

NOT FOR PUBLICATION

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

UNITED STATE OF AMERICA,)	
)	
Plaintiff)	
)	
v.)	
)	CRIMINAL NO. 2004-0016
EUGENE IVOR WILLIAMS,)	
)	
Defendant)	
_____)	

MEMORANDUM OPINION

Finch, Chief Judge

This matter is before the Court on the motion of Defendant Williams to suppress all physical evidence¹ and any statements allegedly made by Defendant to law enforcement agents. The Government opposes this motion. The Court held a hearing on this matter on June 3, 2004.

I. Background

While patrolling the Estate Profit area in a marked police car on January 29, 2004, Officer Franchat Hodge witnessed an individual (later identified as Defendant Williams) flee from a group of people. Officer Hodge chased him. During the pursuit, Officer Hodge witnessed Defendant Williams throw an unidentifiable object over the fence of plot 63 Estate Profit. Defendant Williams then ran into a house and locked himself in a bathroom. The owner of the house claimed not to know Defendant Williams so he was ordered to come out. Officer

¹ including but not limited to the firearm, ammunition, and marijuana

Hertas patted down Defendant Williams for weapons and discovered that the individual was wearing a bulletproof vest and had a black mask on his head. The officers found eight bags of marijuana in the bathtub of the bathroom where Defendant Williams had hid himself. No fingerprints were found on the bags. Officer Hodge went back to the vicinity where he had seen Defendant Williams throw something and Officer Hodge discovered a chrome handgun with six live rounds of ammunition in the magazine and one in the chamber. Defendant Williams was arrested.

Defendant Williams had previously been arrested on August 27, 2003. On that date, Officer Uston Cornelius was patrolling the Castle Coakley Residential Area when he saw an individual (later identified as Defendant Williams) engrossed in an activity inside a light blue van. Officer Cornelius stopped and when Defendant Williams noticed the officer, Defendant Williams tried to discard several small plastic bags from his lap and a larger ziplock bag that he was holding. There was a green leafy substance inside the bags that later tested positive for marijuana. Numerous individuals were inside the van at the time, but only Defendant Williams was arrested.

Pursuant to these arrests, Defendant Williams has been indicted on five counts of gun possession and drug charges. Defendant now moves to suppress the physical evidence, as well as any statements made by him following the arrest, on the basis that the evidence was seized incident to a warrantless, illegal search and seizure.

II. Analysis

A. Warrantless Searches and Seizures

The general rule, subject only to a few specifically established and well-delineated exceptions, is that warrantless searches are *per se* unreasonable under the Fourth Amendment. United States v. Ross, 456 U.S. 798, 824 - 825, 102 S.Ct. 2157, 2172 - 73 (1982) (quoting Katz v. United States, 389 U.S. 347, 357, 88 S.Ct. 507, 514, 19 L.Ed.2d 576 (1967) (footnotes omitted)). Probable cause is typically the level of suspicion required to justify governmental intrusions upon interests protected by the Fourth Amendment. See Ross, 456 U.S. at 825. At the same time, the U.S. Supreme Court held that:

[b]ecause an automobile presents much of its contents in open view to police officers who legitimately stop it on a public way, is used for travel, and is subject to significant government regulation, this Court has determined that the intrusion of a warrantless search of an automobile is constitutionally less significant than a warrantless search of more private areas.

Id. at 830 - 31.

Defendant Williams argues that the police officers did not have “reasonable individualized suspicion” to seize Defendant on either date. (Defendant’s Motion at 8.) The Government responds that law enforcement officials did have the requisite reasonable suspicion. (Government’s Response at 4.)

B. Arrest on January 29, 2004

With regard to the January 29, 2004 incident, Estate Profit does have a reputation as a high-crime area. Therefore, when Defendant Williams fled upon spotting law enforcement officials, Officer Hodge had reasonable suspicion to pursue Defendant. See Illinois v. Wardlow, 528 U.S. 119, 121, 120 S.Ct. 673, 674 (2000) (concluding that the defendant’s Fourth Amendment rights were not violated when police officers stopped and frisked the defendant for having “fled upon seeing police officers patrolling an area known for heavy narcotics

trafficking” and finding that police officers had probable cause to arrest defendant upon discovering a handgun during the patdown). The Court is not persuaded by Defendant’s argument that by “pausing” during the police pursuit upon being ordered to stop, Defendant submitted to police authority and was thereby seized by law enforcement agents.

