

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA :
 :
 v. : CR. NO. 01-564
 :
 DARRYL ADAMS :

MEMORANDUM

ROBERT F. KELLY, SR. J.

JUNE 6, 2002

Defendant Darryl Adams has been indicted for allegedly committing five (5) bank robberies on July 19, July 26, August 3, August 7 and August 8, 2001. Defendant was arrested on the evening of August 9, 2001 in Eddystone Borough, Delaware County, Pennsylvania for public intoxication; while still in custody, he was arrested for the bank robberies. He has now filed a Motion to Suppress. Two hearings were held on this motion, one on April 5, 2002 and the other on April 11, 2002. From the evidence and testimony produced at those hearings, we make the following Findings of Fact.

Hearing held April 5, 2002

Officer Edmund Kinzle, of the Eddystone Borough Police Department, testified about a bank robbery of the M & T Bank in Eddystone Borough on July 19, 2001 and its similarities to a later robbery of another M & T Bank in nearby Ridley Park Borough on August 8, 2001. (Tr., April 5, 2002, 12-27). Officer Kinzle testified about finding the getaway car from the August 8, 2001 robbery, a black Lexus, parked on the 1200 block of East 9th Street in Eddystone about one-half hour after the August 8 robbery. (Tr., April 5, 2002, 20-24). He testified that a witness from the Ridley Park August 8 bank robbery was brought to the scene

where the Lexus was parked, and that witness identified the car as the getaway car and a “76ers” cap inside as the cap the robber wore during the robbery. (Tr., April 5, 2002, 23-24).

On August 9, 2001, Officer Kinzle assisted in the stop of a maroon Nissan automobile containing four (4) persons, one (1) of whom was Defendant. (Tr., April 5, 2002, 27-29). He also testified that Adams was sitting in the back seat singing and “kind of dancing.” (Tr., April 5, 2002, 29). Later the same evening, Officer Kinzle observed the Defendant staggering down the street in Eddystone. (Tr., April 5, 2002, 37-41). Officer Kinzle observed Adams walking unsteadily down the 1200 block of East 9th Street in the same location where he had recovered the getaway car the day before. (Tr., April 5, 2002, 39-41). When Adams reached a spot near where the Lexus automobile had been parked the day before, he stopped, looked around and called someone on his cell phone. (Tr., April 5, 2002, 39-40). He then observed Adams still staggering, cross the intersection of 9th and Eddystone, against the red traffic light, and he decided to stop Adams. (Tr., April 5, 2002, 39-40). He testified that Adams had a strong odor of alcohol about his person, that his eyes were bloodshot and that his speech was slightly slurred. (Tr., April 5, 2002, 40-42). When he asked Adams how much he had to drink, he felt that Adams’ response did not account for the condition he was in and he asked if he had “anything else” to which Adams replied that he had snorted some heroin earlier in the day. (Tr., April 5, 2002, 42). Officer Kinzle testified that at that point he made a decision to place Adams under arrest for public intoxication. (Tr., April 5, 2002, 42). He searched Adams subsequent to his arrest, and found a Lexus key in his pocket that fit the getaway car that had been found the day before. (Tr., April 5, 2002, 42-43).

Jeffrey McCormick is a Special Agent with the Federal Bureau of Investigation

("FBI"). (Tr., April 5, 2002, 101-102). Shortly after midnight on August 10, 2001, he spoke with Adams and advised Adams of his rights from a written waiver form. (Tr., April 5, 2002, 103 and Exh. 13). The Agent went over each right on the form and Adams indicated that he understood and signed the waiver at the bottom. (Tr., April 5, 2002, 104, 105). Agent McCormick testified that he felt that Adams understood his rights (Tr., April 5, 2002, 105, 107). He also testified that he did not threaten or coerce Adams (Tr. 107).

Agent McCormick interviewed Janet Hillard on September 7, 2001. Ms. Hillard worked at the Sharon Savings Bank in Darby, Pennsylvania (Tr., April 5, 2002, 107, 108). That bank had been robbed on July 26, 2001 and August 7, 2001. Ms. Hillard was present on both occasions. (Tr., April 5, 2002, 109). Agent McCormick showed Ms. Hillard a photographic array containing six (6) photographs and asked her if there was anyone she recognized. (Tr. 109). She picked out the Defendant's photograph (Tr., April 5, 2002, 110, 120). Special Agent McCormick did not indicate in any way the photograph to be selected. (Tr., April 5, 2002, 110, 111).

