

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

<b>UNITED STATES OF AMERICA</b>	:	
	:	
<b>V.</b>	:	<b>CRIMINAL NO. 03-421</b>
	:	
<b>ROGERS LOCKETT, III</b>	:	

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

Upon consideration of Defendant's Motion To Suppress Physical Evidence and Statements and the Government's response thereto, the Government's proposed findings of fact and conclusions of law, and Defendant's Supplemental Memorandum, and after a hearing thereon, the Court hereby enters the following findings of fact and conclusions of law:

1. On Wednesday, February 5, 2003, at approximately 12:10 p.m., law enforcement officers Carl Giardinelli, William J. Burdette and James Corbett were working with a multi-agency drug interdiction task force at the Amtrak 30th Street Train Station in Philadelphia, Pennsylvania.

2. Special Agent Giardinelli is and was at all times an agent of the United States Drug Enforcement Administration ("DEA") where he has been employed since March 1995.

3. Officer Burdette is and was at all times a corporal with the Pennsylvania State Police assigned to the Bureau of Emergency and Special Operations and then reassigned to DEA. He has been involved in narcotics enforcement at various times throughout his seventeen years with the Pennsylvania State Police. His duties while assigned to DEA have included interdiction at airports, train stations and bus depots and have involved numerous consensual encounters.

4. Officer Corbett is and was at all times a member of the Philadelphia Police Department. He has been detailed to DEA since 1988. His duties while with DEA have

included drug interdiction at airports, train stations and bus depots.

5. Special Agent Giardinelli, Corporal Burdette and Officer Corbett were dressed in casual civilian clothes on February 5, 2003. They were all armed with handguns, which were concealed beneath their clothing.

6. At approximately 12:10 p.m., Agent Giardinelli and Corporal Burdette observed an African-American male wearing an orange shirt walking around the train station waiting area and talking on a cell phone for approximately 20 minutes. At approximately 12:30 p.m., the unidentified male sat down on a bench and continued to talk on his cell phone. Shortly thereafter, a second African-American male, later identified as Defendant Rogers Lockett, sat down next to the first male in the orange shirt. Lockett placed his bags, a rolling suitcase and a backpack, on the bench as well. Then, the man in the orange shirt, while continuing to talk on his cell phone, shook Lockett's hand and walked away.

7. Lockett remained seated on the bench, which was on the left side of the train station. The waiting area inside the station is large, open and well-lit, approximately one city block long. There are shops, restaurants and kiosks on either side and behind where Lockett was seated. Directly to Lockett's left was a hallway that leads into another large, open area where bathrooms, Amtrak ticket offices and rental car offices are located. Approximately twelve (12) feet in front of Lockett was another row of benches and beyond that a stairwell leading down to a train platform. Agent Giardinelli and Corporal Burdette were standing in the center of the station, near an information desk and underneath a board listing train departure and arrival times. At the time relevant to this motion, there were many members of the general public in the station.

8. Agent Giardinelli and Corporal Burdette observed Lockett sitting on the bench staring

glassy-eyed at the floor. The officers found it particularly strange that Lockett did not react in any way when Officer Corbett interdicted an Asian woman directly in front of Lockett.

9. After observing Lockett for approximately fifteen (15) minutes, Agent Giardinelli and Corporal Burdette approached Lockett. Corporal Burdette showed Lockett his badge, identified himself, and asked Lockett if he would answer a few questions. When Lockett said “Yes,” Corporal Burdette sat down on the bench approximately two (2) feet to Lockett’s right. Agent Giardinelli remained standing a few feet to the right of Corporal Burdette. No law enforcement officer was directly in front or to the left of Lockett. Although Officer Corbett and Amtrak Police Officer Sean Martin were in the vicinity, neither was closer than ten to fifteen feet from Lockett and neither was in his field of vision.

10. In a conversational tone, Corporal Burdette asked Lockett some questions about his travel. Lockett responded willingly and coherently to the questions, telling Corporal Burdette that he was from Philadelphia but was traveling to Boston. When Corporal Burdette asked to see Lockett’s identification and train ticket, Lockett handed him his ticket to Boston and his college identification for Newbury College. Corporal Burdette examined these documents and promptly returned them to Lockett.

11. After returning the ticket and identification, Corporal Burdette explained to Lockett that he and Agent Giardinelli were looking for contraband, including narcotics, large sums of money, guns and other weapons and asked Lockett if he had any of these items in his possession. Lockett said he did not.

12. Corporal Burdette then asked Lockett if the bag (the rolling suitcase) on the seat next to Lockett belonged to him. Lockett admitted the bag was his. Corporal Burdette then asked if

he could look in the bag, and Lockett said, “Yes.”

