

THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

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Alexandria Division

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UNITED STATES OF AMERICA,)	
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v.)	CRIMINAL NO. 83-0095-A
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)	
CHARLES SHELTON and)	
ANDRE REYNARD JOHNSON,)	
Defendants.)	

MEMORANDUM OPINION

I. FACTUAL BACKGROUND

On April 21, 1983, at approximately 10:45 A.M., the Dominion National Bank located at 2928 Annandale Road in Fairfax County, Virginia, was robbed at gunpoint by two black males. The bank is located at the corner of Route 50 and Annandale Road, about a mile or a mile-and-a-half from Fairfax County's boundary with Arlington County. Route 50 leads from Fairfax County into Arlington County, where it intersects with Washington Boulevard. Washington Boulevard in turn intersects with Interstate 395. Route 395 is major commuter route from Northern Virginia, and leads into Washington, D.C. via the 14th Street Bridge.

At approximately 10:45 A.M. on April 21st, Detective Edward Gabrielson of the Arlington County Police was travelling north in an unmarked police cruiser on Route 395. He monitored a radio

call regarding the bank robbery. At this point, he only knew that a bank had been robbed by two black males, and that the bank was located on Route 50 in Fairfax County. Upon receiving this information, he immediately proceeded toward the 14th Street Bridge, because that bridge was known to Officer Gabrielson to be "the escape route from the Route 50 corridor into the District of Columbia." Tr. at 19.

As Detective Gabrielson approached the Washington Boulevard exit onto I-395, he observed an older, green Thunderbird with District of Columbia license plate number 820-689 merging from Washington Boulevard onto I-395. Washington Boulevard is two lanes at this point, I-395 three; they merge to form a five-lane highway. Officer Gabrielson testified that he observed the Thunderbird, which was travelling slightly faster than the speed limit, cross all five lanes in less than 200 yards. He also observed that there were two black males in the car's front seat. The car's erratic movement attracted his attention and caused him to fall in behind it. As he followed at a distance of some car lengths, he radioed the car's D.C. license plate number 820-689 to the Arlington County Dispatcher. While waiting for the response, he observed a third black male rise up from the back seat, and then lay back down. He observed the same passenger rise and slump back down several times. Detective Gabrielson also saw the person pulling off a shirt, and concluded that the back seat passenger was changing his clothes.

Detective Gabrielson's request for a license plate identification was relayed to Special F.B.I. Agent Largent, who was at the bank robbery scene. Agent Largent ordered a computer search run on the National Crime Information Center computer, and asked to be told whether the owner of the car had any criminal record. The search was performed at Agent Largent's request. The car was found to be registered to a Charles Shelton. Shelton had a criminal history including armed robbery and bank robbery. Agent Largent ordered that this information be relayed to Detective Gabrielson.

Detective Gabrielson was meanwhile following the Thunderbird across the 14th Street Bridge. The Thunderbird picked up speed and began changing lanes with increasing frequency, to avoid slower-moving cars. Once across the bridge, the Thunderbird exited onto the Southeast Freeway. About this time, Gabrielson was told of the car owner's identity and criminal history. He followed the Thunderbird as it exited off the Freeway onto the 11th Street bridge and moved into Anacostia in Southeast Washington. He had difficulty following the Thunderbird in Southeast Washington, and he lost the car at the corner of Martin Luther King Boulevard and Chicago Avenue.

Gabrielson then pulled off and made contact with two D.C. police officers who had been dispatched to the area to assist him. He reported all the information he had to the two officers, including the car's description, license number, and owner's history. Officers Goodman and Scott, the two D.C. police officers, had a license check run on the Thunderbird's plate

number. The owner had listed 2508 Pomeroy Road, Apt. 101, as his address. The officers determined that the Pomeroy Road address was nearby. In addition, the information was also relayed to additional D.C. police officers in the area and to a D.C. Police helicopter, which had been dispatched.

The helicopter pilot reported to the D.C. police officers that he spotted several Thunderbirds in the area of Pomeroy Road, but only one that was green--and that was the only Thunderbird in the area that was moving. The helicopter pilot observed that the car contained three black males, and followed the car to Pomeroy Road. Detective Gabrielson and two D.C. police cruisers had in the meantime arrived at the top of the Pomeroy Road hill. Officers Goodman and Scott pulled down the hill and drove in front of a green Thunderbird, which by this time had parked on the side of Pomeroy Road. The Thunderbird bore plates with a license number matching that which they had been given by Detective Gabrielson. Both Goodman and Scott and the helicopter pilot observed three black males emerge from the vehicle. Two of the men ran away from the car, and Officer Goodman gave chase after them.

