

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

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|-------------------------------------|---|--------------|
| UNITED STATES OF AMERICA, | : | CIVIL ACTION |
| Plaintiff, | : | |
| | : | |
| v. | : | NO. 02-6805 |
| | : | |
| \$46,000 IN UNITED STATES CURRENCY, | : | |
| Defendant. | : | |

ORDER

AND NOW, this day of June, 2003, upon consideration of the Motion to Suppress Evidence (“Motion to Suppress”) filed by Miguel Martinez (“Claimant”) on February 14, 2003 (Docket Entry No. 10), the Response in Opposition to Claimant’s Motion to Suppress Evidence (“Response”) filed by the United States of America on February 28, 2003 (Docket Entry No. 11), the testimony presented at the hearing on the Motion to Suppress on March 10, 2003, the proposed findings of fact and conclusions of law submitted by both parties (Docket Entry No.s 14 and 15), and the supplemental briefs filed by both parties (Docket Entry No.s 18-20), it is hereby ORDERED that the Motion to Suppress is GRANTED for the reasons set forth below.

This is a civil forfeiture action brought by the United States of America (“Government”) against \$46,000.00 in United States Currency (“Defendant Currency”) pursuant to 21 U.S.C. § 881(a)(6), which provides in pertinent part:

- (a) Subject property
The following shall be subject to forfeiture to the United States and no property right shall exist in them:

....
(6) All moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance or listed chemical in violation of this subchapter, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of this subchapter.

21 U.S.C. § 881(a)(6). The Defendant Currency was seized by federal agents on March 9, 2002 in Philadelphia, Pennsylvania from a vehicle driven by Claimant. Claimant filed a Claim of Ownership, alleging that he is the owner of the Defendant Currency. Prior to the commencement of a trial to determine whether forfeiture is proper, Claimant filed the instant Motion to Suppress, seeking suppression of the evidence seized from Claimant on March 9, 2002 (including the Defendant Currency itself).

Claimant argues that there were four discrete acts that occurred on March 9, 2002, each of which constitutes either a search or a seizure requiring scrutiny under the Fourth Amendment: (1) the initial traffic stop of Claimant by the federal agents; (2) the detention of Claimant while awaiting the arrival of a canine unit to conduct a “dog sniff” of Claimant’s vehicle; (3) the removal of Claimant to a locked holding cell at the Airport Office of the Philadelphia Police Department, and the detention of Claimant in the holding cell for approximately one hour; and (4) the search of Claimant’s vehicle. Having reviewed the evidence submitted by the parties, and upon consideration of the testimony presented at the hearing conducted on March 10, 2003, the Court concludes that the removal and detention of Claimant constituted a seizure of Claimant for which the Government has failed to establish probable cause. Because the Defendant Currency was discovered pursuant to a consensual search of Claimant’s vehicle, and because Claimant consented to a search of his vehicle only after being impermissibly removed to, and detained in,

the Airport holding cell, the Court will grant the Motion to Suppress, and will exclude the evidence obtained as a result of the consensual search of Claimant's vehicle (including the Defendant Currency).

The Court hereby enters the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. On March 7, 2002, a Federal Bureau of Investigation drug task force received information from a confidential source that an individual named Ramon Alvir, from Dallas, Texas, had checked into the Philadelphia Airport Hilton Hotel (located at 4509 Island Avenue) purportedly under "suspicious circumstances."¹ Agent Warrington was then assigned the role of "lead agent" in the task force's surveillance of the hotel, which lasted approximately two days. See Transcript of Hearing on March 10, 2003 ("Tr.") at 5-9.
2. Claimant Miguel Martinez was observed with Mr. Alvir at the hotel. During the surveillance, the task force witnessed the following: "a lot of foot traffic in and out of" the hotel room in which Mr. Alvir was staying (Room 323); people going to the room carrying bags; people going to the room empty-handed and leaving with bags; Mr. Alvir meeting in the parking lot of the hotel with various individuals who subsequently went inside to the hotel room and then left; and "things of that nature." Tr. at 9-10.
3. The surveillance terminated at approximately 9:15 or 9:30 a.m. on March 9, 2002, at which time Mr. Alvir, Claimant, and a third individual named Avamil Sanchez exited the

