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

UNITED STATES OF AMERICA,

Plaintiff,

v.

LEE ANWAR WILSON,

Defendant.

REPORT AND RECOMMENDATION

04-CR-88-C

REPORT

Before the court for report and recommendation are defendant Lee Anwar Wilson's motion to suppress his various post-arrest statements (dkt. #17), motion to suppress evidence derived from several searches of his car (dkt. #19) and motion to dismiss the indictment (dkt. #28). The government has conceded that some of the challenged evidence is not admissible in its case-in-chief; as for what remains of Wilson's motions, I am recommending that this court deny them.

I. Motion to Dismiss

Following the government's voluntary dismissal of one charge against Wilson, the only charge remaining is that he knowingly possessed ammunition after a prior felony conviction. To preserve his record, Wilson has moved to dismiss on the ground that the charging statute, 18 U.S.C. § 922(g)(1), exceeds Congress's powers under the Commerce

Clause of the Constitution. The Court of Appeals for the Seventh Circuit consistently has ruled that such challenges are meritless. *See, e.g., United States v. Keller*, 376 F.3d 713, 716-17 (2004). Accordingly, I am recommending that the court deny this motion.

II. Motions to Suppress

Wilson has moved to suppress evidence seized during two searches of his car and to suppress post-arrest statements he made to the police. Wilson asked for an evidentiary hearing on his motions but the government objected. After hearing from both sides, and after the government agreed to stipulate to at least one pivotal fact, I found that there was no need to take evidence on any of Wilson's motions. Accordingly, the record is limited essentially to the documents submitted by the parties. From this record, and solely for the purposes of this Report and Recommendation, I find the following facts:

Facts

At about 10:00 p.m. on May 25, 2004, Lonnie Edmond was shot dead in front of his residence at 238 Madison Street, Janesville, Wisconsin. Witnesses saw a white-over-blue Cadillac driving from the scene; police promptly tracked this car to 115 South Chatham in Janesville, where it was parked on the street. Inside the Cadillac police saw in plain view two holsters, several boxes of ammunition, and a magazine with handgun ammunition. Police found Wilson inside the house at 115 South Chatham and arrested him at approximately

10:40 p.m. A resident of the house, Ariela Fruge, told police that Wilson had exited the Cadillac, come to the door and told Fruge that he needed to hide some stuff. Fruge reported that Wilson had been carrying a 5" x 7" box.

One set of police officers began preparing a search warrant affidavit to present to a state court judge, seeking authorization to search both the residence and Wilson's Cadillac. A different set of officers remained on the scene and at 12:39 a.m., they towed Wilson's Cadillac to the Janesville Police Department.

Probably simultaneously, the state court judge was reading the warrant affidavit. The police did not advise the court that they were planning to move–or that they actually had moved–Wilson's Cadillac to a different location before searching it. The judge signed the warrant on May 26, 2004 at 12:46 a.m. The warrant authorized the search of the premises described as 115 South Chatham, "to include any and all vehicles and out buildings pertaining to 115 South Chatham on or near said premises . . . and to search in particular the white-over-blue Cadillac with Wisconsin license plate 351-GYL."

Pursuant to this warrant, police searched the house on Chatham at about 1:15 a.m. that same morning, then searched the Cadillac for the first time at approximately 2:46 a.m. During the car search police found the 9 mm. ammunition now charged against Wilson in this federal prosecution.

Meanwhile, other police officers were interviewing witnesses and suspects. Shortly before midnight on May 25, 2004, Detective Martin Altstadt met with Wilson to interrogate

him. When he first made contact with Wilson, Detective Alstadt attempted to read him his rights pursuant to *Miranda*, but Wilson interrupted to declare that he had not done anything wrong. Wilson then volunteered an exculpatory statement about the incidents of that evening. Detective Alstadt heard him out, then left to interview other witnesses.

Patrol officers interrupted these interviews to advise Detective Alstadt that Wilson had asked to talk to Detective Alstadt again. Detective Alstadt returned to the booking area where Wilson asked if he could get a reduced charge in exchange for information about what had occurred. Detective Alstadt demurred, stating that he had enough reliable information and that he did not need to cut Wilson a deal. Wilson replied that in that case, it wasn't worth it for him to talk. Detective Alstadt ended the meeting.

