

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

UNITED STATES OF AMERICA,

v.

CRIMINAL NO. 02-662

DOUGLAS EDWARDS AND
COBREN HOOPER

:
:

MEMORANDUM AND ORDER

McLaughlin, J.

July 10, 2003

Douglas Edwards is charged with: (1) possession of a firearm by a convicted felon, (2) conspiracy to obstruct justice and tamper with witnesses, (3) obstruction of justice and aiding and abetting the obstruction of justice, and (4) witness tampering and aiding and abetting witness tampering. Cobren Hooper is charged with Mr. Edwards in the latter three charges. Mr. Edwards has moved to suppress the gun that was allegedly seized from his car and two statements that he allegedly gave to the police. The Court held an evidentiary hearing on July 2 and July 8, 2003. The Court will deny the motion with respect to the gun and the second statement but will grant the motion with respect to the first statement.

I. Findings of Fact

On the evening of March 23 and into the morning of March 24, 1999, Detective Timothy Mayer took a report from Dawn

Matthews at Northwest Detectives. The report is contained in government's exhibit S-1. Ms. Matthews reported that she had been involved in a fist fight with a woman named Sharon over Ms. Matthews's boyfriend, Douglas Edwards. She reported that Mr. Edwards had pulled her off Sharon and punched her in her face. Detective Mayer took a photograph of Ms. Matthews's eye. The photograph was introduced as government's exhibit S-2. Ms. Matthews was crying during the interview and complained that her eye hurt. She said nothing about a gun during the interview. Detective Mayer recommended that Ms. Matthews go to certain places for assistance because it was a domestic matter. It did not occur to Detective Mayer that Ms. Matthews was under the influence of narcotics or alcohol.

Officer Lawrence Flagler was working the 11:30 p.m. to 7:35 a.m. shift on March 23-24, 1999. He was driving in a marked police car with his partner Marcus Harris in front of the police district at Broad Street and Champlost Avenue. Ms. Matthews approached him and told him that she had just given a report at Northwest Detectives about a prior altercation with her boyfriend, Douglas Edwards. She told Officer Flagler that as she came out of Northwest Detectives, she saw Mr. Edwards driving a white 1994 Thunderbird. She was upset, crying, and yelling. Ms. Matthews described in detail the clothes Mr. Edwards was wearing. She told Officer Flagler that the defendant was known to carry a

gun. Officer Flagler observed a severe swelling to **Ms.** Matthews' left eye.

Officer Flagler broadcast the description of Mr. Edwards and his vehicle over the police radio. He then put Ms. Matthews in his police car and proceeded southbound on Broad Street because Ms. Matthews said the defendant had been proceeding in that direction. As Officer Flagler was looking for the Thunderbird, another police unit, made up of Officers Kelly and Kelliher, broadcast that they had stopped a vehicle at Thirteenth and Spencer Streets fitting the description of the defendant's car. Within a few seconds, the unit of Officers Kelly and Kelliher broadcast that the car had taken off and was proceeding eastbound on Spencer Street from Thirteenth Street.

Officer Flagler went north on Eleventh Street and saw a police car making a left hand turn from Spencer Street onto Eleventh Street. Officer Flagler got behind the other police car and then a third police car approached from Godfrey Street. Officer Flagler could see the tail lights of the car in front of the first police car. All three police cars had audible and visual signals activated. They were going sixty m.p.h. and lost sight of the Thunderbird around Sixty-sixth and Eleventh Streets.

Ms. Matthews then told Officer Flagler that the defendant had a relative in the area of Ninth Street and Oak Lane. Officer Flagler went to that location and observed a man

running southbound on Ninth Street from behind some bushes and across the intersection of Ninth Street and Oak Lane. Ms. Matthews pointed the man out and stated: "There he goes; he might have a gun."

Officer Flagler stopped the police car within a few feet of Mr. Edwards. The defendant attempted to climb over a railing. Officer Flagler and his partner grabbed him. They pushed him against the fence in an attempt to handcuff him. There was a brief struggle but the defendant did not try to assault the officers. Once they got the defendant handcuffed, the police did a pat down of his outer clothing for weapons. They found none. Officer Flagler asked Mr. Edwards if he had a firearm on his person. He replied either: "I don't have the gun on me;" or " I don't have a gun on me." Officer Flagler did not advise the defendant of his Miranda rights before asking this question. The officers placed the defendant in a police wagon for transport to the station.

Officer Lee Datts heard the flash broadcasts about Mr. Edwards and the white Thunderbird. He headed towards Eleventh and Godfrey Streets and saw the defendant's car "scream across" Eleventh Street at a high rate of speed. He took over the pursuit of the car. The Thunderbird failed to stop at any of the stop signs. Officer Datts lost the car around Sixty-ninth

Street. The closest Officer Datts got to the Thunderbird was a block to a block and a half away.