¹ Contrary to the proposed findings of fact submitted by the Government, no testimony was offered at the hearing establishing that Mr. Alvir checked into the hotel "without a reservation, paying cash for two nights' stay, and refusing all housekeeping services." United States of America's Proposed Findings of Fact and Conclusions of Law ("Govnt.'s Proposed Findings and Conclusions") at ¶ 2.

hotel room, and Mr. Alvir checked out of the hotel. Mr. Alvir and Mr. Sanchez then got into a red Ford Escape, and Claimant got into a champagne-colored Volkswagon GTI, and they left the hotel. Tr. at 10-11.

4. The task force then requested the assistance of the Pennsylvania State Police. Tr. 13, 32-33. Pennsylvania State Trooper Joseph Spingler was given information regarding the vehicles in question, and was instructed to follow the vehicles and attempt to initiate traffic stops of the vehicles. Tr. at 33.
5. At the time in question, Trooper Spingler had been a patrol unit member of the Philadelphia Barracks for approximately three to four months. Tr. at 31.
6. At approximately 9:30 a.m., Trooper Spingler stopped Claimant's car at a gas station in Philadelphia based upon his belief that Claimant's car was in violation of the Pennsylvania "window tint statute," 75 Pa. Cons. Stat. Ann. § 4524(e)(1).² Tr. at 34-36.
7. Trooper Spingler exited his car, approached Claimant's car, asked for Claimant's license, registration and insurance information, explained why he had stopped Claimant, and then returned to his car to check for possible outstanding warrants or suspensions of operating or registration privileges. Tr. at 36. After determining that there were no outstanding

² Claimant argues that this Court should find as fact that the interior of his car was visible through his tinted windows, and that Trooper Spingler therefore lacked reasonable suspicion to believe that the car was in violation of the window tint statute. Claimant directs the Court's attention to a photograph of the car, submitted as an exhibit during the hearing, in which, Claimant contends, it is apparent that the inside of the car is visible through the front side window. See Exhibits G-1, G-1A, M-1. However, Trooper Spingler testified, and the Court finds, that the front side window was rolled down in the photograph. Tr. at 50. Thus, the Court does not find as fact that the interior of the car was visible through the tinted windows.

warrants or suspensions, Trooper Spingler returned to Claimant's car, returned the documents to Claimant, and started "a brief conversation" with Claimant. Tr. at 37.³

8. Claimant's car had a Texas registration plate. Tr. at 35. Trooper Spingler asked Claimant whether he was from Texas, and Claimant said he was. Trooper Spingler asked Claimant why he was in Philadelphia, and Claimant stated that he was visiting the city, although he stated that he did not have a specific destination in Philadelphia and could not identify any particular Philadelphia tourist attractions he intended to visit, which Trooper Spingler found "suspicious." Tr. at 37-38
9. Claimant appeared "very nervous," he was "stuttering a little bit," he avoided making eye contact with Trooper Spingler when he was not answering a question, and he "seemed to be just generally nervous." Tr. at 38.
10. In addition, Trooper Spingler testified that Claimant initially said that he was headed home to Texas, then indicated that he was thinking about going to Atlantic City, and then again stated that he was going to go home. Tr. at 39. However, Claimant testified that he told Trooper Spingler that his initial plan was to go to Atlantic City, but that, because he had stayed out late the night before, he had changed his mind and decided to go home. Tr. at 75. Given Claimant's undisputed nervousness during this conversation, see Tr. at 75, the Court finds that even if Claimant intended to communicate to Trooper Spingler simply that he had changed his mind with regard to his initial travel plans, Trooper Spingler reasonably interpreted these statements as inconsistent and suspicious.

³ The red Ford Escape driven by Mr. Alvir and Mr. Sanchez was also subjected to a traffic stop by police officers at the gas station. The individuals consented to a search of the vehicle, their records were checked, and they were then released. Tr. at 63.