Adams admitted at the Suppression Hearing that he had been high on heroin the evening of August 9, 2001. (Tr., April 5, 2002, 128). He claimed that after he was arrested, he was told by a Sergeant Gibney that the authorities "had arrested Adams' kid's mother, along with the other occupants of the car. And that they had in their possession money that was consistent with bank robbery money, and that they were also being charged with this crime." Adams claimed that Gibney said unless he provided them with a statement that they will in fact be charged with this crime. (Tr., April 5, 2002, 125). Adams said that after hearing this, he waived his rights and gave a false confession to the five (5) bank robberies. (Tr., April 5, 2002,

125-131). On cross examination, Adams testified that Sergeant Gibney had not threatened him concerning the arrest of his child's mother. (Tr., April 5, 2002, 129, 133). He admitted "I'm not going to say he threatened me." (Tr., April 5, 2002, 129). Instead, he said that Sergeant Gibney had made a "deal" with him about not charging his girlfriend. (Tr., April 5, 2002, 129). Adams also claimed that Sergeant Gibney agreed that if he confessed to the bank robberies, he would be charged only with robbery and threats, not with other charges. (Tr., April 5, 2002, 129, 135-36).

By testifying as he did, Adams raised the issue of the voluntariness of his confession and a continued hearing was scheduled for April 11, 2002 in order to provide the government with an opportunity to produce Sergeant Gibney of the Darby Borough Police Department.

Hearing held April 11, 2002

Sergeant Gibney of the Darby Borough Police Department was called to the Eddystone Police Department on August 9, 2001 because Darby Borough had two bank robberies that strongly resembled the bank robberies in Eddystone and Ridley Park. (Tr., April 11, 2002, 4-5). Sergeant Gibney met with the Defendant, told him who he was and why he was there, read the Defendant his Miranda warnings, and had the Defendant sign a document indicating that he had received those warnings. (Tr., April 11, 2002, 7-8). As Sergeant Gibney read each right from the form, the Defendant initialed that particular right indicating that he understood what was being told to him. (Tr., April 11, 2002, 9-10). While the rights were being read to him, he appeared to the Officer to be sober and not in any pain and never asked for a lawyer. (Tr., April 11, 2002, 10-11).

Discussion

I find that Officer Kinzle had reasonable suspicion to stop Mr. Adams and later arrest him. Officer Kinzle first saw the Defendant on August 9, 2001 in the back seat of a car that had been stopped because it did not have current registration and inspection stickers. He said Adams was sitting in the back seat singing and “kind of dancing.” Later, he observed Adams walking unsteadily down the 1200 block of East 9th Street, in the same area where he had found the getaway car from an earlier bank robbery. When Adams got to the area where the getaway car had been found, Adams made a call on his cell phone. He then staggered across the intersection of Eddystone Avenue and 9th Street against the traffic light. At that point, Officer Kinzle decided to approach him, and upon detecting the strong odor of alcohol about his person, and observing his bloodshot eyes and slurred speech, Officer Kinzle asked him how much he had consumed. When the answer did not seem to be sufficient to account for the condition Adams was in, the Officer asked if he was on anything else. To this, the Defendant replied that he had snorted some heroin earlier in the day. From the observations that the Officer had made, he had reasonable suspicion to approach Adams to see if he was under the influence of alcohol, and once he received the answers and after making the further observations and hearing the Defendant’s responses to his questions, he had probable cause to place him under arrest for public intoxication.

The defense next contends that the stop and later arrest was merely a pretext and that the real reason was to arrest him for the bank robbery that occurred in that area. I have already found that the objective observations of Officer Kinzle justified the stop, and later arrest, for public drunkenness. The Supreme Court in Whren v. U.S., 517 U.S. 806, 116 S. Ct. 1769

(1996) held “[t]he ulterior motives of Police Officers . . . [are] irrelevant so long as there is probable cause for the traffic stop.” See also, Arkansas v. Sullivan, 121 S.Ct. 1876 (2001), where the Court reaffirmed this ruling.

Incident to this lawful arrest, the police searched Adams and found a key with a Lexus emblem on it that fit the getaway car that had been impounded the day before. (Tr., April 5, 2002, 43). Based upon this, Adams was arrested for the bank robbery. Because a check of Adams’ criminal history indicated that the name of Darryl Brown has an alias of Darryl Adams, there was some confusion about his real name. (Tr., April 5, 2002, 43). Officer Kinzle asked Adams if he was lying about his name. In response to this, the Defendant said that his name was Darryl Adams but that he had been arrested before using the name Darryl brown. When the Officer asked further questions to his identity, Brown responded, “Look man, I know you got me. You know you got me. Just tell me what jail I’m going to and what my charges are.” (Tr., April 5, 2002, 44). That statement was made prior to Adams being given Miranda warnings. I find that these were routine booking questions, not designed to illicit incriminating responses and that they did not amount to interrogation. Therefore, I find that the incriminating statement of Adams is admissible.

