

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

UNITED STATES OF AMERICA : CRIMINAL
 :
 V. :
 :
 ARNOLD WILLIAMS : NO. 03-209-01

MEMORANDUM AND ORDER

The government has moved for reconsideration of the Court's Order to suppress evidence found in a car under defendant's control. In prior memoranda dated January 20, 2005, and April 26, 2005, the court ruled on defendant's motion to suppress evidence, granting the motion in part, specifically as to the contents of an automobile controlled by the defendant which was searched after the Terry stop of the defendant, and in connection with the defendant's arrest.

The government asserts that the defendant did not move to suppress the contents of the car, that the search warrant which was secured after the defendant's arrest was valid, notwithstanding the prior events, and also, that the Terry stop extends to a search of the car.

Initially, the court finds that the defendant's motion to suppress, which was contained in various pro se pleadings as well as in memoranda filed by defendant's counsel, specifically did seek suppression of evidence in the car. Any doubt about this has been resolved by the defendant's "Memorandum of Fact and Law in Support of his Motion for Suppression" filed December 10, 2004, which clearly states in the conclusion "both of his [Officer Ferrero] searches of the defendant's car (the first through the interior; the second, using the defendant's key to go into the locked glove box and the locked trunk) were illegal and any evidence that was obtained as a result must be excluded."

The government's motion also failed to note or consider the impact of the contradictory testimony of Officer Ferrero and the argument at the hearing held on November 8, 2004. At page 19 of this transcript, Officer Ferrero testified that prior to the Terry stop, he observed the defendant standing on Green Street looking in the open trunk of the car.

Officer Ferrero testified that after the Terry stop, the defendant told him that he owned the car, and the officer found out the car was owned by another individual, and the officer then began to look through the car, and used the key given to him by the defendant to open the trunk (page 25-26.) Although the officer did not testify on direct that he found any incriminating evidence in the trunk at the time he looked in it (P. 20), he did testify that a search warrant was obtained later by the Detectives Division. However, on cross examination Officer Ferrero contradicted himself and said that when he looked in the car trunk he saw "bags and a scale and a bunch of drug paraphernalia." (P. 53).

Officer Ferrero disclaimed any responsibility for the contents of the search warrant. (P. 53) Officer Ferrero claimed that he told the detective about seeing these items in the car at the time of the Terry stop and arrest but had no explanation of why they were not mentioned in the affidavit for the search warrant. (P. 53)

Thus the Officer's testimony is contradictory, but he admitted that the trunk was searched and incriminating evidence was found, prior to the police securing the search warrant.

The Court regrets that its prior memorandum did not discuss the search warrant or its legal significance. However, given the overall testimony, and still finding that Officer Ferrero's testimony cannot be fully accepted, the court declines to change the prior ruling on the suppression. The court notes that Officer Ferrero was the only eye witness who testified that the car trunk was open prior to the Terry stop. The Court finds that the car trunk was not open prior

to the Terry stop but was open only after the defendant ran, was arrested, and was brought back to the scene. The court stands by its previous decision that, under all the circumstances, the police, having illegally seized the gun from the locked glove compartment, had no right to enter the trunk of the car without a search warrant. The government has failed to present any testimony, such as that of the detective who secured the search warrant, to justify the validity of the search warrant given that it followed an illegal search of the locked glove compartment.

The court has now reviewed the affidavit submitted in support of the search warrant. The affidavit, which summarizes the reports of various police officers at the scene, does not disclose that any drug paraphernalia was found in the trunk of the car while the car was located on Green Street, an important fact that surely would have been included if it was true.

The Court furthermore rejects the government's motion for reconsideration to the extent that it reargues that Officer Ferrero's entry into the car does not invalidate the search warrant. The affidavit to the search warrant clearly shows that it was based upon the account of the arresting officer, Officer Ferrero, which the court has refused to accept in total. The affidavit was based in large part on the asserted but not credible testimony that the gun was in "plain view" under the front seat of the car, which the Court has also rejected. Therefore, the Court believes that the search warrant was based on incorrect facts, and therefore was based on evidence that was illegally seized, and without these facts, there was no probable cause for a search of the car. The government's reliance on cases such as U.S. v. Herrold, 962 F.2d 1131 (3rd Cir. 1992) is not helpful because in that case the trial court had accepted the police officer's testimony that he saw drugs in plain view and subsequently got a warrant to seize the drugs and other items inside the defendant's trailer. In this case the court has specifically found that the gun was not in plain view, and thus the premise of the search warrant itself was incorrect. There

is no factual basis in this case to apply the “independent source” doctrine.

The court has also considered but rejects the government’s third argument that the Terry stop extends to the car, for the reasons stated in the prior memorandum. The cases that the government cites in its motion are either “plain view” or “car stop” cases and are not controlling.

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

UNITED STATES OF AMERICA : CRIMINAL
 :
 :
 :
 :
 :
ARNOLD WILLIAMS : NO. 03-209-01

ORDER

AND NOW, this day of May, 2005, upon consideration of the government's Motion
for Reconsideration, it is hereby ORDERED that said motion is DENIED.

MICHAEL M. BAYLSON, U.S.D.J.