Officer Scott apprehended the third man who did not run away. He testified that he observed the third man emerge from the vehicle. He also testified that he frisked the man, and his frisk produced a photo I.D. bearing the name Andre Johnson. In addition, Officer Scott made a courtroom identification of Defendant Johnson as the man he arrested on April 21.

Officer Goodman, together with Detective Thiebeau, pursued the two fleeing males up a slight embankment. Officer Goodman shouted a command that the men halt, at which point the taller of the two men turned. Officer Goodman, recalling that the men were suspects in an armed bank robbery and fearing for his own safety, fired a single shot at the one who turned. He also saw the face of the man at whom he fired, at a distance of some fifteen feet. Both men then turned and continued to run up the hill. The pursuing policemen lost the suspects beyond the crest of the hill, but the helicopter pilot, who had observed the chase, communicated to the pursuers that the one of the fleeing men had run into 2508 Pomeroy Road. Officer Goodman and Detective Thiebeau ran into the apartment building, down the stairs into the basement storage area. Finding the area unoccupied, they knocked on the door of Apt. 101, the address given as that of the green Thunderbird's owner.

Officer Goodman testified that after some delay and repeated knocking, the door was finally answered by a tall black male dressed only in a pair of long pants. The man was sweating and breathing heavily. Officer Goodman testified that the temperature that day was so cool that he was wearing a nylon jacket. Officer Goodman also testified that he recognized the man at the door as the one he had chased up the embankment and at whom he had fired a shot. The officers then began to "secure the scene", Tr. at 53, by which Officer Goodman meant that no one was permitted to leave or to remove anything. After additional police arrived, Officer Goodman retraced the suspect's path up the

embankment and toward 2508 Pomeroy Road. He found "a clump of money" in the rear of 2512 Pomeroy Road, and at the rear of 2510 "another patch of bills". Tr. at 54. The total amount of money found was approximately \$1,200 cash, of which \$500 was in hundred dollar bills.

Agent Largent testified that Detective Thiebeau obtained a warrant authorizing a search of Apt. 101. The warrant was procured through an affidavit which essentially outlined the above facts, including the detail about the large amounts of money found in the rear of the building. A search was conducted pursuant to the warrant. Agent Largent testified that in a back bedroom, in a suitcase filled with clothes, investigators found a roll of money totaling approximately \$1,900.

The defense put on evidence which contradicted the above recitation of facts (which is essentially a distillation of the government's evidence). Counsel for defendant Johnson produced Barry Fowler, an acquaintance of Johnson's, who claimed that he and Johnson were standing and talking just down the hill from where the green Thunderbird pulled up on Pomeroy Road. He testified that he paid no attention when the car pulled up, nor did he pay any attention to who got out of the car. He also testified that he paid no attention when the police drove up, and that he was unaware of any chase that would have had to have gone on very near to him. He testified that he only became aware of the pursuit when a shot rang out, and only conceded this awareness of the pursuit when confronted on cross-examination with the fact that a shot had been fired. He testified that he

only focused on the presence of the police, and indeed, only became aware that anything unusual was afoot, when for no apparent reason, Officer Scott came up and grabbed Johnson. He claimed that Johnson was standing several feet away from the car at the time and that Johnson had never been any nearer to the car at the time the Officer grabbed him.

Though Fowler's testimony does contradict the government's evidence, the court does not find that contradiction particularly troubling. Not only was Fowler an acquaintance of Johnson's; he was a resident of the neighborhood and acquainted with the residents of 2508 Pomeroy Apt. 101, the apartment to which the green Thunderbird was linked, yet he claims he paid no attention when the green Thunderbird pulled up nor any attention to who got out of it. Actually, Fowler seems to have paid very little attention to anything that was going on around him: arrival of police cars, an armed chase very near to him, and so on. The only detail he seemed to notice was the supposed unprovoked seizure of Johnson. Fowler's selective attention to detail suggests a lack of candor, as did his demeanor on the stand. The court finds as a factual matter the version of events related by Officer Scott is more credible than Fowler's, and therefore concludes that Scott's version is a more accurate description of what actually took place.