13. Lockett then placed the rolling suitcase on the floor and started to open it, but Corporal Burdette said, “That’s okay, I can get that.” Lockett responded, “No, I’ll get it,” but Corporal Burdette repeated, “No, that’s okay, I can get it.” Corporal Burdette then opened the bag.

14. Immediately after opening the suitcase, Corporal Burdette and Agent Giardinelli saw three large plastic bags that contained numerous small clear plastic bags, called nickel bags, which they knew are commonly used to package illegal drugs. On one of the three larger bags was a picture of a marijuana leaf. Upon seeing these nickel bags, Corporal Burdette pushed the rolling suitcase over to Agent Giardinelli, who continued searching through the suitcase.

15. While he searched the rolling suitcase, Agent Giardinelli asked Lockett, “Are there any weapons in this bag?” and Lockett said, “No.” Agent Giardinelli then continued to searching the rolling suitcase while Corporal Burdette continued talking to Lockett. Corporal Burdette asked Lockett if the other bag (the backpack) belonged to him. When Lockett said, “Yes,” Corporal Burdette asked if he could search the backpack, and Lockett said, “Yes” again. Lockett then handed the backpack to Corporal Burdette, who began to open it.

16. At this point, a ring on Agent Giardinelli’s finger hit a metal object in the rolling suitcase. After feeling exactly what his ring hit, Agent Giardinelli realized it was a gun and said, “Gun!” in a loud voice so as to get the attention of Corporal Burdette and the other law enforcement officers in the vicinity. Then, Corporal Burdette and Officer Martin, who came over when he heard Agent Giardinelli yell “Gun!”, handcuffed Lockett and walked him from the public area of the train station to the Amtrak police station a short distance away within the same

building. The gun discovered by Agent Giardinelli was an Intertec 9mm semi-automatic uzi-type weapon with an obliterated serial number.

17. The entire encounter between Corporal Burdette, Agent Giardinelli and Lockett, from the time Corporal Burdette and Agent Giardinelli first approached Lockett through when Lockett was taken back to the Amtrak police station, lasted approximately three minutes.

18. Several law enforcement officers, including Agent Giardinelli, Corporal Burdette and Officer Corbett, accompanied Lockett to the Amtrak police station where they handcuffed Lockett to a bench. Agent Giardinelli and Corporal Burdette went to a back room and continued to search Lockett's bags. Corporal Burdette physically searched through the bags while Agent Giardinelli observed.

19. During this search at the police station, Agent Giardinelli and Corporal Burdette found another firearm, a Bryco Jennings 9mm semi-automatic pistol with an obliterated serial number, loaded with twelve (12) live rounds, and a magazine for the Intratec containing thirty (30) rounds of ammunition. They also found approximately one pound of marijuana in the rolling suitcase. They found three notebooks and pictures in the backpack. Two of these pictures were of Lockett and a friend holding handguns to each other's heads.

20. Lockett never revoked his consent or otherwise communicated with the officers that he no longer consented to the search of his suitcase or backpack.

21. Approximately two hours after Lockett was arrested, and after Corporal Burdette and Agent Giardinelli completed their search of Lockett's bags, Officer Corbett attempted to interview Lockett while he was in the holding area, handcuffed to the bench. Before asking Lockett any questions, Officer Corbett read Lockett his Miranda warnings using the standard

DEA-13(a) Miranda form. Lockett said he understood his rights and agreed to answer some questions.

22. Officer Corbett asked Lockett who owned the guns, and Lockett responded, “The guns are mine.” Officer Corbett then asked Lockett from whom he obtained the firearms, at which point Lockett said he wanted to talk to a lawyer. All questioning of Lockett stopped immediately.

23. At the time the first gun was found and Lockett was arrested, it would have been standard procedure for the Philadelphia Police Department and standard procedure for DEA to inventory Lockett’s belongings to ascertain whether they contained any valuables or money and to confiscate any contraband, such as guns or drugs. After conducting this inventory, the non-contraband belongings would be turned over to Lockett’s attorney, a member of his family, or whomever Lockett designated to take possession of the items.

24. During the entire relevant period, from when Agent Giardinelli and Corporal Burdette approached Lockett through when he asked for his lawyer while Officer Corbett was questioning him, Lockett was calm, understood the questions he was asked and answered them coherently. He was capable of understanding his rights and making voluntary choices.

#### **CONCLUSIONS OF LAW**

1. The February 5, 2003 encounter between Corporal Burdette, Agent Giardinelli and Defendant Rogers Lockett in the public area of the 30th Street Train Station in Philadelphia, Pennsylvania was not coercive and did not constitute a stop or seizure under the Fourth Amendment. See generally Florida v. Bostick, 501 U.S. 429, 438 (1991) (“As we have explained, no seizure occurs when police ask questions of an individual, ask to examine the

individual's identification, and request consent to search his or her luggage--so long as the officers do not convey a message that compliance with their requests is required.”); United States v. Kim, 27 F.3d 947, 953 (3d Cir. 1994) (“potentially incriminating questions do not by themselves make an encounter coercive”); United States v. Thame, 846 F.2d 200, 202 (3d Cir. 1988) (“a contact in which officers ‘simply ask [if a defendant] would step aside and talk with them, [is] clearly the sort of consensual encounter that implicates no Fourth Amendment interest’”) (quoting Florida v. Rodriguez, 469 U.S. 1, 5-6 (1984)).

