

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

<b>UNITED STATES OF AMERICA</b>	:	<b>CRIMINAL ACTION</b>
	:	
<b>v.</b>	:	
	:	
<b>CORNELIUS ALEXANDER ALBERT,</b>	:	
	:	
<b>Defendant.</b>	:	<b>NO. 97-404-01</b>

**OMNIBUS MEMORANDUM - ORDER**

**AND NOW**, this 13th day of May, 1998, upon consideration of the motion of defendant Cornelius Albert (“Albert”) to suppress evidence from the search of the Chevy Blazer on May 23, 1997 (Document No. 83) and the supplemental motion to suppress evidence seized from a Chevrolet Blazer and seized from 16061 Ebony Avenue on February 16, 1998 (Document No. 124), and the responses of the Government thereto (Document Nos. 86 and 128), and the reply and supplemental reply of the defendant (Document Nos. 130 and 131), and after hearing the evidence and arguments submitted by the parties, for the reasons stated from the bench and having found and concluded as follows:

1. I find that Special Agent O’Neill had a reasonable suspicion based on the totality of the circumstances that the Chevy Blazer or its occupants were or were about to be engaged in criminal activity and that he was justified in directing Officer Zurinsky to stop the Blazer. See Terry v. Ohio, 392 U.S. 1, 21-22 (1968); United States v. Cortez, 449 U.S. 411, 417-18 (1981). This reasonable suspicion was based on his objective observations and his reasonable reliance on the reports of other agents, including but not limited to, his reliance on a report from another agent that the desk clerk stated that Tolabus Stein denied knowing Sonia Freeman, a resident of the same postal zone in Oram, Utah according to the driver’s licenses displayed to the desk when they checked in to the hotel, a verbal report from an agent of the criminal history of Albert, O’Neill’s observation of

the transfer by Stein of at least one box to the trunk of Albert's Blazer, and his conclusion that the box was of a size consistent with the transport of marijuana. Although I find that many of the factors that O'Neill relied on in forming his reasonable suspicion may have at least one alternative innocent explanation, I find that when viewed in the aggregate by O'Neill, an agent trained in narcotics investigation, these activities formed the basis for reasonable suspicion of criminal activity. See U.S. v. Sokolow, 490 U.S. 1, 9 (1989) ("Any one of these factors is not by itself proof of any illegal conduct and is quite consistent with innocent travel. But we think taken together they amount to reasonable suspicion."); United States v. Pearson, 745 F. Supp. 283, 287 (E.D. Pa. 1990);

2. I conclude that the Government did not satisfy its burden to establish a violation of the traffic laws against speeding which would justify the stop of the Chevy Blazer;
3. I find that the Government has satisfied its burden to establish that O'Neill was justified in detaining the Blazer in order to obtain a search warrant. Despite the fact that the trained narcotics dog failed to alert after a survey limited to the outside of the vehicle, I find that Officer Zurinsky's belief that he smelled marijuana in the Blazer, the observation of Styrofoam packing material and multiple boxes in the Blazer, along with O'Neill's opinion based upon his observations at the hotel, constituted probable cause to detain the vehicle. See United States v. Ross, 456 U.S. 798, 809 & n. 12 (1982) (observing that a seizure is not unreasonable if based on facts that would justify the issuance of a warrant);<sup>1</sup>
4. Although I find that the affidavit supplied to Magistrate Judge Wells in support of the search warrant contained misrepresentations of Albert's criminal record,<sup>2</sup> I conclude that O'Neill did not act in bad faith or with reckless indifference and that the affidavit, based in part on the legal stop and detention of the Chevy Blazer, demonstrated probable cause to support the search warrant. See United States v. Conley, 4 F.3d 1200, 1205 (3d. Cir.

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<sup>1</sup> Although the defendant submitted testimony that the officers performed a pat-down search of Albert and that a unidentified female agent opened up the back hatch of the Blazer to look inside, these allegedly unconstitutional searches yielded no evidence that O'Neill relied on in his affidavit for the search warrant or that the Government seeks to use against Albert at trial. Thus, this Court does not and need not address the constitutionality of these two alleged searches.

