

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

UNITED STATES

vs.

MARK LAWRENCE,

Defendant.

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CRIMINAL NO. 06-83

Rufe, J.

March 16, 2007

**MOTION TO SUPPRESS EVIDENCE
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Indictment in this matter charges Defendant Mark Lawrence with one count of being a convicted felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1). Lawrence has filed a Motion to Suppress Evidence, seeking the suppression of the contents of his vehicle's glove compartment, which included a .357 caliber revolver. The Court held an evidentiary hearing on the Motion to Suppress, where it received exhibits from the government and heard oral testimony from two of the officers who participated in Lawrence's arrest. After reviewing the evidence received at the hearing, the parties' briefs, and the applicable law, the Court enters the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. On the evening of December 7, 2005, at about 10:00 p.m., three law-enforcement officers with a Violent Crimes Impact ("VCI") team were investigating a spike in shootings in the 16th District in Philadelphia, Pennsylvania.
2. The officers conducting this investigation were Detective Joseph McDermott of

the Philadelphia Police Department, and Agents Robert Wescoe and James Lewer of the U.S. Bureau of Alcohol, Tobacco, Firearms, and Explosives.

3. During their patrol of the 16th District, the VCI team members traveled in two unmarked sedans. Detective McDermott drove one car, with Officer Lewer riding in the passenger's seat. Agent Wescoe drove the second car.
4. One of the incidents that the team was investigating was the shooting of Justin Thompson. The VCI team received a tip from a confidential informant that a person known as Mark Lawrence had shot Thompson. This information was also broadcast by police radio. Further, the suspect Lawrence was purportedly driving a white Dodge Magnum.
5. At about 10:25 p.m., while conducting surveillance in the area, the officers patrolled the 1000 block of 45th Street. They drove by 1017 45th Street, a residence known to be occupied by Lawrence.
6. At that moment, a white Dodge Magnum was being parked in front of 1017 45th Street.
7. Detective McDermott slowly pulled past the Magnum, and observed a single occupant in driver's seat of the Magnum.
8. The driver of the Magnum then suddenly pulled out of the parking space and drove north on 45th Street.
9. The Magnum then proceeded at a high rate of speed through about 15 to 20 city blocks, while the officers in the same two unmarked police sedans gave chase.
10. During the high-speed chase, Detective McDermott called for backup from the

Philadelphia Police.

11. Also during the vehicle chase, the Magnum went through at least two busy intersections without observing traffic controls. Both intersections, controlled by a stop sign and a traffic light, respectively, were typically busy with traffic, trolleys, and pedestrians.
12. The unmarked sedans, with activated sirens, continued to pursue the Magnum.
13. The vehicle chase ended on the 4800 block of Merion Avenue, when the Magnum rear-ended a column of vehicles parked on the side of the street.
14. Mark Lawrence then exited the Magnum and fled on foot, running west on Merion Avenue.
15. Detective McDermott continued to pursue Lawrence in his car, while Officer Lewer exited the car and pursued Lawrence on foot.
16. Lawrence turned left on 49th Street and headed south. Agent Wescoe and Officer Lewer then converged on Lawrence, and arrested him. At the time of his arrest, Lawrence was carrying his Pennsylvania driver's license, and \$1,641.00 in cash.
17. Detective McDermott then returned to the Magnum and conducted a search of the vehicle, including the glove compartment. In the glove compartment, Detective McDermott found (1) a pink Dollar Rent-a-Car lease agreement in the name of Mark Lawrence; and (2) a Smith & Wesson Model 640 .357 Magnum 5-shot revolver, serial number CHH8923, containing five live rounds of ammunition.

DISCUSSION

Through this Motion to Suppress, Lawrence seeks to “suppress all the evidence seized from the defendant[’s] vehicle,”¹ arguing that the search of the Magnum was unlawful. It is a foundational principle of our law that the Fourth Amendment protects the people against “unreasonable searches and seizures” by the government.² If the government recovers inculpatory evidence through such an unlawful search or seizure, the exclusionary rule requires this Court to exclude that evidence at the trial.³

Of course, the Supreme Court has held that in order to challenge the lawfulness of a search or seizure, the defendant must have standing under the Fourth Amendment.⁴ Standing under the Fourth Amendment is measured by “whether the person who claims protection of the Amendment has a legitimate expectation of privacy in the invaded place.”⁵ The Third Circuit has recently held that when a person abandons his property, he also relinquishes any expectation of privacy in that property.⁶ Applying this rule, if Lawrence abandoned the Magnum, then he also yielded any expectation of privacy that he may have had in the contents of the glove

¹ Def.’s Mem. of Law in Supp. of Mot. to Suppress Evidence [Doc. # 55], at 1.

² U.S. Const. amend. IV.

³ See United States v. De Reyes, 149 F.3d 192, 194 (3d Cir. 1998) (citing Weeks v. United States, 232 U.S. 383 (1914)).

⁴ Rakas v. Illinois, 439 U.S. 128 (1978).

⁵ Id. at 143.

⁶ United States v. Fulani, 368 F.3d 351, 354 (3d Cir. 2004). See also United States v. Lewis, 921 F.2d 1294, 1302 (D.C. Cir. 1990) (“When an individual abandons property, he forfeits any reasonable expectation of privacy in it; consequently, police may search it without a warrant.”).

compartment.

