

**IN THE UNITED STATE DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA,	:	CRIMINAL
	:	
Plaintiff,	:	
	:	NO. 02-763
v.	:	
	:	
MICHAEL JAMES,	:	
	:	
Defendant.	:	
	:	

**FINDINGS OF FACT AND CONCLUSIONS OF LAW
CONCERNING DEFENDANT’S MOTION TO SUPPRESS
PHYSICAL EVIDENCE AND STATEMENTS**

And now, this day of June, 2003, it is hereby **ORDERED** and **DECREED** that Defendant’ Motion to Suppress Physical Evidence and Statements is Denied. The following findings of fact and conclusions of law are entered with respect to the physical evidence seized from Defendant, his statement to police officers, and the identification obtained during Defendant’s arrest in the parking lot of the First Union Bank in Philadelphia, Pennsylvania, on November 1, 2002.

Defendant contends that the police officers lacked reasonable suspicion or probable cause to arrest him and search his person, and therefore the physical items seized during the search and identification made of him after his illegal arrest, should be suppressed. Moreover, Defendant seeks to suppress his inculpatory statement to Officer Gallagher as the fruit of an illegal arrest on the ground that the police failed to give him Miranda warnings prior to asking him a question which was intended to, and did, elicit a response. The Court’s findings of fact and conclusions of law are, therefore, confined to these issues.

FINDINGS OF FACT

1. On November 1, 2002, at approximately 9:00 a.m., while patrolling in uniform in a marked police car in the 6600 block of North 5th Street, Philadelphia Police Sergeant Joseph Schiavone and another police officer were flagged down by a motorist. N.T. 5/13/03 [Hereinafter “N.T.”], at 4, 5.
2. The motorist informed the officers that the First Union Bank (“the Bank”) located at 5th Street and Cheltenham Avenue was in the process of being robbed. N.T., 5.
3. Accordingly, Sgt. Schiavone notified police radio and proceeded to travel the two to three blocks to the Bank; travel time was approximately thirty (30) seconds. N.T., 5, 6.
4. Upon arrival in the Bank’s parking lot, Sgt. Schiavone spoke with the Bank’s security guard who confirmed that a robbery was in progress. Although upset and nervous, the security guard communicated to Sgt. Schiavone that she had heard the male bank robber order the people inside the Bank to get down on the ground, and that he was still inside the bank. N.T., 8.
5. Sgt. Schiavone then proceeded to the west side of the Bank and looked inside. He observed an individual lying on the floor. Having personally observed the robbery in progress, Sgt. Schiavone notified police radio that the bank robbery was confirmed. Consequently, additional police arrived and surrounded the Bank. N.T., 9.
6. Moments later, Defendant, Michael James, exited the Bank from the west end carrying a bag. Defendant was the first person to leave the building and appeared

to be dressed as an armored car guard, wearing a vest carrier similar to those worn by police to carry their bullet-proof vests, as well as black leather gloves. N.T., 9-12.

7. Upon seeing Defendant exit the Bank, Sgt. Schiavone, who knew the bank had been robbed by a male who was still inside the bank when the officers arrived moments earlier, ordered Defendant to get down on the ground and display his hands. N.T., 8.
8. Defendant immediately complied with Sgt. Schiavone's request. Defendant got down on the ground, and was then handcuffed and secured by the officers who had arrived on the scene to assist Sgt. Schiavone. N.T., 10.
9. Subsequent to Defendant's compliance, Sgt. Schiavone observed a woman pacing bank and forth inside the Bank while pointing at Defendant. The woman exited the Bank at Sgt. Schiavone's request, and immediately identified Defendant as the individual who had just robbed the Bank. The witness further informed Sgt. Schiavone that Defendant was the only bank robber. N.T., 10.
10. Thereafter, Sgt. Schiavone searched Defendant and found a loaded revolver in his vest pocket and five live rounds of ammunition in his pants pocket. Sgt. Schiavone also noted that Defendant was wearing a vest carrier similar to that worn by a police officer that would normally contain armor for a bulletproof vest. Other officers, including Officer Gallagher, secured the bag containing the money stolen from the Bank. N.T., 11, 12.
11. After Defendant was searched, he was ordered to his feet. While Defendant was

being brought to his feet, Officer Gallagher felt his vest carrier. In reference to the vest, Officer Gallagher remarked “you don’t have any armor in that.” Defendant then stated that he did not plan on getting into a shoot-out with the police. N.T., 12-13.

