

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

REPORT AND
RECOMMENDATION

GRADY L. CHRISTOPHER,

03-CR-124-C

Defendant.

REPORT

Before the court for report and recommendation is defendant Grady Christopher's motion to suppress evidence seized from a search of his car on September 3, 2003. *See* dkt. 24. Christopher alleges that there was no probable cause or reasonable suspicion to perform a traffic stop. The government responds that the traffic stop was a complete canard because drug task force agents already had probable cause to arrest Christopher and search his car. The government is correct and I am recommending that the court deny Christopher's motion.

On November 13, 2003, this court held an evidentiary hearing on Christopher's motion. Having heard and seen the testimony, having considered the parties' exhibits and stipulations, and having made credibility determinations, I find the following facts:

Facts

The State Line Area Narcotics Team (SLANT) investigates drug crimes in Rock County, Wisconsin among other places. In the Fall of 2003, SLANT developed Grady Christopher as an investigative target based on a controlled purchase of crack cocaine from him by a confidential informant. The informant reported that on September 3, 2003, Christopher would be driving from Rock Valley College in Rockford, Illinois, to Cub Foods in Beloit to deliver nine ounces of crack cocaine between 8:30 - 9:30 p.m. SLANT agents wanted to intercept Christopher and seize his drugs but they did not want to compromise their informant.

In order to divert suspicion from the informant the agents concocted a ruse involving a pre-existing Rock County arrest warrant outstanding against Christopher and an anticipated pretextual traffic stop. On September 3, 2003 the agents met with Beloit Police Department Officers Kevin Blackmon and Daniel Molland. Molland is a canine officer who worked with Max, a trained drug detecting dog. The agents advised that they had purchased drugs from Christopher before and that there was a valid arrest warrant in place for him. They advised Officer Blackmon of the likely route Christopher would travel from Rockford to Beloit. They asked Officer Blackmon to lie in wait along the route, establish some plausible excuse to perform a traffic stop when Christopher drove by, then “discover” Christopher’s outstanding warrant from a records check during the traffic stop. SLANT

agents would be hovering in the wings, waiting to pounce on Christopher's car after Officer Blackmon arrested him and removed him from the scene.

Events devolved as planned: following the briefing, Officer Blackmon parked his unmarked squad car near the Cub Foods store. SLANT agents conducted a moving surveillance of Christopher as he drove his truck from Rockford to Beloit. These agents broadcast Christopher's progress over the police radio, which Officer Blackmon was monitoring. Officer Blackmon heard the agents specifically identify Christopher as the driver of the white Ford Ranger that they were tailing.

As anticipated, Christopher drove by Officer Blackmon, who pulled in behind him and determined that he was traveling at "a high rate of speed." Officer Blackmon genuinely believed that Christopher was speeding but since no one cared about actually proving up the speeding charge later, he did not "pace" the Ranger, or run radar on it; he simply pulled over Christopher in the grocery parking lot and advised him that he had been driving too fast.

Officer Molland and Max arrived visibly on the scene, ostensibly as backup for the traffic stop; apparently they did not actually assist Officer Blackmon, but watched and waited in their squad car. The SLANT agents hovered nearby, waiting for Act I to conclude.

Playing out the charade, Officer Blackmon positively identified Christopher from his Illinois driver's license, then ran a records check on his squad car's computer to make it look good. No surprise: the computer reported Christopher's outstanding arrest warrant. Officer Blackmon advised Christopher that he had "discovered" this warrant and that he would have

to take Christopher into custody. Officer Blackmon arrested Christopher and patted him down, finding a couple of rocks of crack in his shirt pocket. Officer Blackmon transported Christopher to the Beloit police station, leaving Christopher's truck in the parking lot.

Less than a minute later, Officer Molland, Max and the hovering SLANT agents descended on Christopher's truck. They opened up the truck's doors and saw a duffel bag in plain view. Max jumped in and alerted to the duffel bag, indicating the presence of drugs. Agents seized 265 grams of cocaine base from the duffel; these drugs form the basis of the charge against Christopher in Count 2 of the superseding indictment.

Officer Blackmon subsequently wrote a true but intentionally incomplete report of his activities that day. Officer Blackmon included information about the traffic stop, but excluded any mention of the SLANT briefing, his prior knowledge of the arrest warrant, the ambush or the ultimate irrelevance of the speeding allegation. Officer Blackmon honestly believed that Christopher was traveling above the speed limit and that he could have justified a traffic stop; therefore, Officer Blackmon's written report was literally correct and accurate as far as it went; it did not go very far, however, because Officer Blackmon intentionally omitted all of the material facts in order to protect the informant. One SLANT agent (Inspector de la Rosa) wrote a composite report for the task force that provides more detail about what happened and why.