11. After discussing these matters, Trooper Spingler asked for Claimant's consent to search Claimant's car. Claimant refused to give his consent, at which time the conversation concluded. Approximately ten minutes passed between the time Trooper Spingler initially stopped Claimant's car, and the conclusion of his conversation with Claimant. Tr. at 39. A second officer, Corporal Fuentes, who was present as "backup," then spoke briefly with Claimant. Tr. at 40. No traffic citation was issued to Claimant.
12. At some point in time after Trooper Spingler terminated his conversation with Claimant, and after Corporal Fuentes briefly spoke with Claimant, a decision was made to summon a canine unit to the scene and to detain Claimant until the canine unit arrived. Tr. 40-41.
13. Approximately twenty-five to thirty minutes passed between the time Trooper Spingler terminated his conversation with Claimant and the time that the canine unit arrived at the scene. Tr. at 59. Thus, a total of approximately forty minutes passed between the time Claimant was initially stopped and the time that the canine unit arrived. Tr. at 39, 59.
14. After the canine unit arrived, a "dog sniff" of the car was conducted. Tr. at 41. Two officers testified that the dog made a positive identification on the vehicle, although it does not appear that either one actually witnessed the results of the dog sniff. Tr. at 16, 41. The officers then decided to remove both Claimant and his vehicle from the scene and to attempt to obtain a warrant to search the vehicle. Tr. at 41.

15. Trooper Spingler handcuffed Claimant and transported him to the Philadelphia Police Department Airport station in a patrol car. Tr. at 41-42. Claimant was then placed in a holding cell. Tr. at 42-43.⁴
16. During the next approximately one hour, Trooper Spingler wrote a report documenting the events that had occurred,⁵ while other officers initiated steps to obtain a search warrant. Tr. at 43, 65.
17. Approximately one hour later, before application for a search warrant was made, Claimant asked to speak with the officers. When the officers returned to the Airport police station, Claimant consented to a search of his vehicle, stating that they would find \$46,000.00. Tr. at 44-45, 65-68, 71-72.
18. Claimant consented to the search of his vehicle because he “wanted to get out” of the holding cell, and he would not have consented had he not been placed in the holding cell. Tr. at 77.
19. Claimant was then transported to the Attorney General’s office where he watched as officers searched his car and discovered the Defendant Currency. Tr. at 46.

⁴ There was conflicting testimony regarding whether Claimant remained handcuffed while in the holding cell. Tr. at 43-44, 66, 77, 80-81. However, the Court need not resolve this inconsistency as the Court finds that the removal and detention of Claimant would have constituted a seizure regardless of whether he remained handcuffed while in the holding cell.

⁵ Trooper Spingler acknowledged at the hearing that his report does not state that Claimant appeared nervous, or that Claimant was unable to identify any tourist attractions in Philadelphia which he intended to visit. Tr. at 55-56.

CONCLUSIONS OF LAW

1. In this civil forfeiture case, the Government at trial will bear the initial burden of establishing that it had probable cause to believe that the Defendant Currency was subject to forfeiture at the time that the Government filed the forfeiture complaint in this Court. U.S. v. Ten Thousand Seven Hundred Dollars and No Cents in U.S. Currency, 258 F.3d 215, 222 (3d Cir. 2001).
2. The exclusionary rule applies to this civil forfeiture proceeding because of its quasi-criminal nature. Therefore, only legally-obtained evidence may be used by the Government to establish probable cause. See One 1958 Plymouth Sedan v. Pennsylvania, 380 U.S. 693, 702 (1965); Austin v. U.S., 509 U.S. 602, 608 n.4 (1993); U.S. v. Fifty-Three Thousand Eighty-Two Dollars in U.S. Currency, 985 F.2d 245, 250 (6th Cir. 1993); U.S. v. 1988 BMW 750iL, 716 F.Supp. 171, 174 (E.D. Pa. 1989).
3. Claimant has established a basis for his Motion to Suppress, namely that the various searches and seizures involved in this incident were conducted without a warrant. Therefore, the burden has shifted to the Government to show that each individual act constituting a search or seizure under the Fourth Amendment was reasonable. U.S. v. Johnson, 63 F.3d 242, 245 (3d Cir. 1995).
4. “[A] stop to check a driver’s license and registration is constitutional when it is based on an ‘articulable and reasonable suspicion that . . . either the vehicle or an occupant’ has violated the law.” Johnson, 63 F.3d at 245 (citation omitted).
5. Pennsylvania’s “window tint statute” provides: “No person shall drive any motor vehicle with any sun screening device or other material which does not permit a person to see or

