

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

UNITED STATES OF AMERICA :
 :
 V. : CRIMINAL NO. 04-654
 :
 FRED ROBERTS, :
 a/k/a "Khalil Jiggs" :

MEMORANDUM AND ORDER

PETRESE B. TUCKER, J.

FEBRUARY , 2006

Defendant, Fred Roberts was indicted by the grand jury on October 7, 2004 for criminal acts occurring on April 13, 2004, May 1, 2004 and June 19, 2004 in the County of Philadelphia, within the Eastern District of Pennsylvania. The indictment charges the following: possession of a firearm and ammunition by a felon, in and affecting interstate commerce on April 13, 2004, (Count 1); possession with intent to distribute cocaine base ("crack") on May 1, 2004 (Count 2); possession of marijuana on May 1, 2004 (Count 3); and possession of a firearm and ammunition by a felon, in and affecting interstate commerce on June 19, 2004 (Count 4).

Defendant, through his attorney has filed a Motion to Suppress evidence in Counts 1, 2 and 3, for the incidents occurring April 13, 2004 and May 1, 2004. In addition, defendant filed a pro se motion to suppress evidence seized in the May 1, 2004 incident. The Court after hearing on the Motions filed January 18, 2004 makes the following finds of fact.

1. On April 13, 2004, officer George Soto, Philadelphia Highway Patrol along with his partner, officer James Chabot, badge No. 3602 also Philadelphia Highway Patrol, were assigned to the 12th Police District as part of the Violent Crime Task Force. Officer Soto was the driver and Officer Chabot was the passenger in a

marked police car. The officers were working 6 pm to 2 am shift when at 7:45 pm they stopped a Chevy Tahoe in the 2600 block of South 65th Street in Southwest Philadelphia.

2. The officers, driving southbound on 65th Street stopped the Tahoe to issue a traffic citation for violation of MVC §4524(e) Illegally Tinted Windows. All vehicle windows, except the front windshield were darkly tinted in violation of the motor vehicle code.
3. The officers used the strobe lights to signal the vehicle to stop. The Tahoe pulled over shortly after being signaled to do so. The officers parked their vehicle about 10 feet or 1 car length behind the Tahoe, exited the vehicle and approached the Tahoe. As the officers approached, they observed movement inside the Tahoe but could only see silhouettes of the occupants of the vehicle.
4. Officer Soto approached the driver side of the Tahoe, officer Chabot went to the passenger side. The occupants were ordered to roll down the vehicle windows and complied. Officer Soto stood next to the drivers side of the Tahoe to the front of the driver. Officer Soto requested and received the license and registration for the vehicle. The driver, Anthony Jackson, was compliant at all times. The passenger, Fred Roberts, became belligerent, cursing and arguing that the driver did not have to comply. Officer Soto removed the driver from the Tahoe and put him in the back seat of the police vehicle, after a frisk of Jackson revealed no weapons or contraband. Once officer Soto put Jackson in the police car he returned to the Tahoe.

5. Officers Chabot and Soto requested the passenger, defendant Fred Roberts exit the Tahoe. Fred Roberts was told 5 or 6 times before he finally got out of the car. Once out of the car, Roberts motioned to his right pocket. Officer Soto grabbed Roberts right hand and his partner grabbed his left hand and both hands were placed upon the vehicle. Officer Soto performed a frisk of the defendant and recovered a .380 caliber fully loaded firearm from his right jacket pocket.
6. The defendant Fred Roberts, was charged with VUFA and Jackson was issued a TVR for illegally tinted windows. A preliminary hearing for Roberts was scheduled for 4/21/04 at 55th & Pine Streets. Officer Chabot appeared, the defendant failed to appear when the matter was called and a bench warrant was issued. The defendant appeared later, after the officer had left and received a subpoena for 6/11/04.
7. On May 1, 2004, Officers Chabot and Durham, badge No. 9502 highway patrol were assigned to a roving DUI detail in the Frankford section of Philadelphia. Chabot was the driver and Durham was the passenger. The officers saw a Chevy Tahoe double parked on Frankford Avenue outside the Trolley Stop Bar. The Tahoe drove off and turned onto Granite Street. As the officers turned onto Granite Street they observed the same Tahoe again double parked . The occupants of the Tahoe were talking to women passengers in an Oldsmobile. Since Granite is a small street, the Tahoe was blocking the highway. The officers signaled for the Tahoe to pull over. The driver of the Tahoe complied. The Tahoe had illegally tinted windows. As the officers exited their vehicle, Officer Chabot

commented to Officer Durham that he recognized the vehicle. After they approached, Durham on the passenger side and Chabot on the driver side, Chabot recognized the occupants of the Tahoe from the 4/13/04 arrest. Since Chabot was at the preliminary hearing for Roberts where a bench warrant had been issued he believed the bench warrant for the defendant to be outstanding.

