

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

UNITED STATES OF AMERICA

vs.

MICUS GOLSON,

Defendant.

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CRIMINAL NO. 08-85

**MOTION TO SUPPRESS EVIDENCE
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

RUFE, J.

November 21, 2008

The Indictment in this matter charges Defendant Micus Golson (“Golson”) with one count of possession of a firearm by a convicted felon, in violation of 18 U.S.C. § 922(g)(1), and one count of possession of marijuana, in violation of 21 U.S.C. § 844(a). Defendant has filed a Motion to Suppress Physical Evidence [Document No. 17] seeking the suppression of physical evidence obtained from areas near the site of his arrest on July 13, 2007. Upon consideration of Defendant’s Motion, the Government’s Response [Document No. 18], evidentiary hearing and oral argument held thereon,¹ the Court enters the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. On July 13, 2007, numerous police officer members of the Montgomery County Drug Task Force (“Task Force”) were participating in a reverse drug sale sting detail targeting purchasers of marijuana and cocaine. At approximately 8:00 p.m., two undercover Task Force members, Officer Robinson (“Robinson”) and Officer Dice,

¹ See Doc. No. 36 (Minute entry for proceedings held before the Court on July 29, 2008, regarding Defendant’s Motion to Suppress Physical Evidence).

were standing outside of a convenience store located at the southeast corner of Haws Avenue and West Main Street in Norristown, Pennsylvania.² Robinson had approximately nine years of law enforcement experience, including as an undercover officer policing street level drug crimes. Robinson had also received training in the identification of narcotics. A third Task Force member, Sergeant Sobeck (“Sobeck”), was in a concealed position inside a work van parked on the west side of Haws Avenue near the intersection with Main Street. Sobeck had been a police officer for over twenty years, a member of the Task Force since 1990, and had undergone extensive training with respect to narcotics. Robinson and Sobeck were in communication via handheld walkie-talkie devices (“radio”).

2. At approximately 8:40 p.m., Robinson saw Defendant Golson and two other men, Mr. Hunter and Mr. Barron, converge on the southwest corner of Haws Avenue and Main Street, stand on the west side of Haws Avenue, across from where Robinson stood, and remain there. Robinson observed a “bulge” at Golson’s right hip beneath his shirt, “consistent with somebody carrying a gun,”³ although Robinson did not actually see a gun at that time. Robinson radioed Sobeck and reported that he believed Golson had a gun at his waist, on the right side.
3. Robinson then observed Golson light what he believed to be a “marijuana cigar,” or “blunt.”⁴ Cigars are commonly emptied of tobacco, re-filled with marijuana, closed

² Norristown is located in Montgomery County, in the Eastern District of Pennsylvania.

³ July 29, 2008 Hr’g Tr. at 16:8-9.

⁴ Id. at 16:18.

and then smoked. Robinson believed the cigar contained marijuana based on how Golson held and lit it, which in his policing experience, differed from how an ordinary tobacco cigar is held or lit. Robinson again radioed Sobeck, this time reporting his belief that Golson was smoking marijuana on the corner.

4. After receiving Robinson's calls, from within the van Sobeck observed Golson standing on the corner of Haws and Main, approximately fifteen feet from Hunter and Barron, who stood further south on the sidewalk on the west side of Haws Avenue. Sobeck observed a bulge above Golson's "right belt-line, just slightly . . . a square object, horizontal . . . it made his tee-shirt stick out a little bit."⁵ Like Robinson, Sobeck believed the bulge to be the handle of a gun. Sobeck also saw Golson light and smoke what Sobeck believed to be a marijuana cigar, based on the way Golson smoked it and repeatedly re-lit the cigar, "which is typical of a marijuana cigarette."⁶
5. Sobeck called for the other members of the Task Force detail to come to the scene. In the call, he reported that Golson appeared to have a weapon on his hip and appeared to be smoking a marijuana cigar. Within approximately two minutes three unmarked police vehicles converged nearly simultaneously on the corner of Haws Avenue and Main Street from different directions. The vehicles bore no official markings and were not affixed with police lights. As seven officers emerged from the vehicles, Golson fled, running south on the sidewalk on the west side of Haws Avenue. The officers were not in full police uniform, but were wearing police

⁵ Id. at 58:1-3.

