

IN THE CIRCUIT COURT OF MISSOURI
TWENTY-SECOND JUDICIAL CIRCUIT - CITY OF ST. LOUIS

STATE OF MISSOURI,)
)
Plaintiff,)
) Cause Number 1322-CR03718
v.)
) Division Number 11
ROBERT PHILLIPS, III,)
)
Defendant.)

FILED
MAR 30 2015

22ND JUDICIAL CIRCUIT
CIRCUIT CLERK'S OFFICE
BY _____ DEPUTY

ORDER DENYING
DEFENDANT'S MOTION TO SUPPRESS EVIDENCE

This case is before the Court on Defendant's Motion to Suppress Evidence. By an indictment, the State has charged Defendant with one count of possession of controlled substance - cocaine base, a Class C felony, and one count of possession of marijuana under 35 grams, a Class A misdemeanor. The State also alleges that Robert Phillips, III, is a prior and persistent offender. This case is set on the trial docket in Division 11 for the week of April 6, 2015.

The Court held evidentiary hearings on the Defendant's Motion to Suppress Evidence on January 23 and January 30, 2015. Assistant Circuit Attorney Bayonle Osundare appeared as attorney for the State of Missouri. Defendant, Robert Phillips, III, appeared in person and by his attorney, Aurora Fluhr.

Having fully considered the testimony presented at the evidentiary hearings along with the oral arguments and written submissions (case law) of both parties, the Court now rules on the Defendant's Motion to Suppress Evidence as follows:

DISCUSSION OF FACTS

Police Officer Joseph Scalzo testified for the State. Robert Phillips, III, testified for the Defendant. Neither party asked the Court to admit any exhibits into evidence.

On June 24, 2013, Police Officer Joseph Scalzo was working an overlay assignment from 6:00 p.m. to 2:00 a.m. in the Walnut Park West neighborhood in the 6th District. He was riding in a marked patrol car with Officer Dan Book as his partner. Both officers were wearing regular police uniforms. At the time, Officer Scalzo had been a St. Louis City police officer for about a year. Officer Book was driving their police car a little before midnight heading west on Lillian Avenue toward Goodfellow Boulevard.

At the intersection of Lillian Avenue and Mimika Street, the officers saw a gray sedan heading eastbound on Lillian turn left and head north on Mimika. The officers noticed that the sedan had no working tail lights and so Officer Book turned right onto Mimika and followed the sedan using the police car's overhead lights and siren to alert the driver of the sedan. The sedan pulled over. Both police officers got out of their car and approached the sedan, a 1984 Chevrolet Caprice. The police officers subsequently learned that Robert Phillips, III, was the driver of the Chevrolet, that he had owned the car for six years and that he worked on the car from time to time.

As the police officers approached Mr. Phillips' car, Officer Book was on the driver's side of the car and Officer Scalzo was on the passenger side of the car. Both officers had their flashlights out

and on as they approached the Chevrolet. Mr. Phillips, III, was the only person in the car.

Although neither officer smelled anything unusual as they approached Mr. Phillips' car, Officer Scalzo said that, as he looked into the front seat area from the passenger side of the car, he saw a hand-rolled cigar in the ashtray in the lower part of the dashboard. Officer Scalzo noted that the cigar looked like a blunt to him, which is a handmade marijuana cigarette or cigar. Robert Phillips, III, got out of the car on the driver's side at the direction of Officer Book who told Mr. Phillips, III, about his traffic violation. Officer Scalzo leaned into the car on the passenger side, seized the cigar, confirmed that it appeared to be made of marijuana and then placed Robert Phillips, III, under arrest for possession of marijuana less than 35 grams.

Officer Scalzo said that, after he placed Mr. Phillips, III, under arrest, he advised him of his rights and received confirmation that Robert Phillips, III, understood his rights. Officer Book searched Robert Phillips, III, in connection with his being arrested for marijuana possession and found a plastic bag in one of his pants pockets. This bag contained what subsequent testing showed were illegal drugs. The officers then charged Robert Phillips, III, with possession of a controlled substance. Mr. Phillips, III, made no effort to resist arrest or to struggle with the police officers.

Robert Phillips, III, testified that he had owned his Chevrolet Caprice for six years. Mr. Phillips, III, testified that someone had told him on Goodfellow earlier that evening that the rear brake lights were out on his car and that, as a result, he had pulled over on his

own and that the police car did not come up to his location until after he had stopped his car. Mr. Phillips, III, said that, when the police pulled up around midnight on June 24, 2013, he was in his car. He reported that, at this time, his front dashboard had no ashtray. He said that he had extra gauges in the ash tray area.

Mr. Phillips, III, said that one police officer asked him to get out of his car, which he did and walked to the back end of the car. He did not give anyone permission to search his car at any time, and neither police officer asked him for permission to search his Chevrolet. But, both police officers searched the car. After the first search, Officer Book came back to him and told him that he was under arrest for possession of controlled substance - cocaine base. Mr. Phillips, III, said that at no time during this incident did he feel that he was free to leave and that the police didn't search him and so didn't find any drugs on him. He claims that the police searched his car and then claimed to have found drugs that they charged him with possessing. He emphasized that his car did not have an ash tray in its dashboard on July 24, 2013.

