U
J.S.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES,	)	
Plaintiff,	)	
v.	)	
RANDALL EVANS,	)	CR 92-00040-A (92-170-M)
Defendant.	)	

MEMORANDUM OPINION

This matter is before the Court on the government's appeal of the Magistrate Judge's grant of the defendant's motion to suppress. For the reasons discussed below, the Magistrate Judge's grant of the motion to suppress and the order dismissing the government's case will be VACATED, and the case will be REMANDED to the Magistrate Judge for proceedings not inconsistent with this opinion.

FACTUAL BACKGROUND

On August 22, 1991, United States Park Police Officer Kelsey Stefansson was patrolling the Theodore Roosevelt Island parking lot. She was dressed in her uniform and was patrolling on an official police motorcycle. At approximately 12:30 p.m., she observed the defendant, Randall Evans, park his car in the park's overflow parking lot. This is an area in which a number of narcotics arrests have been made. Officer Stefansson observed the defendant seated in his car with his head bent over, apparently

occupied with something in his lap. She approached the defendant's car and found the defendant reading a "pornographic" magazine and allegedly fondling himself. The defendant was neither charged with having obscene materials nor with disorderly conduct. Instead, Officer Stefansson asked the defendant for his identification. The defendant responded that he did not have a license and that his license was suspended; he did, however, provide Officer Stefansson with his car registration. Based on these facts, Officer Stefansson issued the defendant a citation for operating a motor vehicle on a suspended license, a violation of Virginia Code Section 46.2-301 (assimilated by 18 U.S.C. § 13).

The defendant appeared pro se before Magistrate Judge Brinkema on November 21, 1991, and motioned the court to suppress the evidence on the grounds that his fourth amendment rights had been violated. After hearing the testimony of the arresting officer, the Magistrate Judge granted the motion to suppress, finding that there was not an "adequate suspicion or justification for a police officer to go up and ask him for his identification." Hearing Transcript, November 21, 1991, at 18.

The government now appeals the Magistrate Judge's ruling. The government argues that the Magistrate Judge applied the wrong legal standard to the issue before her.

DISCUSSION

While the Court has considerable sympathy for the view of the

Magistrate Judge in connection with this case,[1] the Court must conclude that the law is well established and that the government is entitled to have the ruling vacated and the case remanded so that the Magistrate Judge can render an opinion based on the correct legal standard.

Before a court addresses the issue of whether or not there was a reasonable or adequate suspicion to justify the officer's conduct, it must first determine whether or not there has been a seizure or an investigatory stop.[2] The fourth amendment is not implicated by every contact between citizens and the police; it is only implicated if the conduct of the police rise to the level of a seizure. See, e.g., Florida v. Bostick, 115 L. Ed. 2d 389, 398 (1991) ("The encounter will not trigger Fourth Amendment scrutiny unless it loses its consensual nature."); Florida v. Royer, 460 U.S. 491, 497 (1983) (plurality opinion).

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[1] Stated more fully, the Magistrate Judge held:

> One of the worst side effects of the war on drugs is just this kind of situation. I think the citizens in this country have a right to go to Federal park lands, and do lawful activities there.
>
> This man was not doing anything, in my opinion, that was illegal or unlawful, and I don't think there was adequate suspicion or justification for a police officer to go up and ask him for his identification. The motion to suppress is granted.
>
> Therefore the fruits of the unjustified contact are suppressed, and the Government would be unable to go forward in this case. It's dismissed.

Hearing Transcript, November 21, 1991, at 18.

[2] Although there is a clear doctrinal distinction between an investigatory stop and a full seizure, the Court will, for the sake of simplicity, hereinafter refer to them generally as "seizures."

The Supreme Court has made "it clear that a seizure does not occur simply because a police officer approaches an individual and asks a few questions. So long as a reasonable person would feel free 'to disregard the police and go about his business,' the encounter is consensual and no reasonable suspicion is required." Bostick, 115 L. Ed. 2d at 398 (citation omitted). Additionally, the mere request for identification does not necessarily change the encounter into a seizure. See INS v. Delgado, 466 U.S. 210, 216 (1984) ("[O]ur recent decision in Royer, [460 U.S. 491 (1983),] plainly implies that interrogation relating to one's identity or a request for identification by the police does not, by itself, constitute a Fourth Amendment seizure."). Similarly, the courts have consistently held that approaching an individual in a parked car located in a public place does not, alone, amount to a seizure. See United States v. Castellanos, 731 F.2d 979, 982-84 (D.C. Cir. 1984) ("Given all the circumstances of this case, we do not believe that the presence of a park police officer together with a request for identification would have led a reasonable person to conclude that he was being compelled to respond and would not be free to leave."); Wayne R. LaFave, Search and Seizure § 9.2(h), at 408-09 & n.230, 415-17 (2d ed. 1987).

The Court expresses no opinion as to whether or not there was a seizure in this case. This is a matter for the Magistrate Judge to determine based on the evidence before her. Similarly, the Court expresses no opinion as to whether or not the Magistrate Judge should hear additional evidence. While the Magistrate Judge

may feel that there was sufficient evidence before her to now make a determination as to whether or not a seizure occurred, it may also be that, because she was focusing on a different issue, insufficient evidence was elicited on this point.[3]

The Court vacates the grant of the motion to suppress, and, therefore, the dismissal of the case, and remands the case to the Magistrate Judge for action not inconsistent with this opinion.

Let the Clerk send a copy of this Memorandum Opinion and the accompanying Order to the pro se defendant and all counsel of record.

_____ _____

DATE UNITED STATES DISTRICT JUDGE

[3] In particular, the defendant has suggested in his memorandum in opposition to the appeal that he "was commanded by the officer 'Do Not Move! Stay in the car!" Response of the Defense, at 2. A quick review of the transcript failed to reveal any testimony on this point. Such testimony, in addition to evidence on the degree of force demonstrated by Officer Stefansson, may be relevant to the determination of whether or not a seizure occurred in the instant case. See, e.g., United States v. Mendenhall, 446 U.S. 544, 553 (1980) ("Examples of circumstances that might indicate a seizure, even where the person did not attempt to leave, would be the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled." (emphasis added)).