⁶ Id. at 57:16-17.

tactical vests emblazoned with the word “police” over plainclothes. The officers did not have guns drawn, nor did they shout commands to Golson prior to the moment he fled.

6. Moments after Golson began running south on Haws Avenue, Sobeck observed him throw the cigar he had been smoking to the ground. An officer recovered it. It was subsequently determined that the cigar was filled with marijuana.
7. Two of the Task Force members responding to Sobeck’s call, Officers Leeds and Schurr, pulled to a stop on Haws Avenue directly behind Sobeck’s van and climbed out of their vehicle. Hunter and Barron were standing at least fifteen feet farther south on Haws Avenue than Golson, and thus nearer to Leeds and Schurr. As Leeds emerged from the vehicle, Hunter immediately started to walk toward him, and Leeds ordered him to get on the ground. Leeds then saw Golson running toward him, south on the sidewalk on the west side of Haws Avenue. In response, Leeds drew his gun. Leeds saw Golson pull a black handgun from his waistband with his right hand while running and toss it to his right. The gun caromed off a wall alongside the sidewalk and stopped near Leeds. Leeds shouted “Gun” and picked up the gun, removed the clip and emptied the chamber. Other Task Force members began to chase Golson as he ran south on Haws Avenue. After several minutes of a running foot chase, Officer Schurr caught and arrested Golson.

DISCUSSION OF APPLICABLE LAW

Golson alleges his Fourth Amendment rights were violated when the Task Force officers approached him, and seeks to suppress the gun and marijuana collected by the police on July

13, 2007 under the “fruit of the poisonous tree” doctrine, claiming that the gun and drugs were obtained as a direct result of the initial unlawful seizure.⁷ Golson’s suppression argument is predicated on the Court first finding that an unlawful seizure occurred.⁸ Golson argues that he was seized by Task Force officers when they first arrived at the scene, and that the seizure was without a proper basis, making it unreasonable.

The relevant law for Golson’s argument is as follows. “[A]n officer may, consistent with the Fourth Amendment, conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot” (“Terry stop”).⁹ A police officer’s “mere ‘hunch’ or ‘inchoate and unparticularized suspicion’ of criminal activity does not suffice to justify an investigatory stop, rather, a “particularized and objective basis” for the belief underlying the stop is required.¹⁰ When evaluating whether reasonable suspicion existed for a Terry stop, a court must consider the totality of the circumstances surrounding the stop.¹¹

In contrast, the Government argues that there was a lawful basis to attempt to subject Golson to an investigatory stop based on Sobek’s and Robinson’s observations of Golson, including that he appeared to be smoking a marijuana cigar and to have a gun in his waistband. However, the Government contends that Golson fled before he was subject to any form of actual restraint of his

⁷ The Fourth Amendment to the United States Constitution provides: “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by an oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.” U.S. Const., amend. IV.

⁸ See generally Wong Sun v. United States, 371 U.S. 471 (1963). It follows that the “fruit of the poisonous tree” doctrine does not apply to this case if no unlawful search or seizure is found to have occurred.

⁹ Illinois v. Wardlow, 528 U.S. 119, 123 (2000).

¹⁰ United States v. Brown, 159 F.3d 147, 149 (3d Cir. 1998).

¹¹ United States v. Nelson, 284 F.3d 472, 477-78 (3d Cir. 2002).

liberty by the police, and that he was not seized until he was later caught and arrested. Because Golson was not seized before he fled, and because he abandoned the contested contraband while fleeing, the Government argues the Fourth Amendment does not apply to the marijuana and gun, and cannot be invoked to suppress its use at trial.

A law enforcement officer effects a Fourth Amendment seizure when “by means of physical force or show of authority” he in some way restrains an individual’s liberty.¹² No seizure occurs, however, where a suspect is directed, verbally or otherwise, to remain in place as police officers approach, but instead flees from the officers before his movement is restrained in any way.¹³ In such a circumstance, the Fourth Amendment simply is not implicated.