The Government further contends that Defendant Williams has no valid Fourth Amendment argument regarding the handgun, ammunition, and marijuana for the reason that these objects constitute abandoned property. It is true that it is lawful for the Government to appropriate abandoned property. See California v. Greenwood, 486 U.S. 35, 40 - 43, 108 S.Ct. 1625, 1628 - 30 (1998) (determining that there is no Fourth Amendment protection for garbage left out for collection) See also Abel v. U.S., 362 U.S. 217, 241, 80 S.Ct. 683, 698 (1960) (citing Hester v. United States, 265 U.S. 57, 58, 44 S.Ct. 445, 446, 68 L.Ed. 898 (1924)). The Court finds that the handgun, ammunition, and marijuana seized by police on January 29, 2004 had been abandoned, noting that all of these objects were recovered from property in which Defendant Williams has no standing to assert a privacy violation.

C. Arrest on August 27, 2003

As for the August 27, 2003 incident, the Court cannot attest to the Castle Coakley Residential Area as being a high crime area and no evidence was presented at the hearing to support this contention. Furthermore, the reason for Officer Cornelius’ approach was that an individual in the van appeared to be doing something intently. No suspicion arose until after Officer Cornelius approached Defendant Williams. The Court concludes that Officer Cornelius approaching the van in this case does not constitute a legitimate stop. See Adams v. Williams, 407 U.S. 143, 158, 92 S.Ct. 1921, 1929 (1972) (finding that a police officer who approached an

individual sitting in parked vehicle based on an informant's tip was not justified, because a stop requires specific facts that reasonably lead the police officer to conclude that the individual is engaged in *criminal* activity) (emphasis added) (citing Terry v. Ohio, 392 U.S. 1, 29, 88 S.Ct. 1868, 1884) (1968)).

Addressing the Government's abandonment argument, the Court notes that the marijuana seized from Defendant on August 27, 2003 was not abandoned property. Officer Cornelius testified at the hearing that the objects seized from Defendant Williams on this date were found in Defendant's hand and lap.

III. Conclusion

It is undisputed that law enforcement officials did not have an arrest warrant nor a search warrant in either of these arrests. With regard to the incident on January 29, 2004, the Court determines that the police officers had reasonable suspicion to pursue, stop, and frisk Defendant Williams. In light of the circumstances, the discovery of a bullet proof vest and mask on Defendant's person and of marijuana in the bathtub of the bathroom where Defendant Williams had hid provided the police officers with probable cause to arrest. Furthermore, the firearm, ammunition, and marijuana that were appropriated by law enforcement officers had been abandoned before the officers came to possess these objects. These objects were therefore lawfully seized and the Court finds that the Government has provided a strong enough tie between Defendant Williams and the objects that a jury should be allowed to decide whether this connection overcomes the standard of reasonable doubt. Additionally, the Court has not been presented with any evidence to support suppressing any statements that Defendant Williams

made to law enforcement in connection with this lawful arrest.

Regarding the August 27, 2003 event, the Court cannot believe that Officer Cornelius had objective reasonable suspicion to approach the light blue van. Therefore, any physical evidence seized and any statements Defendant Williams made to law enforcement officials in connection to this illegal detainment on August 27, 2003 must be suppressed at trial.

For the foregoing reasons, Defendant Williams' Motion to Suppress will be granted in part and denied in part. An appropriate Order is attached.

ENTER:

Dated: June 7, 2004

RAYMOND L. FINCH
CHIEF U.S. DISTRICT JUDGE

Attest:
Wilfredo F. Morales
Clerk of the Court

By: _____
Deputy Clerk

cc: Hon. George W. Cannon
Denise A. Hinds, AUSA
Pamela L. Colon, Esq.

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ORDER

THIS MATTER is before the Court on Defendant Williams' Motion to Suppress, docket item # 18. In accordance with the attached Memorandum Opinion, the Court finds no reason to suppress any evidence obtained in connection with the January 29, 2004 arrest of Defendant Williams, but holds that all physical evidence and Defendant's statements obtained by law enforcement agents in connection with the August 27, 2003 incident must be suppressed as the fruits of an illegal stop. Accordingly, it is hereby

ORDERED that Defendant's Motion to Suppress is **GRANTED in part** and **DENIED in part**.

ENTER:

Dated: June 7, 2004

RAYMOND L. FINCH
CHIEF U.S. DISTRICT JUDGE

Attest:

Wilfredo F. Morales
Clerk of the Court

By: _____
Deputy Clerk

cc: Hon. George W. Cannon
Denise A. Hinds, AUSA
Pamela L. Colon, Esq.