

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

UNITED STATES OF AMERICA	:	
	:	CRIMINAL ACTION
	:	
v.	:	
	:	NO. 11-706-01
ANTHONY HAINES	:	

MOTION TO SUPPRESS EVIDENCE
FINDINGS OF FACT AND CONCLUSIONS OF LAW

Rufe, J.

May 16, 2012

The superseding indictment in this case charges Anthony Haines and his co-defendant, Trevon Roberts, with conspiracy, possession with intent to distribute cocaine and marijuana, use of a firearm in furtherance of a drug trafficking crime, and in the case of Mr. Haines, possession of a firearm by a convicted felon. Mr. Haines has filed a motion to suppress physical evidence, including the contents of a black bag, the contents of Mr. Haines’s pockets, and evidence seized from an apartment. Upon consideration of the motion and the opposition thereto, and after an evidentiary hearing on February 15, 2012, the Court enters the following findings of fact and conclusions of law.

I. FINDINGS OF FACT

1. The Philadelphia Police Force Narcotic Field Unit engaged in an investigation of Trevon Roberts that included “controlled buys,” that is, the purchase of illegal narcotics by a

confidential informant using prerecorded buy money.¹

2. The controlled buys took place in the Overbrook section of Philadelphia within two blocks of the 7300 block of Greenhill Road.²

3. After one of the controlled buys, the police observed Mr. Roberts enter 7317 Greenhill Road, Building C.³ 7317 Greenhill Road is an apartment complex.⁴ Building C is a duplex, with Apartment C-1 downstairs and Apartment C-2 upstairs.⁵ None of the controlled buys took place at 7317 Greenhill Road.

4. Officer London saw Mr. Roberts use a key to enter Building C and saw him go up the stairwell.⁶

5. On July 13, 2011, the police arrested Mr. Roberts on the street,⁷ began to prepare a search warrant for 7317 Greenhill Road, Apartment C-2, and established surveillance outside 7317 Greenhill Road.

6. On July 13, 2011, during nighttime surveillance, Officer Coleman saw a light go out in Apartment C-2, then saw a shadow pass a window on the landing, and after a minute, saw a man exit the building.⁸

¹ Transcript of Suppression Hearing, (“Tr.”) 15 (Feb. 15, 2012) (testimony of Officer Francis).

² Tr. 17.

³ Tr. 17.

⁴ Tr. 21.

⁵ Tr. 55-56.

⁶ Tr. 73, 81.

⁷ Tr. 18.

⁸ Tr. 84.

7. From his vantage point, Officer Coleman could not see directly into the front doorway.⁹

8. The person who exited the building was the defendant, Anthony Haines, who was carrying a small black bag and who began to walk away from the building.¹⁰

9. Officer Burgess and Officer Coleman called other officers to find out if they should stop Mr. Haines.¹¹ Based on the information received, the officers pulled their unmarked¹² police car to the corner, where Mr. Haines turned. Officer Burgess called to Mr. Haines from the unmarked police car, identifying himself as a police officer, and asking to speak to Mr. Haines.¹³

10. Mr. Haines fled toward Haverford Avenue, and tossed objects¹⁴ from the bag he was carrying as he ran, eventually discarding the bag itself.¹⁵

11. Officer Coleman saw Mr. Haines reach under his shirt; Officer Coleman believed that Mr. Haines had a gun and Officer Coleman drew his service weapon.¹⁶

12. Officer Burgess and Officer Coleman handcuffed Mr. Haines, and found what

⁹ Tr. 99.

¹⁰ Tr. 84-85.

¹¹ Tr. 102.

¹² Tr. 103.

¹³ Tr. 85 (testimony of Officer Coleman).

¹⁴ These objects included a pair of sunglasses, a sunglass case, a brush, and candies. Tr. 108.

¹⁵ Tr. 86, 87.