APPLICATION OF LAW TO FACTS

In his Motion to Suppress Evidence and in his lawyer's arguments at the close of the second evidentiary hearing, the Defendant contends that, under all of the circumstances in this case, the Fourth and Fourteenth Amendments of the United States Constitution and U.S. Supreme Court decisions interpreting the Fourth and Fourteenth Amendments required the police to obtain Defendant's consent to search his car because they had no reason to arrest Robert Phillips, III, at the time of the initial stop. The police had no legal basis to search

the car without the Defendant's permission or without a warrant. Without any exigent circumstances to allow a warrantless search, the Fourth and Fourteenth Amendments required the police to obtain Robert Phillips' permission to search or to obtain a valid search warrant before they entered and searched his Chevrolet on June 24, 2013.

The State counters that the police followed all applicable procedures and were justified in each step they took leading up to their arrest of Mr. Phillips' for possession of cocaine base. The State contends that Officer Scalzo saw a marijuana cigar in plain view in Robert Phillips' car. He then seized the cigar, confirmed that it was made of marijuana and arrested Robert Phillips for possession of marijuana. The officers then patted down Mr. Phillips incident to the lawful arrest for possession of marijuana and found the cocaine base in a baggie in one of his pants pockets.

Burden of Production and of Persuasion

To begin its discussion of the issues in this case, the Court notes that, at a suppression hearing, the State bears both the initial burden of producing evidence and the ultimate burden of persuasion and that, as to its burden of persuasion, the State must show, by a preponderance of the evidence, that the Defendant's Motion to Suppress Evidence should be overruled. Section 542.296.6 RSMo. See also, State v. Milliorn, 794 S.W.2d 181 at 184 (Mo. banc 1990) and State v. Weddle, 18 S.W.3d 389 at 391 (Mo.App.E.D. 2000).

Since this case involves the issue of search and seizure, the Court also notes its agreement with the observation that "(t)he constitutional validity of a warrantless search is pre-eminently the sort of question which can only be decided in the concrete factual

context of the individual case.” Sibron v. New York, 392 U.S. 40 at 59, 88 S.Ct. 1889 at 1901, 20 L.Ed.2d 917 at 932 (1968).

In this case, the State met its initial burden of providing substantial evidence in support of the conduct of the police officers who initially arrested the Defendant based on evidence in plain view which Officer Scalzo seized after he approached the Chevrolet and looked in the passenger side window. The police officers acted lawfully in arresting Robert Phillips and then conducting a pat-down search of his person incident to the arrest.

The Court finds Officer Joseph Scalzo’s testimony credible. Office Scalzo’s testimony was internally consistent and his demeanor and manner while he testified supported the reliability of his account of what happened just before midnight on June 24, 2013, when he and Officer Book met with Robert Phillips at Mr. Phillips’ Chevrolet stopped on Mimika. The Court finds that Robert Phillips’ testimony was somewhat credible, but not as believable as the testimony of Office Scalzo. He answered questions from both lawyers. However, his testimony, his body language and the tenor of his speech gave the Court some reason to believe that he was tailoring what he said or was trying to color his evidence to paint a picture of something different than what actually happened during his interaction with the police on June 24, 2013.

After reviewing and weighing all of the evidence in this case, the Court concludes that a preponderance of the evidence presented supports the State’s version of the facts.

Legal Basis Justifying Warrantless Search

Did Officer Scalzo have a legal basis for placing Defendant under arrest for possession of a controlled substance - cocaine base? The Defendant contends that the police did not have probable cause to arrest him for possession of controlled substance - cocaine base because they did not search him and find cocaine base on his person and they did not have permission or reason to search his car that night.

The Court notes that this case involves police officers stopping a car on a public street or highway while the defendant is the driver of the car. According to its evidence, the State argues that Officer Scalzo's testimony shows that he observed a marijuana cigar in plain view in the ash tray located in the dashboard of Mr. Phillips' car. The police placed the Defendant under arrest for possession of marijuana and then patted him down and found the cocaine base in one of his pants pockets.

The Court concludes that, under all of the circumstances and under applicable Missouri search and seizure law, the police had probable cause to arrest the Defendant after observing marijuana in plain view in the Defendant's vehicle and to search him incident to that arrest. The Court must deny the Defendant's Motion to Suppress Evidence.

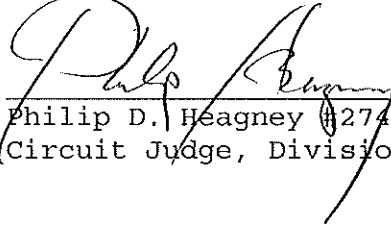
ORDERS

Based on the findings and conclusions set out above, the Court orders that:

1. Defendant's Motion to Suppress Evidence is denied.
2. The Court continues this case on its trial docket for

April 6, 2015, at 9:00 am.

SO ORDERED:


Philip D. Heagney #27434
Circuit Judge, Division 11

March 30, 2015

Cc: Bayonle Osundare, Assistant Circuit Attorney
Aurora Fluhr, Attorney for Defendant