Defendant Shelton produced as a witness his nephew, Kevin Stewart. Stewart's testimony contradicted the government's case at several critical points. He testified that it was he, and not Charles Shelton, who answered the police knock on the door,

though he did testify that Shelton came forward immediately and confronted the police. He testified that when the police came in, they told everyone to lie face down on the floor. Then, he claimed, instead of simply securing the apartment, the police "walked around searching." He testified that five minutes after the police arrived, and long before a warrant was obtained, an officer brought in money from the back room and laid it on the table. He testified that the police officers only began talking about a warrant after the money was found. He also claimed that the police never produced a suitcase.

Stewart's testimony, though contradictory of the government's evidence, is likewise not troubling. He testified that he was laying face down on the floor, so he had at best a limited opportunity to observe. Though he seemed quite sure the money was produced before the warrant, he was quite unclear about other details, such as the time of arrival of the F.B.I. agent and others, or whether or not they were there before or after the warrant was produced. Defendant Shelton is Stewart's uncle, so Stewart's motives may be somewhat suspect. His apparent character is not strenghted by the testimony that he was at home that day because he was skipping classes at his vocational school. Though counsel brought out on re-direct that Stewart's father had died the previous day, Stewart himself did not consider the event significant enough to give as a reason for his absence from school when asked about it on cross-examination. He said only "I just didn't go that day", Tr. at 20, in response to questions regarding his absence from school. And even on re-direct, he

didn't testify that his father's death was the reason for his absence; he testified only that his father died, and the next day he missed school. He never said anything that linked the two events; and, again, the only time he was asked his reason for missing school, he didn't consider this father's death significant enough to mention.

Finally, Stewart's testimony was itself directly contradicted by the testimony of Investigator Thomas Miles, of the Fairfax County Police Department. Miles testified in rebuttal that he was present on April 21, 1983, when a search warrant was executed on 2508 Pomeroy Road. Miles testified that he personally observed the opening of a large suitcase and the discovery of a roll of money. He testified that he had been in Apt. 101 prior to the time the search warrant arrived and that no searching had begun prior to the warrant's arrival.

Based on Miles's rebuttal testimony, and the reasons given above for questioning Stewart's candor, the court finds that among the two contradictory versions of the search of Apt. 101, it credits more highly the government's version, and finds that the version of the search testified to by Goodman, Largent, and Miles is a more accurate description of what actually did happen.

II. LEGAL ANALYSIS

Shelton's Motion to Suppress

Defendant Shelton moves to suppress the \$1,900 in cash obtained as a result of the search of the 2508 Pomeroy Road apartment. The search was conducted pursuant to a warrant. The warrant was based upon an affidavit. The affidavit stated that a search of Apt. 101 was sought because that was the address of the owner of the Thunderbird, and that was where Charles Shelton, who had been seen fleeing from the Thunderbird and who was recognized by Officer Goodman when he answered the door of Apt. 101, was located. Charles Shelton had been found there when he voluntarily and consensually opened the door in response to the policemen's knock. A close reading of the affidavit shows that none of the facts alleged were discovered after Shelton was positively linked to Apartment 101, with the exception of the finding of the money on the ground outside the apartment building. No references were made in the affidavit to anything discovered inside the apartment after Shelton opened the door.

A chain of facts ties the green Thunderbird to the bank robbery, ties the green Thunderbird to Shelton, ties Shelton to Apt. 101, and provides the probable cause that supported the search which was eventually conducted in Apartment 101. While the mere passage of a car with D.C. tags containing two black males from Washington Blvd. to I-395 is not noteworthy, and that same car's erratic passage onto I-395 is merely attention-getting, and even the appearance in the back seat of someone obviously changing clothes is not unduly suspicious, these facts taken

together with the information that the car's owner had a history of bank robbery, and that the car was on an "escape corridor" leading directly from the scene of the crime only minutes after the crime took place, justified Detective Gabrielson taking up the chase after the green Thunderbird. While his chase was not uninterrupted, a car of the same description with three black males in it was seen only moments after he lost the trail moving in the direction of the address known to be that of the owner of the car Gabrielson had seen. The helicopter pilot traced the car to the 2500 block of Pomeroy Road, which was known to be the address of the owner of the car Gabrielson had seen. Gabrielson observed the car parked in the 2500 block as the same he had originally pursued. Officer's Scott and Goodman observed that the car had the same license number as that Gabrielson had previously reported.