CONCLUSIONS OF LAW

1. Police officers are permitted to conduct an investigatory stop of an individual if they reasonably suspect that criminal activity is afoot. Ornelas v. United States, 517 U.S. 690, 693 (1996) (citing Terry v. Ohio, 392 U.S. 1, 30 (1966)).
2. Sgt. Schiavone’s initial stop of Defendant was a brief investigatory detention, amply supported by objective circumstances leading to the reasonable conclusion that criminal activity was afoot. The following circumstances are relevant to this inquiry: 1) Sgt. Schiavone had been informed by a citizen that a bank robbery was in progress at the Bank; 2) the security guard confirmed the occurrence of the robbery and provided Sgt. Schiavone with the specific details that the male bank robber had ordered the individuals inside the Bank to lie on the ground and was still inside the bank; 3) Sgt. Schiavone confirmed the information provided by the witness security guard by personally observing through the bank window, that an individual was in fact lying on the floor and thus the crime continued to occur in Sgt. Schiavone’s presence; 4) Defendant, a male, was the first individual to exit the Bank after the confirmed bank robbery; and 5) Defendant emerged wearing dark clothing resembling that which would be worn by an armored car guard, a

vest carrier similar to those worn by police to carry their bullet-proof vests as well as black leather gloves. He also carried a bag.

Defendant's emergence from the bank under these circumstances, at the very least, appeared highly suspicious to a ten year veteran of the Police Department. Sgt. Schiavone was amply justified in briefly detaining Defendant pending conversations with the known victims of the robbery – the persons lying on the floor of the bank.

3. While Defendant was lying on the ground, and before the search of his person commenced, a woman - who was in the Bank while it was being robbed and observed the bank robber - pointed to Defendant. Upon exiting the Bank, she identified Defendant as the bank robber. Defendant's arrest occurred at this point. United States v. Watson, 432 U.S. 411 (1976)(holding that a warrantless arrest in a public place is permissible as long as the arresting officer had probable cause to arrest suspect). Under the Fourth Amendment standard, an officer has probable cause to effectuate a warrantless arrest of a suspect if the facts and circumstances existing prior to the arrest are sufficient to warrant prudent man in believing that suspect has committed or is committing an offense. Michigan v. DeFillippo, 443 U.S. 31, 37 (1979). In the instant matter, Sgt. Schiavone had ample probable cause to satisfy the constitutional prerequisite for Defendant's arrest.
4. Thereafter, officers searched Defendant and recovered the revolver, the extra bullets and the proceeds of the robbery. The search of Defendant's person was incident to a lawful arrest. Knowles v. Iowa, 525 U.S. 113, 116 (1998)(Police

search of a suspect incident to an arrest is permissible to (1) disarm the suspect in order to take him into custody, and (2) preserve evidence for later use at trial).

The seizure of loaded revolver and five live rounds of ammunition in Defendant's pockets and the bag of stolen money, occurred as a result of a lawful search of Defendant's person.

5. While conducting the search and arrest of Defendant, Officer Gallagher noted that Defendant's vest carrier did not contain the armor which is usually found in such a vest. Gallagher remarked to Defendant, "you don't have any armor inside that." Defendant stated that he did not plan on getting into a shoot-out with the police.
6. The Supreme Court in Miranda held that "certain warnings must be given before a suspect's statement made during custodial interrogation could be admitted in evidence." United States v. Dickerson, 530 US. 428, 431-32 (2001)(citing Miranda v. Arizona, 384 U.S. 436 (1966)). However, not all statements obtained by the police after a person has been taken into custody are the product of interrogation. Rhode Island v. Innis, 446 U.S. 291, 300 (1980). Voluntary confessions absent compulsion, are admissible under Miranda and its progeny: "Confessions remain a proper element in law enforcement. Any statement given freely and voluntarily without any compelling influences is, of course, admissible in evidence." Id. at 299-30 (quoting Miranda, 384 U.S. at 478). Accordingly, the procedural safeguards embodied in Miranda only apply where a suspect who is in custody is subjected to a "measure of compulsion above and beyond that inherent in custody itself" thereby rising to the legally recognized level of interrogation.

Innis, 446 U.S. at 300. Interrogation occurs not only when the suspect is subject to direct questioning, but equally when subject to actions or words which the police officers should have known were reasonably likely to elicit an incriminating response. Id. at 302.

10. In the instant matter, Officer Gallagher made a statement which was not designed to elicit a response from Defendant, nor was it reasonably likely to elicit a response. As such, Miranda warning were not necessary. Innis, 446 U.S. at 291 (quoting, Miranda, 384 U.S. at 479). Officer Gallagher's statement was a reactionary response to an unexpected discovery; that a vest which normally contains and is designed to contain armor, did not. Officer Gallagher made the statement after he had searched Defendant and concluded that the vest carrier did not contain armor. Officer Gallagher had no need for confirmation or validation from Defendant, the armor simply was not there. He made the statement for his own benefit, an expression akin to an internal monologue, a vocal utterance of his inner thoughts. As such, the statement was not made to elicit a response from Defendant. Consequently, the statement made by Defendant is admissible.
11. As the initial detention of the Defendant was proper, and as he was promptly identified by an eyewitness to a crime without any suggestion by the police, the identification is not the "fruit of the poisonous tree." Accordingly, the post-arrest identification of Defendant is constitutionally permissible. See Stovall v. Denno, 388 U.S. 293, 301-302 (1967).

For the reasons set forth above, Defendant's motion to suppress physical evidence, statements, and identification is **DENIED**.

BY THE COURT:

Legrome D. Davis