At that point, a flash came over the police radio that the driver resided near Ninth Street and Oak Lane. Officer Datts went to that location and located the car parked in the 6800 block of Ninth Street. The defendant was not at the location of the car. Officer Datts later heard that Mr. Edwards was being placed in custody so he went **to** the location of the arrest to see if the officers needed any assistance. The defendant was already in custody and placed in the wagon when he arrived.

Ms. Matthews approached Officer Datts, screaming and yelling that Mr. Edwards had a gun under the dashboard near the steering column. She kept yelling that he always hides his gun and the police never find it. She said that she was tired of it and tired of him threatening her with the gun.

Officer Datts approached the car. It was unlocked but the alarm system was on. The windows were rolled down. Officer Datts put his arm completely up into the dashboard where all the wiring was located and found a gun. The weapon was loaded with eight live rounds. He put the weapon on the property book.

Ms. Matthews returned to the police station and gave a second statement to Detective Mayer. During the second interview, Ms. Matthews was very excited, very nervous, and very

tense. She kept crying. She said that Mr. Edwards had already threatened to kill her. She said that she felt the threat was real and she knew that he carried a gun. It is unclear when Ms. Matthews signed the first statement she gave to Detective Mayer. Underneath Ms. Matthews' signature is 1:39 a.m. The time at the top of the statement, however, is 12:10 a.m. Detective Mayer could not say whether she signed the statement at around midnight and wrote the wrong time or did not sign it until after Mr. Edwards was arrested.

Detective Mayer also took a written statement from Mr. Edwards. Mr. Edwards was advised of and waived his Miranda rights. Detective Mayer typed the statement as it was being made. The defendant said that he did not have a permit to carry a firearm in the Commonwealth of Pennsylvania, that he never applied for a permit to carry a firearm in Pennsylvania, that he does not carry the gun that was found in the Thunderbird, and that he did not punch Ms. Matthews in the face. He said that he only pulled her off Sharon. The statement is contained in the government's exhibit S-4. The Court finds that the statement was voluntary and made after the defendant was fully apprised of his Miranda rights and waived them.

11. Analysis

A, The Gun

The government argues that the car was properly searched and the gun properly seized (1) because it was incident to Mr. Edwards's arrest for the assault on Ms. Matthews and (2) because the police had probable cause to believe that a gun was in the car and that the defendant's possession of that gun was illegal, and there was no warrant requirement. I reject the government's first argument but accept the second one.

Police officers may search the interior **of** a vehicle incident to and contemporaneous with the arrest of a recent occupant of that vehicle. New York v. Belton, 453 U.S. 454 (1981). This test is meant to provide a bright-line objective rule for judging when items could be within the reach of a suspect, and thus subject to search. Id. at 460.

The search conducted by Officer Datts was not incident to the arrest of a recent occupant of an automobile. When the arresting officers came upon Mr. Edwards he had parked his car and was running on foot. The search was conducted not by the arresting officers, but by Officer Datts who came on the scene once the defendant was already in custody. What prompted the search was not the arrest, but the statements made by Ms. Matthews.

The government points to three cases from two other circuits which it argues allow for a search incident to arrest in the present situation, where the suspect is apprehended some distance away from his vehicle. All of those cases are distinguishable from the present case. Both United States v. Franco, 981 F.2d 470 (10th Cir. 1992) and United States v. Willis, 37 F.3d 313, 316 (7th Cir. 1994) involve situations where the suspect was apprehended in extreme proximity to his vehicle. In United States v. Arango, 879 F.2d 1501 (7th Cir. 1989) the suspect was apprehended at a distance to his vehicle, but due to circumstances needed to be quickly returned to the car's proximity, justifying the search. Further, as the government concedes, no Third Circuit cases point to a reading of Belton sufficiently broad to embrace this case.

The Court does find, however, that the police had probable cause to search the car and no warrant was required because of the automobile exception to the warrant requirement. Probable cause is assessed under a flexible "totality of the circumstances" approach. Illinois v. Gates, 462 U.S. 213, 214 (1983). Probable cause exists where "there is a fair probability that contraband or evidence of a crime will be found in a particular place." Id. See also United States v. Ninety-Two Thousand Four Hundred Twenty-Two Dollars and Fifty Seven Cents, 307 F.3d 137 (3d Cir. 2002) (citing Gates).