The next day (May 26), Detective Alstadt continued investigating the murder. Around 7:20 that evening, the jail called to report that Wilson was asking to speak to the detective who had arrested him. So about an hour later, Detective Alstadt met with Wilson for the third time and Wilson confirmed his wish to speak. Detective Alstadt read Wilson his rights from a preprinted *Miranda* form; Wilson signed the form indicating that he understood and was waiving his rights. Wilson then provided a narrative of the events of May 25, 2004 in which he cast himself in the role of a post-shooting conduit of a box placed into his car. This statement corresponded with information Detective Alstadt had received from others.

Subsequently, the police received a tip that there still might be a handgun in Wilson's Cadillac that they had missed during their search pursuant to the warrant. On May 28, 2004, Officers Blaser and Ratzlaff returned to the vehicle at the city garage, searched it more thoroughly and found a handgun stashed under the rear seat of the car. This prompted Officer Blaser to visit Wilson at the jail that same afternoon to ask about the gun. Blaser read Wilson *Miranda* warnings and had Wilson sign a *Miranda* waiver form. Wilson then recounted his knowledge of the events the night of Edmond's murder. He admitted that he had been on the scene when the shooting took place, and that he then had driven his car to 115 South Chatham. Wilson admitted that he knew "he had a box of possible ammunition in his car" and he had told a woman at the residence that he needed to hide it there; just then the police arrived, so he had run inside to evade them.

Analysis

Wilson had moved to suppress all of the car searches and all of his post-arrest statements. As noted at the outset, the government has conceded the inadmissibility of some of its evidence. First, and solely for the purpose of deciding the suppression motions, the government does not contest a finding that the May 28, 2004 search of Wilson's car by Officers Blaser and Ratzlaff was improper. This is the search that uncovered the handgun that was the subject of now-dismissed Count 1. Second, the government concedes that it will not attempt to introduce in its case in chief the statement that Wilson made on May 28

following that search, since it was a "fruit" of the unlawful search. Finally, the government has indicated that it will not attempt to introduce either of Wilson's first two statements in its case in chief.[1] Because of these concessions, this court may deny large chunks of Wilson's motions to suppress because they are moot. Here's what remains in dispute:

A. Motion to Suppress the Ammunition

Wilson seeks to suppress the ammunition that was discovered in the Cadillac during the search pursuant to the warrant. Wilson initially contended that the search was not authorized by the warrant because police towed his car to the station house *before* they executed their warrant; therefore the car no longer was "on or near the premises" of 115 South Chatham.

As Wilson recognized in his subsequent brief, however, the legality of this search does not rise or fall on the scope of the warrant because the police didn't *need* a warrant to search the car so long as they had probable cause to believe it contained contraband or evidence of a crime. *California v. Acevedo*, 500 U.S. 565, 569 (1991). Wilson does not argue that the police did not have probable cause to search his car. The car was seen driving from the scene of a handgun murder and within minutes police had observed in plain view in the car

[1] Wilson does not claim that any of his statements were involuntary, *see* Reply Brief at 3, n.1, so it is possible that the government might seek to introduce those statements to impeach Wilson if he takes the stand, or in a rebuttal case.

ammunition and holsters. This was enough to have allowed the police to search the car then and there.

Though conceding that point, Wilson suggests that the automobile exception to the warrant requirement somehow evaporated when the police towed his vehicle to the station house instead of searching it on site. Wilson acknowledges that he stands on weak ground in light of *Chambers v. Maroney*, 399 U.S. 42 (1970), in which the Court held that police officers with probable cause to search an automobile at the scene where it was stopped can constitutionally do so later at the station house without first obtaining a warrant. *See also Texas v. White*, 423 U.S. 67, 68 (1975) (probable cause to search car that developed at the scene "still obtained at the station house"). However, Wilson argues that "the Supreme Court has yet to explicitly pronounce that this exception applies if the vehicle is not readily mobile."