¹⁶ Tr. 86.

they believed were illegal narcotics in the discarded bag.¹⁷

13. Mr. Haines was not armed, but the police officers found a cell phone, keys, and \$404 in his pockets.¹⁸

14. After the arrests, Officer Francis sought, and a magistrate authorized, a search and seizure warrant for 7317 Greenhill Road, Apartment C-2.¹⁹

15. The search warrant described the controlled buys, the arrests of Mr. Haines and Mr. Roberts, and the evidence recovered, including the drugs in the black bag, and evidence observed in plain view when officers secured 7317 Greenhill Road, Apartment C-2 after Mr. Haines was arrested.²⁰

16. The search warrant was executed at 7317 Greenhill Road, Apartment C-2 at 2:50 a.m. on July 14, 2011.²¹

II. DISCUSSION

Mr. Haines alleges his Fourth Amendment rights were violated when Officers Burgess and Coleman stopped him after he left 7317 Greenhill Road on July 13, 2011. Mr. Haines seeks to suppress evidence obtained from his pockets, a black bag he discarded, and Apartment C-2. He argues that all evidence was obtained a result of an unconstitutional seizure, and must be

¹⁷ Tr. 87.

¹⁸ Tr. 112.

¹⁹ Tr. 37.

²⁰ Search Warrant, Ex. G-1.

²¹ Tr. 55.

excluded.²²

Mr. Haines argues that Officers Burgess and Coleman had no basis to stop him simply because he came out of an apartment building to which Mr. Roberts had keys, as there was no evidence of any drug deals taking place inside the apartment. He also argues that his actions in running from two individuals in an unmarked car at night were not enough to give rise to a reasonable suspicion of illegal activity. Upon consideration of the facts adduced at the suppression hearing, the Court disagrees.

At the time the police seized Mr. Haines, they did not have a warrant. However, in the absence of a warrant, “an 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.”²³ In this case, the police officers had such reasonable suspicion.

The Third Circuit Court of Appeals has held that in making an investigatory stop, an officer may rely on the collective knowledge of other officers “in a fast-paced, dynamic situation such as we have before us, in which the officers worked together as a unified and tight-knit team.”²⁴ Officers Burgess and Coleman consulted with other officers before deciding to ask questions of Mr. Haines. Collectively, the police officers knew that an individual with keys to Building C and who had climbed the stairs to Apartment C-2 had been arrested following controlled drug buys, that Officer Francis was in the process of obtaining a warrant for

²² U.S. Const. amend. IV. “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.”

²³ Illinois v. Wardlow, 528 U.S. 119, 123 (2000) (discussing Terry v. Ohio, 392 U.S. 1 (1968)).

²⁴ United States v. Whitfield, 634 F.3d 741, 746 (3d Cir. 2010).

Apartment C-2, and that Mr. Haines was reasonably believed to have left that apartment carrying a bag. The objective and particularized knowledge of each officer may be imputed to Officers Coleman and Burgess, and gave rise to reasonable suspicion to briefly stop Mr. Haines.²⁵

When the police first approached Mr. Haines they had reasonable suspicion for an investigatory stop.²⁶ But when the police approached him, Mr. Haines ran. Although flight after the police initiate contact may not alone give rise to reasonable suspicion, it is an additional factor that militates in favor of a finding of reasonable suspicion.²⁷ Once Officers Burgess and Coleman stopped Mr. Haines, they were “authorized to take such steps as reasonably necessary to protect their personal safety and to maintain the status quo during the course of the stop.”²⁸ In this case, Officer Coleman testified that he believed Mr. Haines may have had a weapon, which justified a search of Mr. Haines.

The motion to suppress the evidence found in the black bag is denied because Mr. Haines abandoned the bag.²⁹ Once Mr. Haines threw the bag away on a public street, he retained no

²⁵ See id. (“[I]ndeed, it would be impractical to expect an officer in such a situation to communicate to the other officers every fact that could be pertinent in a subsequent reasonable suspicion analysis.”); Wardlow, 528 U.S. at 124 (2000).

²⁶ When they first approached Mr. Haines, the police officers, who were in a car while Mr. Haines was on foot, only attempted to ask a few questions; although they had reasonable suspicion for a stop, this part of the encounter did not constitute a seizure. Florida v. Bostick, 501 U.S. 429, 434 (1991) (“Our cases make it clear that a seizure does not occur simply because a police officer approaches an individual and asks a few questions.”); accord United States v. Kim, 27 F.3d 947, 951 (3d Cir. 1994).

