

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA :
 :
 v. : CRIMINAL ACTION
 :
 : NO. 05-440
 DESMOND FAISON, and :
 TYREK MCGETH :

SURRICK, J.

JANUARY 15, 2008

MEMORANDUM & ORDER

Presently before the Court are Defendants Desmond Faison and Tyrek McGeth's Motions to Suppress Physical Evidence Seized on **December 5, 2001 (Doc. Nos. 421, 432)**. A **Suppression Hearing was held on August 15, 2007**. For the following reasons, Defendants' Motions will be **denied**.

I. BACKGROUND

On December 5, 2001, at approximately 11:30 AM, Philadelphia Police Officer Javier Rodriguez was conducting surveillance of the north side of the 7200 block of Greenway Avenue. (Suppression Hr'g Tr. 32-33, Aug 15, 2007). Officer Rodriguez is an eleven year veteran of the Philadelphia Police Department, and has observed more than a thousand illegal drug transactions while participating in confidential anti-narcotics surveillance operations. (*Id.* at 32, 42.) During the surveillance, Officer Rodriguez observed three separate individuals, a black male, a black female, and a white female, approach Defendant McGeth at separate times. (*Id.* at 34-36.) These individuals each handed McGeth cash in return for which McGeth handed them small items which he removed from his right pocket. Each of the individuals then left the area. (*Id.* at 34-

36.) Based on his extensive experience Officer Rodriguez concluded that he had just observed illegal drug transactions. (*Id.* at 35.) Following these transactions, Defendant McGeth was met by Defendant Faison. (*Id.* at 37.) Defendant McGeth put the money he had obtained through his transactions with the three individuals together with additional currency that he had in his left pocket and gave the bundle of cash to Defendant Faison. (*Id.*) Defendants Faison and McGeth then entered a Ford Bronco and departed the area. (*Id.* at 40.) Philadelphia Police officers stopped the black female and the white female who had approached Defendant McGeth. (*Id.* at 58.) They were in possession of the crack cocaine that they had just purchased from McGeth. (*Id.*) Rodriguez radioed his backup requesting that the Defendants be stopped and arrested for engaging in illegal drug transactions. (*Id.* at 56.) Defendants McGeth and Faison were apprehended. (*Id.* at 58.) Faison was in possession of \$817 and McGeth was in possession of \$157. (Doc. No. 475 at 22; Doc. No. 476 at 13.)

Defendants move to suppress the currency seized from them as being seized in violation of their Fourth Amendment rights. (Doc. Nos. 421, 432.)

II. LEGAL ANALYSIS

As an initial matter, Defendant McGeth mis-characterizes the nature of his and Defendant Faison's detention. He suggests it was an investigatory stop. (*See* Doc. No. 432 at 6-10.) Officer Rodriguez testified that Defendants were not taken into custody pursuant to *Terry v. Ohio*, 392 U.S. 1 (1968). Rather they were stopped by officers who were making a warrantless arrest. A warrantless arrest by a police officer is reasonable under the Fourth Amendment when there is probable cause to believe that a criminal offense has been or is being committed. *Devenpeck v. Alford*, 543 U.S. 146, 152 (2004). A determination as to whether probable cause

exists looks at the events leading up to the arrest and then asks whether these facts, when seen from the viewpoint of an objectively reasonable police officer, amount to probable cause. *Maryland v. Pringle*, 540 U.S. 366, 371 (2003). “[A]ll that matters is whether the arresting officers possessed knowledge of evidence sufficient to establish probable cause that [a defendant] was engaged in the commission of a felony at the time of his public warrantless arrest.” *United States v. Abdi*, 463 F.3d 547, 559 (6th Cir. 2006) (citing *Payton v. New York*, 445 U.S. 573, 598 (1980)).

In this case, the arrests of Defendants McGeth and Faison were clearly based upon probable cause. Officer Rodriguez observed Defendant McGeth engaged in three illegal drug transactions with individuals in the 7200 block of Greenway Avenue. Two of the drug purchasers were subsequently stopped and the crack cocaine that they had just purchased from McGeth was seized. These facts alone are sufficient to establish probable cause to believe that Defendant McGeth was engaged in the felony of selling crack cocaine. Moreover, when Defendant Faison approached Defendant McGeth and was handed the proceeds from Defendant McGeth’s drug sales, it was reasonable for the officers to believe that Faison was engaged in a conspiracy with McGeth to sell narcotics.

The Supreme Court has determined that upon making a lawful arrest, officers may conduct a search incident to the arrest of the area within the immediate control of the arrestee. *See Chimel v. California*, 395 U.S. 752, 762-63 (1969) (“When an arrest is made . . . it is entirely reasonable for the arresting officer to search for and seize any evidence on the arrestee’s person in order to prevent its concealment or destruction.”); *see also New York v. Belton*, 453 U.S. 454 (1981). The *Belton* Court concluded that “articles inside the relatively narrow compass

of the passenger compartment of an automobile are in fact generally, even if not inevitably, within ‘the area into which an arrestee might reach in order to grab a weapon or evidentiary ite[m].’” *Belton*, 453 U.S. at 460 (quoting *Chimel*, 395 U.S. at 763). The Third Circuit has interpreted the holding in *Belton* to mean that there need not be any nexus between the item seized and the criminal behavior at issue. Rather, “such a search is permissible whenever it is made in conjunction with and contemporaneous to a lawful arrest of the auto’s occupants” even when the arrestees are no longer in the vehicle when the search takes place. *United States v. Schecter*, 717 F.2d 864, 868 (3d Cir.1983). Under both *Chimel* and *Schecter*, such searches may be made either for the protection of the arresting officer or to prevent an arrestee from “destroying evidence of the crime for which he was being arrested.” *Schecter*, 717 F.2d at 867 (citing *Chimel*, 395 U.S. at 763).

In this case, the currency seized from both Defendants on December 5, 2001 was seized during a search made incident to a lawful arrest. At the time the Defendants were taken into custody, it was reasonable for the arresting officers to believe that they were in possession of evidence related to the crimes for which they were being arrested. A Philadelphia Police officer had observed both Defendants, shortly before their arrest, in possession of currency which was obtained from the sale of illegal narcotics. It was objectively reasonable for the arresting officers to search Defendants and seize the money for the purpose of preserving the evidence.

III. CONCLUSION

For these reasons, we conclude that the Defendants’ Motions to Suppress evidence seized on December 5, 2001 will be denied.

An appropriate Order follows.

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ORDER

AND NOW, this 15th day of January, 2008, upon consideration of Defendants Desmond Faison and Tyrek McGeth's Motions to Suppress Physical Evidence Seized on December 5, 2001 (Doc. Nos. 421, 432), and after a hearing in open court, it is ORDERED that the Motions are DENIED.

IT IS SO ORDERED.

COURT:

BY THE



R. Barclay Surrick, Judge