

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

UNITED STATES OF AMERICA : CRIMINAL ACTION  
 :  
 v. :  
 :  
 DANTE SEAN WOOTEN : NO. 19-455

MEMORANDUM

Bartle, J. December 20, 2019

Defendant Dante Sean Wooten ("Wooten") has been charged with fifteen counts of wire fraud in violation of 18 U.S.C. § 1343, three counts of aggravated identity theft in violation of 18 U.S.C. § 1028A(a)(1), one count of access device fraud in violation of 18 U.S.C. § 1029(a)(1), and aiding and abetting in violation of 18 U.S.C. § 2. Before the court is the motion of Wooten to suppress physical evidence, that is, the credit cards found on his person on the ground that the evidence was seized from him in violation of the Fourth Amendment to the United States Constitution.

I

At the evidentiary hearing on the motion, the Government presented the testimony of one witness, Philadelphia Police Lieutenant Jeffrey Rabinovitch. The parties also stipulated that, if called as witnesses, Federal Bureau of Investigation ("FBI") agents would testify as to certain

statements Rabinovitch made to them and recorded in their 302 Reports during the FBI investigation of this case.

The following are the court's findings of facts. Rabinovitch has been a Philadelphia Police Officer since 2002. Prior to that time, Rabinovitch worked for the Pennsylvania State Police and also spent fourteen years working in retail security. Rabinovitch specializes in investigating credit card crimes.

On July 18, 2016, Rabinovitch received a call reporting a theft in progress at the Ritz-Carlton Hotel in Philadelphia. When he arrived at the hotel, Rabinovitch was told by a hotel clerk that an individual had contacted the hotel to report that a person had used an American Express credit card without authorization the previous day to check into a room. It is unclear whether the caller was the individual cardholder or a representative of American Express. Rabinovitch then spoke with the head of hotel security, who stated that he had reviewed video surveillance from around the time of the credit card transaction at issue and had identified the individual who had used the card and the room in which that individual was staying.

Rabinovitch, joined by the head of hotel security and Philadelphia Police Officers Nolan Young and Michael Blatchford, then proceeded to the room in question and knocked on the door.

After a short delay, Wooten voluntarily opened the door.<sup>1</sup> The head of hotel security confirmed that Wooten was the individual identified on the video surveillance as having used the card at issue. Rabinovitch informed Wooten that the card used to check into his room had been reported stolen and then asked to see the card. Rabinovitch explained that he wanted to look at the card to determine whether there had been a misunderstanding. Wooten replied that the card was in his car, which had been parked with the valet service at the hotel. According to Rabinovitch, Wooten seemed nervous, was stuttering, and was looking around but was cooperative.

Rabinovitch, along with the other police officers and hotel security, then escorted Wooten to the hotel lobby to retrieve his car. While waiting for the valet to bring his car, Wooten stated that the credit card was not, in fact, in the vehicle. Wooten then told Rabinovitch that he could pay for the hotel room with another credit card and pulled out his wallet. Rabinovitch observed that it contained a large quantity of credit cards. Rabinovitch could not determine the exact number but stated that, in his experience, it exceeded what he would

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1. The room was also occupied by Wooten's then-girlfriend and now wife. After Wooten's arrest, the Government maintains that approximately 119 credit and debit cards were seized from bags in her possession. The Government has stated that it does not intend to use those cards in its case-in-chief. Thus, those credit cards were not the subject of the hearing on Wooten's motion to suppress.

expect an individual to carry. Wooten was nervous and shaking. At that point, Rabinovitch took Wooten's wallet and instructed the other officers to place Wooten under arrest.

The wallet seized from Wooten contained numerous credit cards which the Government alleges were counterfeit, fraudulent, or otherwise not valid.

## II

In support of his motion, Wooten asserts that he was arrested while he was still in his hotel room. Wooten reasons that the police did not possess probable cause at the time of his arrest and therefore his warrantless arrest was in contravention of the Fourth Amendment. Consequently, the subsequent warrantless search of his wallet was unlawful and the credit cards seized from it should be suppressed.

The Fourth Amendment 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 Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend. IV. The text of the Fourth Amendment thus imposes two requirements. First, "all searches and seizures must be reasonable." Kentucky v. King, 563 U.S. 452, 459 (2011). Second, a warrant may not be issued unless probable

cause exists and the scope of the search or seizure is set out with particularity. Id. (citing Payton v. New York, 445 U.S. 573, 584 (1980)).

