything other than “fairly responsive to the emerging tableau.” Id. at 6. Silvia does not seriously contest these steps nor does he argue that producing the marijuana from his pockets violated his constitutional rights. Silvia’s contention is that once Hamilton had the marijuana from his pockets, the smell had been explained and Hamilton had no right to continue with his search of the passenger compartment. Silvia argues that

everything after the marijuana had been seized from his person was nothing more than a “fishing expedition.”

Silvia’s argument ignores United States v. Staula, 80 F.3d 596, 602 (1st Cir. 1996), a case that authorizes a warrantless search of the passenger compartment of a motor vehicle when a law enforcement officer has detected marijuana odor emanating from that confined area.¹ Furthermore the law recognizes that this warrantless search exception applies to all areas of the vehicle in which the suspected contraband is likely to be found. Id. at 602-03. The bags were on the floor behind the driver’s seat and contained within them a brown paper bag. Hamilton’s intrusion into these items was well within the scope of his permitted warrantless search of the vehicle passenger compartment. The tangible evidence seized should not be suppressed.

B. Silvia’s Statements to Trooper Hamilton

There are three groups of statements that are subject to this motion. The first statements are Silvia’s initial admissions to Hamilton that he was smoking marijuana and that he had some of it in his pockets. These statements were made after Silvia had been asked to step from the car and they were made in response to Hamilton’s questions about the source of the odor he had detected. The second set of statements relate to the alleged “apology” concerning the gun. I believe based upon the testimony I heard that Silvia made this statement prior to receiving the Miranda warning while he was still outside Hamilton’s cruiser, when Silvia was either seated on the hood of the cruiser, on the guardrail, or standing in front of the cruiser. The statement was obviously made after the search of the bag and when Silvia had been placed in handcuffs. This statement was

¹ Whether Hamilton could have searched the trunk based upon the marijuana odor is not a question that needs to be answered in this case. Clearly the video tape shows that he did search the locked trunk. However, no evidence was seized from that location.

clearly custodial. The third set of statements was made inside the cruiser after administration of the Miranda warning.

The easiest set of statements to analyze is the third set. Under well established precedent a defendant's statements made during a custodial interrogation are not admissible in the government's case in chief unless the defendant was properly advised of his rights. Miranda v. Arizona, 384 U.S. 436 (1966). A handcuffed defendant in the backseat of a police cruiser being questioned by a state trooper is clearly the subject of a custodial interrogation. Equally as clear from the testimony I heard is the fact that Hamilton properly advised Silvia of his rights per Miranda and Silvia agreed to answer some questions. His waiver was knowing and voluntary. When Silvia indicated that he did not wish to answer further questions, interrogation ceased. There was no Miranda violation as to those statements.

The first set of statements also does not run afoul of Miranda. Hamilton merely asked Silvia to step from the car. The request occurred in the very first minutes of the stop. Silvia's movement was not substantially restricted, in fact he was given leave to have a seat on the guard rail adjacent to the highway. In order to determine the applicability of Miranda the court must determine "whether there was 'a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest.'" United States v. Trueber, 238 F.3d 79, 93 (1st Cir. 2001) (quoting Thompson v. Keohane, 516 U.S. 99, 112 (1995)). This inquiry, in turn, requires a two-part analysis, the first step involving an assessment of the circumstances surrounding the interrogation and the second step applying an objective "reasonable person" standard to those circumstances to determine if a reasonable person in Silvia's position would have believed he was actually

in police custody and constrained to a degree associated with formal arrest. Id. I do not believe these initial questions were custodial in nature viewing the totality of circumstances and applying the objective “reasonable person” standard.

The second set of statements, involving the gun “apology,” is a little harder to analyze because Hamilton’s memory of what was said and when it was said is vague. It appears clear to me that Silvia was in custody when he apologized for not telling the officer about the gun. However, I am not at all sure what Hamilton supposedly did to elicit this statement. Silvia apparently volunteered his apology as Hamilton was attending to other matters. As such, the statement is not the product of a custodial interrogation. See Miranda, 384 U.S. at 478 (“Volunteered statements of any kind are not barred by the Fifth Amendment.”); accord United States v. Timpani, 665 F.2d 1, 3 (1st Cir.1981) (quoting Miranda, 384 U.S. at 478). In any event, after being advised of his rights per Miranda Silvia again acknowledged that he knew the gun was in the bag. There is no reason to suppress this statement.

Conclusion

Based upon the foregoing I recommend that the court **DENY** the 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.

Margaret J. Kravchuk
U.S. Magistrate Judge

Dated June 27, 2002

U.S. District Court
District of Maine (Bangor)
CRIMINAL DOCKET FOR CASE #: 02-CR-21-ALL

USA v. SILVIA
Other Dkt # 1:02-m -00010
Case Assigned to: Judge GEORGE Z. SINGAL

Filed: 03/12/02

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Pending Counts:

Disposition

21:841B=ND.F NARCOTICS - SELL, DISTRIBUTE, OR DISPENSE COCAINE
(1)

21:841E=MD.F MARIJUANA - SELL, DISTRIBUTE, OR DISPENSE
(2)

VIOLENT CRIME/DRUGS/MACHINE GUN
(3)

Offense Level (opening): 4

Terminated Counts: NONE

Complaints

Disposition

Ct. I - Possession with intent to distribute cocaine
21:841(a)(1) and 18:2[1:02-m -10]

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