view the inside of the vehicle through the windshield, side wing or side window of the vehicle.” 75 Pa. Cons. Stat. Ann. § 4524(e)(1).

6. Trooper Spingler’s stop of Claimant’s car was based on an articulable and reasonable suspicion that the car was in violation of the window tint statute, and the stop was therefore constitutional.⁶
7. Following the initial stop of Claimant’s car, the officers who then continued to detain Claimant were required to have “a reasonable, articulable suspicion of criminal activity” in order to “expand the scope of [the] inquiry beyond the reason for the stop and detain the vehicle and [Claimant] for further investigation.” U.S. v. Givan, 320 F.3d 452, 458 (3d Cir. 2003). Stated another way, “the detaining officers must have a particularized and objective basis for suspecting the particular person stopped of criminal activity.” U.S. v. Cortez, 449 U.S. 411, 417-18 (1981).
8. “While ‘reasonable suspicion’ must be more than an inchoate ‘hunch,’ the Fourth Amendment only requires that police articulate some minimal, objective justification for an investigatory stop.” Id. “In determining whether there was a basis for reasonable suspicion, a court must consider the totality of the circumstances, in light of the officer’s experience.” Id. Moreover, it is appropriate for a court to accord “great deference to the

⁶ Claimant contends that the window tint statute has been held unconstitutional in Commonwealth v. Ventura, 28 Mercer County L.J. 298 (1997). However, any such holding is not binding upon this Court. Moreover, the issue here is whether the facts and circumstances within Trooper Spingler’s knowledge at the time of the stop were sufficient to warrant a reasonable belief that the car was in violation of the statute, not whether the statute is, in fact, constitutional. See, e.g., Orsatti v. New Jersey State Police, 71 F.3d 480, 483 (3d Cir. 1995).

officer's knowledge of the nature and the nuances of the type of criminal activity that he had observed in his experience." Id.⁷

9. The Court concludes that there was a basis for reasonable suspicion to detain Claimant after the initial stop based upon the totality of the circumstances, including: (a) Claimant's inability to identify any specific sites he wished to visit in Philadelphia, and his inconsistent statements about his destination, which Trooper Spingler reasonably found to be suspicious;⁸ (b) Claimant's nervousness;⁹ and (c) Claimant's previous involvement in the "suspicious" activities that occurred at the hotel over a period of two to three days.¹⁰

⁷ Although the Court will conclude that there was a basis for reasonable suspicion, the Court notes that it is unable to consider "the totality of the circumstances, *in light of the officer's experience*," Cortez, 449 U.S. at 418 (emphasis added), and is unable to accord "deference to the officer's knowledge of the nature and the nuances of the type of criminal activity that he had observed in his experience," id., because the Government provided no testimony on these matters.

⁸ Suspicious behavior during a stop may be sufficient to raise a reasonable suspicion of illegal activity, even where such behavior is insufficient to establish probable cause. See \$10,700.00, 258 F.3d at 227.

⁹ Although nervousness is "of minimal probative value" when considered in isolation, it is properly considered when examining the totality of the circumstances in determining whether reasonable suspicion existed. See \$10,700.00, 258 F.3d at 226-27.