In addition, because the marijuana "roach" that the officers allegedly found outside the driver's side door of the Blazer was not discovered until after O'Neill had made the decision to detain the vehicle, this piece of evidence did not effect the Court's review of whether O'Neill had probable cause to seize the vehicle preparatory to pursuing a search warrant.

<sup>2</sup> The affidavit represented that Albert's criminal record contained thirty-three arrests, seven of which were for narcotics violations, resulting in three narcotics convictions. Upon close inspection, it appears that some of the entries in Albert's criminal record were duplicative and that in fact he has be arrested for narcotics violations five times, resulting in two narcotics convictions.

In addition, although the most recent arrest for narcotics occurred in 1972, a detail which was omitted from the affidavit for the search warrant, Albert's criminal record reveals a continuous history of arrests on other charges since the 1960s until the date of the affidavit. (Government Ex. B).

1993) (“Keeping in mind that the task of the issuing magistrate is simply to determine whether there is a ‘fair probability that contraband or evidence of a crime will be found in a particular place’ . . . a reviewing court is to uphold the warrant as long as there is a substantial basis for a fair probability that evidence will be found.”) (quoting Illinois v. Gates, 462 U.S. 213, 238 (1983)), cert. denied, 510 U.S. 1177 (1994);

it is accordingly hereby **ORDERED** that the motion to suppress the evidence from the Chevy Blazer on May 23, 1997 is **DENIED**.

As to the motion to suppress evidence from 16061 Ebony Avenue on February 16, 1998:

5. Upon consideration of the motion to suppress evidence seized at the residence of Margo Woodard, I conclude that Albert has standing to object to this search. Based on the testimony of Woodard and Albert regarding the relationship they had with each other, the fact that Albert had a key to the house and was privy to the security code, and the fact that Albert stayed at the house when Woodard was not there, I find that Albert had a reasonable expectation of privacy in Woodard’s home, including the garage where he stored the items seized by the government. See Katz v. United States, 389 U.S. 347, 353 (1967);
6. I find that there was probable cause for the search warrant to search the garage at Woodard’s residence based on the totality of the circumstances, including the statements that Woodard gave to the FBI over the phone, the self-corroboration within those statements by reason of the intimate details of the disclosure which would only be known by a person with unique knowledge of the events, and the corroboration by the presence of Albert’s auto at the premises, all of which indicated the truthfulness and reliability of Woodard as an informant. See Illinois v. Gates, 462 U.S. 213 (1983) (holding that corroboration of an anonymous tip letter was adequate to establish probable cause for the issuance of a warrant);
7. I find that Agent Jean Mitchell did not act in bad faith when she went to a municipal court judge, a judge of a state court of record, to obtain the search warrant of the Woodard home;

it is accordingly hereby **ORDERED** that the motion to suppress evidence from 16061 Ebony Avenue is **DENIED**.

As to the Government’s motion and supplemental motion to admit tape recordings, and

the defendant's motion to suppress tape recordings and his opposition to the Government's motion to admit tape recordings:

8. I find from the testimony of Special Agent Jean Mitchell which I credit, as well as from the clarity of the tape recordings and the accuracy of the transcripts, neither of the latter of which were contested by Albert, that the government has satisfied its burden in establishing that (1) the recording device used by the Metropolitan Detention Center where Albert was held at the time of the recordings was capable of recording the conversations, (2) the operator of the device was competent, (3) the tape recordings were authentic and correct, (4) there have been no changes in, additions to, or deletions from the tape recordings, (5) the tape recordings have been properly preserved, (6) the tape recordings have been properly identified, (7) Albert knowingly and freely consented to the tape recording of the conversations on August 15, 1997 and February 17, 1998,<sup>3</sup> and that (8) the transcripts of the tape recordings accurately represent the conversations on the tape recordings and accurately identify the speakers and parties to the tape recorded conversations. See United States v. Starks, 515 F.2d 112, 121 n. 11 (3d Cir. 1975);

it is accordingly hereby **ORDERED** that the Government's motions to admit tape recordings are **GRANTED** and the defendant's motion to suppress tape recordings is **DENIED**.

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**LOWELL A. REED, JR., J.**

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<sup>3</sup> Albert's consent is evidenced by his declaration acknowledging that he had read the Federal Bureau of Prison's policy regarding monitoring and recording of inmate telephone calls which he signed on August 15, 1997 after he was arrested. (Government Ex. G).