At the hearing on April 5, 2002, Adams testified and admitted that he was high on heroin on the evening of August 9, 2001. Adams claimed that after he was arrested, he was told by Sergeant Gibney of the Darby Borough Police Department that the authorities “had arrested [Adams’] kid’s mother, along with the other occupant of the car. And that they had in their possession money that was consistent with the bank robbery money, and that they were also being charged with this crime. And that unless I provide them with a statement, that they will in

fact be charged with this.” (Tr., April 5, 2002, 125). Adams went on to state that after hearing this, he waived his rights and gave a full confession to the five (5) bank robberies. (Tr., April 5, 2002, 125-131).

On cross-examination, Adams testified that Sergeant Gibney had not threatened him concerning the arrest of his kid’s mother. (Tr., April 5, 2002, 129- 133). He admitted “ I’m not going to say he threatened me.” (Tr., April 5, 2002, 129). Instead, Adams stated that Sergeant Gibney had made a “deal” with him about not charging his girlfriend. (Tr., April 5, 2002, 129). Adams also claimed that Sergeant Gibney agreed that if he confessed to the bank robberies, he would be charged only with robbery and threats and not with other charges. (Tr., April 5, 2002, 129, 135-36).

I believe Sergeant Gibney’s testimony that he did not threaten to arrest the Defendant’s girlfriend, unless the Defendant gave a statement. Adams is a mature 38-year-old who has had extensive experience with the criminal justice system. See United States Supp. Brief, p.5. Although he was intoxicated when arrested at approximately 8:15 p.m. on August 9, 2001, an Eddystone Police Report indicates that Adams was sober when he was advised of his rights at 9:45 p.m. Agent McCormick advised Adams of his rights at 12:50 a.m. on August 10, 2001. I am satisfied that the relinquishment of Adams’ rights was voluntary and was not the product of intimidation, coercion or deception. I am also satisfied that the waiver was made with full awareness of the nature of the rights being abandoned and the consequences of the decision to abandon those rights. Statements made by Adams may be used at trial.

Defendant challenges the identification of the Defendant by Janet Hilliard. FBI Agent McCormick interviewed Janet Hilliard on September 7, 2001. Ms. Hilliard worked at the

Sharon Savings Bank in Darby, Pennsylvania. (Tr., April 5, 2002, 107-108). That bank was robbed on July 26, 2001 and August 7, 2001. Ms. Hilliard was present at the bank on both occasions. (Tr., April 5, 2002, 109). Agent McCormick showed Ms. Hilliard a photographic array containing six (6) photographs and asked her to look at them to see if there is anyone she recognizes. (Tr., April 5, 2002, 109). She indicated the Defendant's photograph. (Tr., April 5, 2002, 110, 120). From the testimony, I find that Agent McCormick did not say or do anything to indicate to Ms. Hilliard which photograph to select. (Tr., April 5, 2002, 110, 111). The Court viewed the photographic array, which was admitted as Exhibit No. 1. It appeared to the Court that the six (6) photographs were all of African American males, all with some form of facial hair. Although some were darker than others and some appeared to be heavier than others, in the Court's view the array did not suggest one photograph over any of the others, and it was fair. On August 10, 2001, Officer Kinzle showed a photographic array, marked Exhibit No. 1, to Glenn Pearson, a teller at the M & T Bank located at 933 Sellers Avenue in Eddystone, Delaware County, Pennsylvania. (Tr., April 5, 2002, 49-50). Officer Kinzle testified that when he showed the photographic array to Mr. Pearson, the only thing he said to him was "do you recognize anyone in these photos." (Tr., April 5, 2002, 51). Mr. Pearson looked at the photo array for approximately ten seconds and immediately picked out the Defendant's photograph. When Officer Kinzle showed the photographic array, he did not point to any photograph or tell Mr. Pearson that the robber's photo was among those in the array, and did not, in any manner, indicate which photograph he should select. (Tr., April 5, 2002, 53). Again, I find that the photographic array was fair and not suggestive in any way and the manner in which it was presented to the witness, Mr. Pearson, was not suggestive in any way.

I, therefore, enter the following Order.