Wilson is incorrect. In *Michigan v. Thomas*, 458 U.S. 259 (1982), the Court stated:

> [T]he justification to conduct such a warrantless search does not vanish once the car has been immobilized; nor does it depend upon a reviewing court's assessment of the likelihood in each particular case that the car would have been driven away, or that its contents would have been tampered with, during the period required for the police to obtain a warrant.

Id. at 261. Contrary to Wilson's contention, the Court did not limit its holding to roadside inventory searches. In fact, the propriety of the inventory search was not at issue in that case. The question was whether police could search the car without a warrant when *during*

their inventory search (with the occupants in custody and a tow truck was on the way), they discovered evidence providing probable cause to search the rest of the vehicle. The Court rejected the suggestion that a demonstrable "exigency" must exist prior to such a search; all the police needed was probable cause.

Chambers, White and *Thomas* make it clear that, because the officers in the instant case developed probable cause to conduct a warrantless search of Wilson's Cadillac, they were justified in searching it at the police station, even without a warrant, and even if the car was not readily moveable. Therefore, Wilson's motion to suppress the evidence derived from that search must be denied.

B. Motion to Suppress Statements

Wilson seeks to suppress the statement he gave to Detective Alstadt on the evening of May 26. Wilson concedes that he was read and waived his *Miranda* rights prior to making that statement, but argues that that waiver was tainted by his two previous, unwarned statements. In support of his position, Wilson relies on *Missouri v. Seibert*, ___ U.S. ___, 124 S. Ct. 2601 (2004); this reliance is misplaced.

In *Seibert*, the Supreme Court nixed a manipulative interrogation technique in which police would: 1) Intentionally interrogate a suspect without providing *Miranda* warnings; 2) Obtain a tainted confession; 3) Read the suspect her rights and obtain a waiver; then 4) Promptly resume questioning with the expectation of obtaining a duplicate, untainted

confession. The Court held that in cases involving such "coordinated and continuing interrogation," the insertion of *Miranda* warnings into the middle was not effective to allow the defendant to make a free and rational choice about speaking during the second part of the interrogation. *Id.* at 2611-13.

Here, Wilson argues that his *Mirandized* statement to Detective Alstadt on May 26 must be suppressed under *Seibert* because it was made during a "continuing" interrogation. That is palpably not the case. Myriad facts distinguish Wilson's situation from *Seibert*, most significant of which are the large time gap between the second and third meetings, Wilson's request for the third meeting, and the absence of any prior, un-*Mirandized* confession by Wilson. Wilson did not make any incriminating statements during his first two contacts with Detective Alstadt; to the contrary, he denied knowledge the first time and asked for a deal the second time. Then, after mulling things over for a day, Wilson concluded that he still would be better off if he talked, so *he* called for the detective a second time. Then, after hearing and waiving his *Miranda* rights, Wilson told a new story.

This is not a case where, after having let the cat out of the bag during a systematic, exhaustive initial interrogation, Wilson saw little choice but to repeat his confession when the police continued to interrogate him after administering a post-initial confession *Miranda* warning. Rather, this is a case where, faced with the possibility of being charged with a crime that he didn't commit, Wilson decided that he'd be better off talking than sticking to his initial claim of ignorance.

"[A] suspect who has once responded to unwarned yet uncoercive questioning is not thereby disabled from waiving his rights and confessing after he has been given the requisite *Miranda* warnings." *Oregon v. Elstad*, 470 U.S. 298, 318 (1985). A subsequent confession is admissible so long as it was "knowingly and voluntarily made," taking the circumstances surrounding the earlier confession into account. *Id*. at 309; *Seibert*, 124 S. Ct. at 2610 n. 4. Clearly that is the case here, so *Elstad*, not *Seibert*, controls. Accordingly, Wilson's motion to suppress his third statement should be denied.

RECOMMENDATION

Pursuant to 28 U.S.C. § 636(b)(1)(B) and for the reasons stated above, I recommend that this court deny defendant Lee Anwar Wilson's motion to dismiss and his motions to suppress statements and physical evidence.

Entered this 30th day of August, 2004.

BY THE COURT:

STEPHEN L. CROCKER
Magistrate Judge