Analysis

A reader taking Officer Blackmon's laconic written report of Christopher's "traffic stop" at face value could pick out some arguable suppression issues: there's the vague reference to driving at a "high rate of speed," whatever that means, followed by the search of Christopher's truck on the scene after he has been transported to jail. Even taking into account Inspector de la Rosa's more thorough report, one could be left with the impression that the police were relying on the alleged speeding violation as a basis to stop Christopher's car. These were the issues Christopher raised in his motion to suppress, although he subsequently withdrew his claim that the car search was not sufficiently incident to the arrest. *See* Brief in Support, dkt. 28, at 1, n. 1.

But the evidentiary hearing has clarified that the traffic stop never was more than a cover story developed to protect SLANT's covert investigation. The agents didn't care about Christopher's "high rate of speed" then, and they don't care now. The ruse served its purpose and has been discarded. Although Christopher decries this subterfuge in lofty terms, there is nothing remotely unconstitutional about what happened. Nobody likes to be played like a fish, but viewed objectively, it was logical and reasonable for the police to arrest a suspected drug dealer in a manner that protected the investigation's informant. Therefore, the only suppression issue actually before this court is whether there was probable cause to stop Christopher's truck and then arrest him. In this situation, then, the adequacy of the reports, including Officer Blackmon's intentional omissions, at best is an impeachment issue.

To determine the lawfulness of the stop and arrest the court doesn't even have to reach the informant credibility issue because there was an unchallenged pre-existing arrest warrant for Christopher coupled with an unequivocal identification of him as the driver of the White Ford Ranger. These two facts justified Officer Blackmon pulling over Christopher, confirming his identity, then arresting him on the warrant. The police then could have searched Christopher's truck, including all closed containers, incident to that arrest. *See United States v. Richardson*, 121 F.3d 1051, 1056 (7th Cir. 1997). Such searches are allowable even after the suspect has been removed from his vehicle. *See United States v. Wills*, 37 F.3d 313, 317-18 (7th Cir. 1994).

Apart from this, the agents had probable cause to believe that Christopher had nine ounces of crack cocaine in his car. This was an independent justification for the car search. Police may search an automobile without a warrant when they have probable cause to believe that the vehicle contains contraband or evidence of a crime. *Alabama v. White*, 496 U.S. 325, 332 (1990). Probable cause is a commonsense, nontechnical concept that deals with the factual and practical considerations of everyday life on which reasonable and prudent people, not legal technicians, act. *Ornelas v. United States*, 517 U.S. 690, 695 (1996) citations omitted. Probable cause to search exists "where the known facts and circumstances are sufficient to warrant a man of reasonable prudence in the belief that contraband or evidence of a crime will be found." *Id.* at 696, citations omitted. Probable cause is a fluid concept that derives its substantive content from the particular context in which the

standard is being assessed. *Id.*, citations omitted. “Probable cause requires only a probability or a substantial chance of criminal activity, not an actual showing of such activity.” *United States v Roth*, 201 F.3d 888, 893 (7th Cir. 2000), quoting *Illinois v. Gates*, 462 U.S. 213, 244 (1983) Notwithstanding the defensible assumption that “probable” denotes “more likely than not,” probable cause does not require a showing that an event is more than 50% likely. See *United States v. Garcia*, 179 F.3d 265, 269 (5th Cir. 1999); see also *Edmond v. Goldsmith*, 183 F.3d 659, 669 (7th Cir. 1999)(Easterbrook, J., dissenting)(probable cause exists somewhere beneath the 50% threshold).

Here, an informant provided the initial impetus for the police activity on September 3, 2003. This informant had established his/her reliability by previously having performed a controlled buy of cocaine base from Christopher, and by having provided an accurate prediction of Christopher’s actions that morning, which the police corroborated. This probably was enough to justify an investigative stop, but the pre-existing arrest warrant obviates the need to dwell on this point. Upon arresting Christopher on the warrant, Officer Blackmon found two rocks of crack cocaine in his pocket. Finally, Max, the trained drug-detecting dog, alerted to the bag in Christopher’s truck. Once a trained drug dog alerts to a package, reasonable suspicion elevates to probable cause. See *United States v. Ganser*, 315 F.3d 839, 843 (7th Cir. 2003)(involving canine alert to a mailed letter). These facts, considered collectively, established probable cause to search Christopher’s truck.

RECOMMENDATION

Pursuant to 28 U.S.C. § 636(b)(1)(B) and for the reasons stated above, I recommend that this court deny defendant Grady Christopher's motion to suppress evidence.

Entered this 18th day of December, 2003.

BY THE COURT:

STEPHEN L. CROCKER
Magistrate Judge