2. A reasonable person in Lockett’s position would have felt free to refuse to talk to Giardinelli and Burdette.

3. Because the encounter did not constitute a stop or seizure of Lockett, Burdette and Giardinelli did not need reasonable suspicion to approach and question Lockett.

4. Based on the totality of the circumstances, Lockett voluntarily gave his consent by responding, “Yes” to Corporal Burdette’s request to search his rolling suitcase.

5. Based on the totality of the circumstances, Lockett voluntarily gave his consent by responding, “Yes” to Corporal Burdette’s request to search his backpack.

6. Because Lockett voluntarily consented to the searches of his rolling suitcase and backpack, any items discovered during these consensual searches were lawfully obtained.

7. When Agent Giardinelli found the Intratec 9mm in the rolling suitcase, the law enforcement officers had probable cause to arrest Lockett.

8. Because the Intratec 9mm was discovered during a consensual search of Lockett’s rolling suitcase, it was lawfully obtained.

9. Rogers Lockett never revoked his consent to the searches of his rolling suitcase and

backpack. Even if he had revoked his consent after he was arrested and taken to the police station, the rolling suitcase and backpack would have been legally searched pursuant to the standard inventory procedures of the Philadelphia Police Department and DEA and as a valid inventory search. See generally Illinois v. Lafayette, 462 U.S. 640, 648 (1983) (“[I]t is not ‘unreasonable’ for police, as part of the routine procedure incident to incarcerating an arrested person, to search any container or article in his possession, in accordance with established inventory procedures.”) During these legal searches, the contraband material, including the second gun, pound of marijuana, drug packaging and paraphernalia, and ammunition found in Lockett’s bags when Burdette and Giardinelli searched them at the police station, would have inevitably been discovered. Those items, therefore, are admissible under the inevitable discovery doctrine. See Nix v. Williams, 467 U.S. 431 (1984) (“Exclusion of physical evidence that would inevitably have been discovered adds nothing to either the integrity or fairness of a criminal trial.”).

10. Lockett was not in custody until his arrest after Giardinelli discovered the gun in his rolling suitcase.

11. Lockett voluntarily, knowingly and intelligently waived his Miranda rights prior to saying, “The guns are mine,” in response to Corbett’s question. When Lockett asserted his right to counsel after Corbett’s second question, Corbett properly stopped questioning Lockett. See Brosius v. Warden, 278 F.3d 239, 250 (3d Cir. 2003) (“[A]n accused . . . having expressed his desire to deal with the police only through counsel, is not subject to further interrogation by the authorities until counsel has been made available to him, unless the accused himself initiates further communication, exchanges, or conversations with the police.”) (quoting Edwards v.

Arizona, 451 U.S. 477, 484-85 (1981)); see also Miranda v. Arizona, 384 U.S. 436, 444 (1966)

(“The defendant may waive effectuation of [his Miranda] rights, provided the waiver is made voluntarily, knowingly and intelligently. If, however, he indicates in any manner and at any stage of the process that he wishes to consult with an attorney before speaking there can be no questioning.”)

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**ORDER**

**AND NOW**, this \_\_ day of January, 2004, upon consideration of Defendant’s Motion to Suppress Physical Evidence and Statement [Doc. #31] and the Government’s Response thereto [Doc. #35], the Government’s Proposed Findings of Fact and Conclusions of Law [Doc. #38], Defendant’s Supplemental Memorandum of Law [Doc. #39], and after a hearing on this Motion, it is hereby **ORDERED** that Defendant’s Motion is **DENIED**.

It is further **ORDERED** that all evidence obtained from the person or personal belongings of Defendant Rogers Lockett, III, on February 5, 2003 shall be admissible in the Government’s case against him in the above-captioned matter, including, but not limited to, the following:

1. The Intratec 9mm semi-automatic uzi-type gun with an obliterated serial number;
2. The Bryco Jennings 9mm semi-automatic pistol with an obliterated serial number;
3. The magazine containing thirty (30) rounds of ammunition for the Intratec 9mm;
4. The three large plastic bags and the smaller “nickel bags”;
5. The marijuana (approximately one pound); and
6. The statements, admissions and confession made by Defendant up to his request for counsel.

It is so **ORDERED**.

**BY THE COURT:**

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**CYNTHIA M. RUFÉ**