Although the Fourth Amendment generally requires a warrant for the Government to conduct a search or effect a seizure, this warrant requirement is subject to certain well-established exceptions. Id. A "warrantless arrest by a law officer is reasonable under the Fourth Amendment where 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). Probable cause exists "whenever reasonably trustworthy information or circumstances within a police officer's knowledge are sufficient to warrant a person of reasonable caution to conclude that an offense has been committed by the person being arrested." United States v. Myers, 308 F.3d 251, 255 (3d Cir. 2002) (citing Beck v. Ohio, 379 U.S. 89, 91 (1964)). While probable cause "requires more than mere suspicion, the law recognizes that probable cause determinations have to be made 'on the spot' under pressure and do 'not require the fine resolution of conflicting evidence that a reasonable doubt or even a preponderance standard demands.'" Paff v. Kaltenbach, 204 F.3d 425, 436 (3d Cir. 2000) (quoting Gerstein v. Pugh, 420 U.S. 103, 121 (1975)). The probable cause analysis is made based on the facts known to the arresting officer at the moment

of the arrest. Devenpeck, 543 U.S. at 152 (citing Maryland v. Pringle, 540 U.S. 366, 371 (2003)).

We find based on the evidence presented at the hearing that Wooten was arrested when Rabinovitch placed him in handcuffs in the lobby area of the hotel. At that point, Rabinovitch knew from the hotel security chief that an individual had contacted the hotel to report that a credit card had been used without authorization to check into a room. He also knew that hotel security had reviewed video surveillance and had identified Wooten as the individual who had used the credit card based on the timing of the transaction as well as the room in which he was staying.

When Rabinovitch and others went to that room to investigate further, Wooten answered the door and hotel security confirmed that Wooten was the same individual identified in the video surveillance. Wooten initially stated the card was in his vehicle but then changed his story. Throughout this time Wooten appeared nervous. When Wooten voluntarily opened his wallet in an offer to produce another means of paying for the room, Rabinovitch observed a quantity of cards significantly greater than he would expect an individual to possess. All these facts, combined with Rabinovitch's substantial experience investigating credit card fraud, are sufficient to establish probable cause.

The existence of probable cause that a person has committed a crime depends on the elements of the crime under state law. See, e.g., Wright v. City of Phila., 409 F.3d 595, 602 (3d Cir. 2005). Under Pennsylvania law, police officers can execute warrantless arrests for felonies and any grade of theft and attempted theft. See id. at 602-03 (citing 18 Pa. Cons. Stat. Ann. § 3904). Here, Rabinovitch had probable cause to believe that Wooten had committed several offenses under Pennsylvania law, including access device fraud in violation of 18 Pa. Cons. Stat. Ann. § 4106(a)(1), theft by deception in violation of 18 Pa. Cons. Stat. Ann. § 3922, and identity theft in violation of 18 Pa. Cons. Stat. Ann. § 4120.

Until the time that Wooten was placed in handcuffs, he was not under arrest but was instead subject to an investigatory stop. In Terry v. Ohio and subsequent cases, the Supreme Court has held that, consistent with the Fourth Amendment, police may make an investigatory stop of an individual without a warrant and in the absence of probable cause under limited circumstances. See Dunaway v. New York, 442 U.S. 200, 207-11 (1979) (citing Terry v. Ohio, 392 U.S. 1, 20-27 (1968)). To conduct an investigatory stop, police must have "reasonable suspicion, grounded in specific and articulable facts, that a person they encounter was involved in or is wanted in connection

with a completed felony.” United States v. Hensley, 469 U.S. 221, 229 (1985).

In determining whether there was reasonable suspicion for an investigatory stop, a court must make two inquiries: (1) whether the officer’s action was “reasonable at its inception”; and (2) “whether it was reasonably related in scope to the circumstances which justified the interference in the first place.” Terry, 392 U.S. at 18-20; see also United States v. Green, 897 F.3d 173, 178-79 (3d Cir. 2018). In other words, both the stop itself and the scope and duration of the subsequent detention must be reasonable. In determining whether a detention is too long in duration to constitute an investigatory stop, it is appropriate to “examine whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly, during which time it was necessary to detain the defendant.” United States v. Sharpe, 470 U.S. 675, 686 (1985).

