

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

UNITED STATES OF AMERICA	:	CRIMINAL ACTION
	:	
v.	:	
	:	
RONALD SMITH	:	NO. 04-229

MEMORANDUM

Baylson, J.

May 24, 2005

In this case the Defendant is charged with one count each of armed carjacking in violation of 18 U.S.C. §2119, carrying a firearm during and in relation to a crime of violence in violation of 18 U.S.C. §924(c), and being a felon in possession of a firearm and ammunition in violation of 18 U.S.C. §922(g)(1).

The Defendant filed a Motion to Suppress Evidence, asserting that the police did not have any probable cause to arrest Defendant, or to seize a gun or a wallet that the Defendant allegedly had in his possession. The Court held a hearing on the suppression motion on May 20, 2005.

The first witness was Officer Hannon who testified that while on patrol on January 17, 2004, on the 3-11 p.m. shift, he received a radio call that an individual had been a victim of a carjacking at 15th and Tioga Streets. Officer Hannon proceeded to that intersection, where he met a black male who was later identified as the alleged victim in this case, Tyrone Lewis, who had called "911" and also told Officer Hannon that another black male had approached him while he was seated in his automobile, a green 1994 Buick LeSabre, had threatened him with a gun, ordered him out of the car and then drove away with the car. Mr. Lewis identified the perpetrator

as being a black male in his mid-thirties, approximately 6' 1" tall, weighing 200 pounds with a full beard wearing a black "hoodie" and black jacket. Officer Hannon put the victim in his car and drove around the neighborhood without finding the stolen vehicle. However, shortly thereafter, Officer Hannon heard another officer broadcast on the police radio that he had observed the stolen vehicle. At that point, Officer Hannon turned around and through periodic reports on police radio, came to an area on North 21st Street, where another officer, Officer Butler, had apprehended the Defendant. At that time Mr. Lewis, the alleged victim, identified the Defendant as the person who had taken his car at gunpoint.

Officer Butler then testified that he heard the radio report and observed the 1994 green Buick LeSabre proceeding south on 17th street at Erie Avenue whereupon he followed the car, turned on his overhead patrol lights, reported his findings to police radio, and observed the car pull over whereupon he also pulled over, and ordered the driver of the Buick out of the car. The Defendant exited the car, ran west on Venango Street until he was, after stumbling, apprehended by Officer Butler, who also observed the Defendant throw a wallet and gun from his person. Officer Butler then placed the Defendant under arrest. The wallet that had been discarded belonged to the victim, Mr. Lewis, who as noted above, identified the Defendant as the person who had stolen his car at gunpoint. The weapon was confiscated.

The Court will deny the Defendant's Motion to Suppress, finding that the police had probable cause based on all of the above circumstances. The Court finds that Officers Hannon and Butler are credible, that they had a credible report of a very serious felony, that the car identified by the victim as his was located within ten minutes to be traveling in a nearby location, driven by Defendant, who exited the car and was then apprehended. The Court finds that the

police had probable cause to believe the Defendant was the individual who took the car from Mr. Lewis, and also that the Defendant discarded Mr. Lewis' wallet and a gun while the Defendant was being apprehended by Officer Butler. Defendant also discarded the weapon which is charged in the indictment.

The police had probable cause to arrest Defendant without a warrant. U.S. v. Watson, 423 U.S. 411 (1976). The wallet and gun were not "seized" from Defendant; he discarded them while running. Even if this were characterized as a "search and seizure," it was incident to a lawful arrest.

An appropriate Order follows.

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ORDER

AND NOW, this 24th day of May, 2005, upon consideration of the Motion to Suppress filed by Defendant (Doc. No. 44) and the response of the United States of America in opposition thereto, and an evidentiary hearing, for the reasons stated in the foregoing Memorandum, it is hereby ORDERED that the Motion is DENIED.

Trial will begin on Monday, June 6, 2005 at 9:30 a.m. The other outstanding Motions will be heard at that time. Please call chambers at 267.299.7520 for the courtroom location.

BY THE COURT:

s/Michael M. Baylson
Michael M. Baylson, U.S.D.J.