The Court concludes that Golson was not seized before he discarded the marijuana and gun at issue. Therefore these items may be admissible as evidence in his trial, and Golson’s Motion to Suppress Physical Evidence will be denied.

Golson fled from the area near the corner of Haws Avenue and West Main Street when three unmarked police cars pulled up and stopped, and the officers inside began to emerge. He fled before any Task Force officer directed him to remain where he was, let alone got close enough to him to physically touch or restrain him. The mere arrival of three unmarked police cars at the corner and emergence of officers therefrom did not effectuate a seizure of Golson, either by actual restraint or show of authority that restrained his liberty.¹⁴ As his unabated flight

¹² Terry v. Ohio, 392 U.S. 1, 19 n.16 (1968).

¹³ California v. Hodari D., 499 U.S. 621, 625-26 (1991); United States v. Valentine, 232 F.3d 350, 357-59 (3d Cir. 2000).

¹⁴ See Hodari D., 499 U.S. at 625-26 (finding no seizure where police officers emerged from vehicle near suspect’s position and suspect ran despite police commands to stop).

demonstrates, nor was Golson seized when, after he began to run, Officer Leeds drew his gun and other officers chased him. Indeed, the Court finds that Golson ran for several minutes before he was actually seized. During this brief period of flight, he flung away the marijuana cigar and gun presently at issue. Because the Court finds that Golson voluntarily abandoned these items, they may be admitted against him at trial.

A second, alternative ground exists to deny the instant Motion, because the Court concludes that the Task Force officers had the requisite reasonable suspicion to subject Golson to an investigative stop before he fled. Sobeck and Robinson, each experienced in policing street level drug crimes, both observed Golson and believed by his conduct that he was smoking marijuana on the street. Both Robinson and Sobeck considered how Golson held and smoked the cigar, and repeatedly lit it, in a manner typical of smoking a marijuana cigar and distinct from how a tobacco cigar is held, lit and smoked. Robinson and Sobeck, in other words, articulated particularized reasons based on their direct observations and experience to believe Golson was committing a crime. The Court finds their testimony on this point to be credible. They or their partners in the Task Force could have lawfully stopped Golson on this ground had he not fled first.

CONCLUSIONS OF LAW

1. Golson was not seized when three Task Force vehicles stopped in the street near where he stood, nor was he seized when the police officer-occupants of the vehicles began to emerge, because the mere arrival of these officers on the scene did not constitute a show of authority sufficient to restrain Golson's liberty.
2. After he fled, Golson was not seized by the mere occurrence of Officer Leeds drawing his gun and other officers chasing him as these acts demonstrably did not

restrain Golson's liberty.¹⁵

3. Golson was not seized for Fourth Amendment purposes until Task Force officers caught him after chasing him for several minutes.
4. While fleeing and before being seized, Golson voluntarily abandoned the marijuana cigar and firearm at issue herein by throwing them to the ground.
5. Because Golson was not seized when he abandoned the items at issue, the Fourth Amendment is inapplicable and cannot provide a basis for the exclusion of the marijuana and gun at Golson's trial.
6. In addition, based on Robinson's and Sobek's observations, which include particularized reference to objective facts regarding Golson's smoking a suspected marijuana cigar, reasonable suspicion existed to justify subjecting Golson to an investigatory stop. However, such investigatory stop was unable to be effectuated because Golson fled the scene upon seeing the Task Force officers arrive.

CONCLUSION

For the foregoing reasons, Golson's Motion to Suppress Physical Evidence will be denied. An appropriate Order follows.

¹⁵ See id.

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	:	

ORDER

AND NOW, this 21st day of November 2008, upon consideration of Defendant's Motion to Suppress Physical Evidence [Document No. 17], the Government's Response [Document No. 18], and after an evidentiary hearing and oral argument thereon, it is hereby **ORDERED** that the Motion is **DENIED**.

It is so **ORDERED**.

BY THE COURT:

/s/ Cynthia M. Rufe

Cynthia M. Rufe, J.