²⁷ Bostick, 501 U.S. at 434; United States v. Smith, 575 F.3d 308, 312 (3d Cir. 2009) (holding that “if the seizure occurred after suspicious behavior such as flight, this factors into our analysis of whether there was reasonable suspicion to justify the seizure”).

²⁸ United States v. Hensley, 469 U.S. 221, 235 (1985).

²⁹ “Although a person has a privacy interest in the contents of his personal luggage, he forfeits that interest when he abandons his property.” United States v. Fulani, 368 F.3d 351, 354 (3d Cir. 2004) (citation omitted).

reasonable expectation of privacy in its contents.³⁰ Thus, the officers' search of the bag was not unconstitutional.³¹ Accordingly, the motion to suppress the illegal narcotics recovered from the bag is denied.³² The evidence found in the bag was sufficient cause for the officers to arrest Mr. Haines, and provides an additional basis for holding the items in Mr. Haines's pockets were properly seized.

Because the stop and subsequent arrest of Mr. Haines were proper, there is no basis for suppressing evidence found in the search of Apartment C-2, which was executed pursuant to a valid warrant, supported by probable cause.³³ "[T]he duty of a reviewing court is simply to ensure that the magistrate had a substantial basis for . . . conclud[ing] that probable cause existed."³⁴ If the warrant provides a "substantial basis" for the magistrate to conclude that there is a "fair probability that contraband or evidence of a crime [would] be found," then the warrant is proper.³⁵ In this case, the warrant described the drug sales, and the circumstances of the actions and arrests of both Mr. Haines and Mr. Roberts, and provided ample probable cause for

³⁰ United States v. Thomas, 423 F. App'x 199, 204 (3d Cir. 2011) ("[The defendant] dropped the duffel bag in a grassy area in the parking lot located behind housing units, then walked away. Any individual in the area would have had access to the duffel bag. Therefore, we can infer that [the defendant] had no reasonable expectation of privacy in the bag.").

³¹ Although Haines was fleeing officers at the time, the abandonment was not triggered by an unlawful seizure and therefore is not subject to exclusion. U.S. v. Coggins, 986 F.2d 651, 653 (3d Cir. 1993).

³² See, e.g., United States v. Smith, 575 F.3d 308, 312-16 (3d Cir. 2009) (reversing suppression of a firearm obtained from individual who discarded it during flight from law enforcement officers.)

³³ United States v. Vosburgh, 602 F.3d 512, 526 (3d Cir. 2010).

³⁴ Illinois v. Gates, 462 U.S. 213, 238-39 (1983) (internal citations omitted).

³⁵ Id. at 238. See, e.g., Vosburgh, 602 F.3d at 526.

issuance of the search warrant.³⁶

III. CONCLUSIONS OF LAW

1. Based upon all the information collectively known to the police officers, the decision to stop Mr. Haines was supported by reasonable suspicion and did not violate the Fourth Amendment.

2. The black bag had been abandoned by Mr. Haines and the police officers were entitled to search it.

3. The evidence found in the black bag provided probable cause to arrest Mr. Haines and seize the items in his pockets.

4. The search warrant for 7317 Greenhill Road, Apartment C-2 was validly issued and supported by probable cause.

IV. CONCLUSION

For the foregoing reasons, the Court concludes that there is no basis to exclude the evidence seized in this case, and the Motion to Suppress is denied. An appropriate order will be entered.

³⁶ Officer Francis was already in the process of obtaining a warrant when the police secured Apartment C-2 and found several items in plain view. Thus, even if the officers had not entered Apartment C-2 before the warrant was issued, the items in plain view would have been discovered once the search was conducted pursuant to the warrant. Murray v. United States, 487 U.S. 533, 542-43 (1988).

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ORDER

AND NOW, this 16th day of May 2012, upon consideration of Defendant’s Motion to Suppress [Doc. No. 22] and the response thereto, and after an evidentiary hearing on February 15, 2012, it is **ORDERED** that the Motion is **DENIED**.

It is so **ORDERED**.

BY THE COURT:

/s/ Cynthia M. Rufe

CYNTHIA M. RUFÉ, J.