If a police officer has probable cause that a car contains contraband or evidence of a crime, no warrant is needed to conduct a search. Chambers v. Maroney, 399 U.S. 42, 52 (1970). A showing of probable cause alone is enough to justify a search. United States v. Ross, 456 U.S. 798, 809 (1982) ("a search is not unreasonable if based on facts that would justify the issuance of a warrant, even though a warrant has not actually been obtained.") So long as the vehicle is readily mobile, the inquiry as to the reasonableness of the search ends with a showing of probable cause. Pennsylvania v. Labron, 518 U.S. 938, 940 (1996) (striking down a Pennsylvania Supreme Court decision ruling that exigent circumstances were necessary to justify a warrantless vehicle search). See also United States v. Burton, 288 F.3d 91, 100 (3d Cir. 2002) (holding that the automobile exception permits warrantless searches upon a showing of probable cause and nothing more).

The defendant argues that there is nothing per se illegal about possessing a gun and there is no evidence that the police knew that the defendant did not have a license or that he had a prior felony conviction. I will accept that if all the information the police had was that there was a gun in the car, that would not be probable cause to search it. United States v. Ubiles, 224 F.3d 213 (2000). The police had much more, however.

Ms. Matthews had just reported an assault by the defendant, her boyfriend, to Detective Mayer. She had a swollen eye that added to her credibility. She reported to Officer Flagler that the defendant was following her. She appeared upset and frightened to all the police who saw her.

The police stopped Mr. Edwards and he fled from them at a high rate of speed, going through stop signs along the way. He parked the car and ran from it. Ms. Matthews screamed at Officer Datts that Mr. Edwards had a gun under the dashboard near the steering column. She kept yelling that he always hides his gun and the police never find it. She said that she was tired of him threatening her with the gun.

The defendant argues that the flight from the police could just as easily have been to avoid arrest for the alleged assault rather than to avoid arrest for possession of a gun. There is some force to this argument; but it was fair for the police to conclude that it was probable that the defendant was trying to distance himself from the car because he **so** deliberately ran from it.

The police also had information that the defendant kept the gun secreted under the dashboard under the steering wheel. If the defendant were legally entitled to possess the gun, why would he put it there? The witness also said that the defendant was always hiding his gun and the police never find it. Someone

who legally possessed a gun would not be hiding it from the police. Finally, I found as a fact that Ms. Matthews told Officer Datts that she was tired of the defendant threatening her with the gun.

The defendant argued strenuously that Officer Datts's testimony on this point is not credible because Ms. Matthews never told the other police officers that he threatened her with the gun and the statement was not contained in any report. I do find it credible, however, because I did not understand the threat to relate to the assault earlier that evening. **Ms.** Matthews appears to be complaining about events that happened earlier in their relationship. Also, Officer Datts was very credible when he described Ms. Matthews yelling at him about the gun.

B. Mr. Edwards's Alleged Statements

The police testified that the defendant made two statements: one to Officer Flagler during his arrest; and one to Detective Mayer at the station after his arrest. I have already found that the second statement to Detective Mayer was voluntary and the defendant was fully advised of his Miranda rights and waived them, I will grant the motion with respect to the first statement, however, for two reasons.

First, Officer Flagler questioned the defendant when he was in custody without advising him of his Miranda rights. The government argues that there was no obligation to advise the defendant of his rights because of the public safety exception to Miranda, citing New York v. Quarles, 467 U.S. 649 (1984). Quarles dealt with the apprehension of a rape suspect in a supermarket. There was strong reason for the arresting officer to believe that the suspect had concealed a gun somewhere in the market, where it might come into the hands of an accomplice or bystander. The Court found that requiring Miranda warnings prior to questioning the suspect about the whereabouts of the gun could deter a prompt and honest answer, thus undermining public safety.

The public safety exception does not apply in the present case. At the time Officer Flagler asked this question. Mr. Edwards had been handcuffed and patted down for weapons. The question put to him was not tailored to immediate concerns of public safety. Officer Flagler did not ask for the location of a gun that might pose a risk to the public. He asked whether Mr. Edwards had a gun on his person. This gratuitous question, to a suspect already in custody, cannot be justified by the public safety exception which is a "narrow" one. Quarles, 467 U.S. at 658.

Second, Officer Flagler does not recall whether the defendant said: "I don't have the gun on me;" or "I don't have a

gun on me". The first is inculpatory but the second statement is neutral. The jury would have to speculate to decide which statement the defendant made. There is no basis on which to ask it to conclude that the defendant made one statement over the other.

An Order follows.

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ORDER

AND NOW, this 10th day of July, 2003, upon consideration of the defendant's motion to suppress and the government's opposition thereto, IT IS HEREBY ORDERED that the defendant's motion is GRANTED in part and DENIED in part for the reasons stated in the attached memorandum of today's date.

BY THE COURT:



MARY A. McLAUGHLIN, J.

7/10/03 filed & given to
all counsel