¹⁰ Although Trooper Spingler did not personally witness Claimant's involvement in the suspicious behavior at the hotel, the knowledge of the task force officers who conducted the surveillance may be imputed to Trooper Spingler. See, e.g., U.S. v. Chappelle, 2002 WL 1067675, at *2 (E.D. Pa. 2002) (citing U.S. v. Andreas, 463 U.S. 765, 771 n.5 (1983)). However, the Court also notes that the probativeness of Claimant's behavior at the hotel is extremely weak given the lack of testimony by the Government regarding the objective significance of such behavior. See infra ¶ 15, Conclusions of Law.

10. As to whether the removal of Claimant to the Airport police office violated his Fourth Amendment rights, it is well-established that “at some point in the investigative process, police procedures can qualitatively and quantitatively be so intrusive with respect to a suspect’s freedom of movement and privacy interests as to trigger the full protection of the Fourth and Fourteenth Amendments.” Hayes v. Florida, 470 U.S. 811, 815-16 (1985). This “line is crossed when the police, without probable cause or a warrant, forcibly remove a person from his home or other place in which he is entitled to be and transport him to the police station, where he is detained, although briefly, for investigative purposes.” Id. at 816. “[S]uch seizures, at least where not under judicial supervision, are sufficiently like arrests to invoke the traditional rule that arrests may constitutionally be made only on probable cause.” Id.
11. The removal of Claimant to the Airport police station in a patrol car while Claimant was in handcuffs, and the detention of Claimant in a holding cell at the Airport police station for approximately an hour, constituted a seizure for Fourth Amendment purposes. Thus, probable cause to support this seizure must be established, and the burden is on the Government to establish probable cause for this seizure. Johnson, 63 F.3d at 245.
12. The Government has failed to establish that there was probable cause to remove and detain Claimant.¹¹

¹¹ In fact, until the Court instructed the parties to file supplemental briefs on this particular issue, the Government failed even to recognize that the removal and detention of Claimant constituted a search for Fourth Amendment purposes for which the Government must establish probable cause. See Govnt’s Proposed Findings and Conclusions.

13. The Government has not clearly established that the result of the dog sniff was, in fact, positive, as the dog handler was not called as a witness to testify, and it does not appear that the officers testifying at the hearing have first-hand knowledge of the dog sniff results.
14. Even assuming *arguendo* that the result of the dog sniff was positive, the Government has not established that the dog sniff constitutes probative evidence supporting probable cause. Proof of a positive canine alert only constitutes probative evidence where there is evidence offered by the Government regarding the particular dog's past training and its degree of accuracy in detecting narcotics, and where the district court finds that the particular dog used for the sniff meets training and reliability requirements. See \$10,700.00, 258 F.3d at 229-32, & n.10; see also United States v. Massac, 867 F.2d 174, 176 (3d Cir. 1989); United States v. Carr, 25 F.3d 1194, 1202-03 (3d Cir. 1994). Here, no evidence was offered prior to or during the hearing regarding the training or degree of accuracy of the dog that conducted a sniff of Claimant's vehicle. Thus, the Court concludes that the positive dog sniff of Claimant's vehicle does not constitute probative evidence supporting a finding of probable cause.¹²

¹² In response to this Court's Order entered May 20, 2003, the parties submitted supplemental briefs specifically addressing whether the removal and detention of Claimant violated his Fourth Amendment rights. In its supplemental brief, the Government asserts that it did not offer testimony regarding the training or reliability of the dog "because [Claimant's Motion to Suppress] did not specifically challenge the reliability or certification of the drug dog." Supplemental Brief of United States of America ("Govn't Supp. Brief") at 9. The Court holds that Claimant's explicit contention in his Motion to Suppress, and at the hearing, that his removal and detention, which occurred without a warrant, constituted an impermissible seizure, was sufficient to satisfy Claimant's initial burden, and to shift the burden of proof to the Government to establish that it had probable cause. See U.S. v. Johnson, 63 F.3d 242, 245 (3d Cir. 1995)

(continued...)