At the time that Rabinovitch and others approached Wooten in his hotel room, Rabinovitch had reasonable suspicion sufficient to conduct an investigatory stop of Wooten, namely, that an individual had reported that a credit card had been used without authorization and that Wooten had been connected to the use of that card through video surveillance. Rabinovitch explained that he wished to examine the card at issue to

determine whether a misunderstanding had occurred. When Wooten reported that the card was located in his car, it was reasonable for Rabinovitch to continue his investigation by accompanying Wooten down to the valet to retrieve the vehicle and to wait a brief period while the car was being retrieved. Thus, the investigatory stop of Wooten was reasonable both at its inception and in its duration.

Whether Wooten was "free to leave" the scene as he was being questioned at his hotel room and escorted to the hotel lobby is not dispositive of whether his Terry stop escalated into an arrest, since with a stop as well as an arrest a suspect is not free to leave. United States v. Edwards, 53 F.3d 616, 619-20 (3d Cir. 1995). Both an investigatory stop and an arrest constitute a seizure, which means that in light of the surrounding circumstances, "a reasonable person would have believed that he was not free to leave." Michigan v. Chesternut, 486 U.S. 567, 573 (1988).

While Rabinovitch testified that he did not intend to let Wooten leave, he never communicated his intention to Wooten. At all times, Wooten was cooperative. Under the circumstances, we find that a reasonable person would not have believed he was not free to leave. In any event, the officers' actions did not constitute an arrest. See Edwards, 53 F.3d at 619-20. The investigatory stop, which endured for only a short time, did not

escalate into an arrest until after Wooten admitted that the card was not actually in his vehicle and then voluntarily brandished his wallet containing a large quantity of credit cards, prompting the officers to put Wooten in handcuffs.

The seizure at the time of Wooten's arrest of his wallet and the credit cards it contained was lawful without a warrant under the plain view doctrine. See Horton v. California, 496 U.S. 128, 133-36 (1990). The application of the plain view doctrine turns on three requirements: (1) "the officer must not have violated the Fourth Amendment in 'arriving at the place from which the evidence could be plainly viewed'"; (2) "the incriminating character of the evidence must be 'immediately apparent'"; and (3) "the officer must have 'a lawful right of access to the object itself.'" United States v. Menon, 24 F.3d 550, 559 (3d Cir. 1994) (quoting Horton, 496 U.S. at 136). Here, Wooten voluntarily took out his wallet and opened it in front of Rabinovitch when Wooten offered to use another credit card to pay for the hotel room. At that point, Rabinovitch was able to view the contents of the wallet, which contained numerous credit cards. Rabinovitch understood the incriminating nature of the credit cards in the wallet, that is, that the quantity of cards was significantly greater than he would reasonably expect an individual to carry. Thus,

Rabinovitch's seizure of the wallet was proper under the plain view doctrine.

The seizure of Wooten's wallet without a warrant was also lawful as a search incident to his arrest. See Arizona v. Gant, 556 U.S. 332, 338 (2009). Seizure without a warrant under these circumstances is permissible to protect the safety of the officer and to preserve evidence. Id.; see also United States v. Robinson, 414 U.S. 218, 234 (1973). The search may entail a full search of the person as well as personal effects found on that person such as a wallet. United States v. Shakir, 616 F.3d 315, 319-21 (3d Cir. 2010); United States v. Yancy, No. 94-366, 1995 WL 420036, at \*3 (E.D. Pa. July 14, 1995). Where the arrest "follow[s] quickly on the heels of the challenged search" of defendant, it is immaterial that the search preceded the arrest rather than vice versa. Rawlings v. Kentucky, 448 U.S. 98, 111 (1980).

In sum, the motion of Wooten to suppress physical evidence, namely the sixteen credit cards seized from his person at the time of his arrest, will be denied. The Government has met its burden to establish by a preponderance of the evidence that there was no violation of Wooten's rights under the Fourth Amendment. Thus, there is no basis to suppress the fruits of the search and seizure at issue here. See Wong Sun v. United States, 371 U.S. 471, 484-85 (1963).

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ORDER

AND NOW, this 20th day of December, 2019, for the reasons set forth in the accompanying Memorandum, it is hereby ORDERED that the motion of defendant to suppress physical evidence (Doc. # 17) is DENIED.

BY THE COURT:

/s/ Harvey Bartle III

J.