Goodman's chase of the green Thunderbird's occupants was also not uninterrupted. But Goodman was informed by the helicopter pilot that one of the fleeing suspects had been observed running into 2508 Pomeroy Road. He knew that the green Thunderbird's owner lived in Apt. 101 in that same building, and when he knocked on the door of Apt. 101, he found the same man he had been chasing perspiring and out of breath on a cool spring morning. Goodman also found large quantities of cash strewn on the ground on a path leading directly from the crest of the hill where he had last seen the fleeing men to 2508 Pomeroy Road.

Defendant Melton contends that probable cause sufficient to justify the search did not exist based upon the above recital of facts. The standard upon which such challenges are to be evaluated was recently elaborated upon by the United States Supreme Court in Illinois v. Gates, ___ U.S. ___, 51 U.S.L.W. 4709 (June 8, 1983), which held that the standard of review of an issuing magistrate's probable cause determination is whether "the magistrate had a substantial basis for concluding that a search would uncover evidence of wrongdoing." Id. at 4715. Affidavits supporting the warrant should be evaluated in a "commonsense" and not a "hypertechnical" manner. Id.

Evaluating the information contained in this affidavit in a "commonsense" manner, the court concludes that the magistrate could only have found that the a search of Apartment 101 was likely to uncover evidence of wrongdoing. Furthermore, he had a substantial basis for so concluding. The chain of events which led from the bank to Apt. 101, though not without inferential links and interruptions, was never entirely broken from the moment Detective Gabrielson observed the green Thunderbird in the "escape corridor" only moments after the crime and on a path that led directly from the scene of the crime. It may have been a mere fortuity that Gabrielson spotted the car, and merely good police instincts that caused him to follow the car. But by the time the affidavit was presented to the reviewing magistrate, a substantial basis existed for concluding that Apt. 101, to which one of the occupants of the car had fled, contained evidence of wrongdoing. Not only was the car traced to an owner with a bank

robbery record, but it contained three males, which would account for two robbers and one driver. And, finally, clumps of money in large denominations were found simply laying on the ground outside the apartment to which the owner had registered his car. One of the men fleeing from the car had recently passed over the exact spot where the money was found. The presence of the money, together with all that led up to its discovery, and those events link to the man found in apartment 101, justified the issuance of the warrant.

Because the court finds that the issuance of the warrant was proper, and there being no contention that the search itself exceeded the bounds of the properly issued warrant, the court finds that the evidence obtained during the search was properly seized. Defendant Shelton's motion to suppress is denied.

2. Johnson's Motion to Suppress

Defendant Johnson contends that his arrest was not supported by probable cause and that all evidence seized incident thereto should be suppressed. Johnson does not dispute that the Constitution permits an officer to arrest a suspect without a warrant if there is probable cause to believe that the suspect has committed or is committing an offense. Michigan v. DeFillippo, 443 U.S. 31, 36 (1979); Beck v. Ohio, 379 U.S. 89, 91 (1964). His contention is that Officer Scott was without sufficient cause to arrest him.

A warrantless arrest is supported by probable cause if the facts and circumstances within the arresting officer's knowledge are sufficient to warrant a prudent person, or one of reasonable caution, in believing, in the circumstances shown, that the suspect has committed, is committing or is about to commit an offense. Gerstein v. Pugh, 420 U.S. 103, 111 (1975).

At the time of Johnson's arrest, Officer Scott had observed Johnson emerge from a green Thunderbird with D.C. plates No. 820-689. He knew that a car of that description and bearing those tags had been pursued into the District on suspicion of bank robbery. He knew that that suspicion was based, among other things, on the presence of three black males in the car. He had observed three black males depart from the car. He also knew that the suspicion of those men's involvement in the crime was based on the car's movement minutes after the crime on a path leading straight from the crime scene to the place of the arrest. And he knew that the suspicion of the car's occupant's involvement in the robbery was based on the car owner's criminal history of bank robbery.

Evaluating these facts, and applying a "commonsense" and not a "hypertechnical" approach, the court can only conclude that there was sufficient information available to Officer Scott as would warrant a prudent person in believing that Johnson had some involvement with the bank robbery. Because the court finds that Officer Scott had sufficient grounds to believe the suspect had committed a crime, his warrantless arrest of Johnson was supported by probable cause. Johnson's motion to suppress his arrest and evidence seized incident thereto is denied.

DATE: Aug. 22, 1983

Richard L. Williams

UNITED STATES DISTRICT JUDGE