In United States v. Fulani, the Third Circuit examined a case with a similar abandonment issue under the Fourth Amendment. In that case, officers investigating drug trafficking boarded a passenger bus, and spoke to all 50 people on board, including Ibrahim Fulani.⁷ Fulani told the officers that none of the luggage in the overhead rack belonged to him.⁸ After the officers determined that one bag in the overhead rack had not been claimed, they opened it without a warrant, and found five plastic bags containing heroin, plus a passport bearing Fulani's picture and name.⁹ When Fulani later asked the district court to suppress the heroin based on the Fourth Amendment, the court granted his motion.¹⁰ The Third Circuit reversed, holding that by disclaiming ownership in all of the bags in the overhead rack, Fulani also abandoned his own bag for Fourth Amendment purposes, thus relinquishing any legitimate expectation of privacy that he previously held.¹¹

In reaching its conclusion that Fulani had abandoned his luggage, the court of appeals stated that “[a] court must determine from an objective viewpoint whether property has been abandoned.”¹² Further, “[p]roof of intent to abandon property must be established by clear

⁷ Id. at 352.

⁸ Id. at 353.

⁹ Id.

¹⁰ Id.

¹¹ Id. at 354.

¹² Id.

and unequivocal evidence.”¹³ Applying these standards to this case, the Court concludes that an objective observer would agree that by running away from his vehicle, Lawrence abandoned it. By leaving his vehicle unsecured on the street, Lawrence also unequivocally manifested his intent to abandon it, thereby relinquishing any expectation of privacy he may have previously held in the vehicle and its contents.

In response, Lawrence argues that his “exit of the car was [the] direct consequence of the unlawful stop/attempt stop of the defendant.”¹⁴ He continues, “[i]n such a situation it cannot be said that there was voluntary abandonment of the automobile. The officer’s unlawful and coercive action was the causing factor which motivated defendant’s abandonment.”¹⁵ The Court disagrees with this characterization of the officers’ actions. First, the evidence shows that Lawrence was preparing to park his car, but upon suspicion that the police were near, suddenly changed course and drove hastily away. The police then followed Lawrence, which is not prohibited by the Fourth Amendment.¹⁶ Furthermore, when the officers observed the Magnum speed up and run through multiple intersections in violation of all traffic laws, probable cause to arrest Lawrence for reckless driving, at a minimum, arose.¹⁷ Therefore, these facts bear the

¹³ Id.

¹⁴ Def.’s Mem. of Law in Supp. of Mot. to Suppress Evidence [Doc. # 55], at 21.

¹⁵ Id.

¹⁶ See United States v. Knotts, 460 U.S. 276, 281 (1983) (“A person traveling in an automobile on public thoroughfares has no reasonable expectation of privacy in his movements from one place to another.”).

¹⁷ See 75 Pa. Cons. Stat. Ann. § 3736(a) (“Any person who drives any vehicle in willful or wanton disregard for the safety of persons or property is guilty of reckless driving.”).

interpretation that it was Lawrence who led the police on a dangerous high-speed chase through a residential neighborhood, and not the reverse. Lawrence's characterization of the evidence—that the police "coerced" him into fleeing at a high rate of speed—appears to the Court to be extraordinarily improbable.

Therefore, because the Court concludes that Lawrence voluntarily abandoned his vehicle, thereby forfeiting any legitimate expectation of privacy in the Magnum's contents, the Court rules that Lawrence does not have standing to challenge the search of the glove compartment on Fourth Amendment grounds.

CONCLUSIONS OF LAW

1. Under the Fourth Amendment, Officer McDermott and Agents Wescoe and Lewer did not need probable cause or a warrant to follow Mark Lawrence's vehicle on a public thoroughfare.
2. By lawfully following Mark Lawrence's vehicle, the officers did not induce or coerce Mark Lawrence to violate any traffic laws.
2. When the officers observed Mark Lawrence drive his vehicle through at least two busy intersections, without observing stop signs or traffic lights, probable cause to arrest Mark Lawrence arose.
3. By driving his vehicle into a column of parked cars, and then exiting the vehicle and fleeing the scene on foot, Mark Lawrence voluntarily abandoned the vehicle.
4. When he abandoned the vehicle, Mark Lawrence relinquished any legitimate expectation of privacy that he may have previously had in the contents of the

vehicle's glove compartment.

5. Because Mark Lawrence no longer held a legitimate expectation of privacy in the glove compartment, he does not have standing under the Fourth Amendment to challenge the legality of the officers' subsequent search of the glove compartment.
6. Because Mark Lawrence lacks standing to challenge the lawfulness of the search, the Court will deny his Motion to Suppress Evidence.

An appropriate Order follows.

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ORDER

AND NOW, this 16th day of March 2007, upon consideration of Lawrence's Motion to Suppress [Doc. # 30], the Government's Response thereto [Doc. # 37], the testimony and exhibits offered at the evidentiary hearing, Lawrence's Memorandum of Law [Doc. # 55], Lawrence's Supplemental Memorandum of Law [Doc. # 58], and the applicable law, it is hereby

ORDERED, that the Defendant's Motion is **DENIED**.

It is so **ORDERED**.

BY THE COURT:

/s/ Cynthia M. Rufe

CYNTHIA M. RUFÉ, J.