8. Chabot ordered Jackson, the driver out of the Tahoe and after a frisk placed him in the back seat of the police vehicle. Chabot returned to the Tahoe to assist Durham. Officer Durham was in the process of frisking Roberts when Chabot returned and joined in the frisk. Chabot observed a bulge in defendant's pants pockets about 3 to 4 inches. Using his flashlight, Officer Chabot looked into an open pocket in defendant's cut off pants and saw drugs and a large amount of U.S. currency, \$830 in various denominations. A total of 45 bills.
9. As the defendant was exiting the Tahoe, before officer Chabot's return, Officer Durham saw defendant discard a package containing marijuana.
10. Officer Durham frisked defendant on the right, officer Chabot on his left. Officer Durham recovered an opened notebook from the defendant's right pants pocket. All items confiscated were placed on a property receipt.

CONCLUSIONS OF LAW:

1. The stop of the defendant on 4/13/04 was based on probable cause that the driver was violating the motor vehicle code and would be issued a traffic summons for illegal tint on windows. Sec. E.g. Ohio v. Robinette, 519 U.S. 33, 38(1996); Whren v. United States, 517 U.S. 806, 813(1996); See 75 Pa. C.S.A. § 4524(e)(1).

2. Removing defendant from the vehicle was reasonable to insure the officers' safety since defendant was loud and argumentative with the officers. United States v. Bonner, 363 F.3d 213, 216 (3d Cir. 2004).
3. The frisk of the defendant once out of the vehicle was reasonable and based upon articulable suspicion of the officers. Pennsylvania v. Mimms, 434 U.S. 106, 111-12 (frisk upheld solely on basis of officer's observation of a bulge under Mimms' clothing); Maryland v. Wilson, 519 U.S. 408 (1997) (extending Mimms to passengers); see Michigan v. Long, 463 U.S. 1032, 1049-50 (1983) (permitting search of car during traffic stop).
4. The evidence seized in the April 13, 2004 arrest will not be suppressed.
5. The stop of the defendant on 5/1/04 was based on probable cause to believe the driver of the vehicle was violating the Motor Vehicle Code by obstructing the highway and having illegally tinted windows. Mimms, 434 U.S. at 111-12; Bonner, 363 F3d at 216. See 75 Pa. C.S.A. § 4524 (e)(1)
6. After the officer approached the vehicle, the removal of defendant from the auto for further investigation for their safety was reasonable since Officer Chabot had reason to believe the defendant was wanted on a bench warrant for a firearms violation. Mimms, 434 U.S. at 222-12; Bonner, 363 F.3d at 216.
7. Once out of the auto, officer Durham was authorized to frisk defendant for weapons and contraband. After officer Durham saw defendant discard the package of marijuana, the defendant was considered under arrest and a further search incident to the arrest was appropriate. Id.

8. Officer Chabot was authorized to search the defendant for several reasons. A frisk was appropriate for the officers safety. A search was authorized incident to defendants arrest for possession of marijuana. The 3 to 4 inch bulge in defendants open pants pocket revealed, with the use of a flash light, in plain view, drugs and a large amount of U.S. currency. Id.

9. The motion to suppress the evidence in the 5/1/04 incident is DENIED.

An appropriate Order is attached.

/S/ Petrese B. Tucker

PETRESE B. TUCKER, USDJ.

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ORDER

AND NOW, this day of February, 2006, upon consideration of defendants Motion to Suppress filed by counsel for the defendant and the defendant Pro Se, the Governments Response to the Motion to Suppress and hearing held January 17, 2006, it is HEREBY ORDERED AND DECREED, that defendant's Motion to Suppress are DENIED.

It is further Ordered that:

1. All evidence seized at the arrest of April 13, 2004 (Count 1) may be introduced at trial, and
2. All evidence signed at the arrest of May 1, 2004 (Counts 2 and 3) may be introduced at trial.

BY THE COURT:

/S/ Petrese B. Tucker

PETRESE B. TUCKER, USDJ