15. Nor was evidence offered regarding the significance, from an objective standpoint, of the allegedly “questionable” activity exhibited by Claimant and others during the hotel surveillance. For example, there was no testimony by any police officer that, according to his personal experience, the conduct exhibited by Claimant at the hotel indicated that Claimant was likely involved in illegal activities such as selling narcotics. See \$10,700.00, 258 F.3d at 227 n.9 (factors allegedly supporting probable cause not probative in the absence of evidence, such as testimony of officer with relevant experience, that factors are indicative of drug-related activity). The Government’s mere

¹²(...continued)

(“once the defendant has established a basis for his motion, *i.e.*, the search or seizure was conducted without a warrant, the burden shifts to the government to show that the search or seizure was reasonable”). Thus, the Government’s argument that it was not obligated to present evidence regarding the training or reliability of the dog because Claimant did not expressly challenge the probativeness of the positive dog sniff is rejected.

The Government also “seeks leave of Court to make [documents establishing the training and reliability of the dog] part of the record.” Govn’t Supp. Brief at 9. However, the Government does not set forth the applicable law regarding the reopening of evidence after a party has rested. Whether the government may reopen its case after resting is traditionally a discretionary matter for the district court. See U.S. v. Coward, 296 F.3d 176, 180 (3d Cir. 2002). “[C]ourts should be extremely reluctant to grant reopenings.” Id. at 180; see United States v. Kithcart, 218 F.3d 213, 219 (3d Cir. 2000). There are a number of factors that a court must consider in deciding whether to permit reopening, including: (1) prejudice (if the timing of the motion to reopen comes after all parties have rested, granting of motion is likely to be prejudicial); (2) the character of the testimony or evidence; (3) the effect of granting the motion; and (4) whether the party moving to reopen has provided a reasonable explanation for failure to present the evidence in its case-in-chief. See Coward, 296 F.3d at 181-82. A reasonable explanation might include that the law on point at the time was unclear or ambiguous, or that new evidence came to light or became available after the proceedings closed. Id. Considering that the request to reopen the evidence here comes long after both parties have rested, and that the Government’s only explanation is that it did not realize that Claimant intended to challenge the training and reliability of the drug dog, the Court concludes that the evidence should not be reopened.

conclusory contentions that Claimant was seen engaging in “suspicious” activities are not probative on the issue of probable cause.

16. The Government argues that it would have inevitably discovered the Defendant Currency because it would have sought and obtained a warrant to search Claimant’s car. According to the “inevitable discovery” doctrine, “[i]f the prosecution can establish by a preponderance of the evidence that the information ultimately or inevitably would have been discovered by lawful means,” then even evidence obtained as a result of a Fourth Amendment violation is admissible. U.S. v. Herrold, 962 F.2d 1131, 1139 (3d Cir. 1992) (quoting Nix v. Williams, 467 U.S. 431, 444 (1984)). Based upon the evidence presented, the Court has determined that the Government has failed to establish that it had probable cause at the point in time when it removed Claimant and his vehicle from the gas station. Because the evidence does not establish that the Government had probable cause, there is no reason to believe that the Government would have been successful in obtaining a warrant to search Claimant’s vehicle, and therefore no reason to believe, let alone conclude that a preponderance of the evidence establishes, that the Government would have inevitably discovered the Defendant Currency. See, e.g., United States v. Cabassa, 62 F.3d 470, 474 (2d Cir. 1995) (holding evidence did not support application of inevitable discovery rule where government’s showing of probable cause was not overwhelming, and therefore there was no guarantee that government would have obtained a warrant); U.S. v. Mejia, 69 F.3d 309, 319 (9th Cir. 1995) (holding evidence did not support application of inevitable discovery rule where it was unclear whether there was competent evidence establishing probable cause to support a warrant).

ORDER

The Court concludes: that the removal and detention of Claimant constituted a seizure for Fourth Amendment purposes; that the government has not established that it had probable cause at the time of this seizure; that the evidence obtained by the Government as a result of this impermissible seizure must be suppressed; and that such evidence includes the Defendant Currency, which was obtained as a result of a search of Claimant's vehicle, which search was undertaken pursuant to Claimant's consent which was given solely as a result of his detention. For these reasons, the Motion to Suppress is GRANTED.

BY THE COURT:

Legrome D. Davis