IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 02-20265-GV
	)	
RONNIE STEWART, SR.,	)	
	)	
Defendant.	)	

REPORT AND RECOMMENDATION
ON DEFENDANT'S MOTION TO SUPPRESS

The defendant, Ronnie Stewart, Sr., was indicted on one count of being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g). He is charged with knowingly possessing a Smith and Wesson .40 caliber semi-automatic pistol on or about April 1, 2002, after having been previously convicted of a felony. Stewart seeks to suppress the gun which was retrieved by police officers from his person during a traffic stop.[1] As a basis for his motion to suppress, Stewart argues that the gun was the fruit of a stop and search conducted in violation of the Fourth Amendment. Stewart's motion to suppress was referred to the United States

[1] Stewart's motion also seeks to suppress any statements made to officers, but Stewart's counsel acknowledges in the motion that he knows of no statements other than Stewart's response to a request for his driver's license. Because Stewart did not present evidence of any other statements at the evidentiary hearing, his motion to suppress statements is moot, and this order only addresses suppression of the gun.

Magistrate Judge for an evidentiary hearing and a report and recommendation pursuant to 28 U.S.C. § 636(b)(1)(B) and (C).

At the evidentiary hearing on November 20, 2002, the government called one witness, Officer Mike Schafer of the Memphis Police Department's West Precinct Task Force. The defense called no witnesses. After carefully considering the arguments of counsel, the testimony of the sole witness, and the entire record in this cause, this court submits the following findings of facts and conclusions of law and recommends that the motion to suppress be denied.

PROPOSED FINDINGS OF FACT

Because the government presented only one witness and Stewart presented no witnesses, Officer Schafer's testimony is uncontradicted. The court finds Officer Schafer's testimony to be credible and accepts his version of the stop and search as fact.

According to Officer Schafer's testimony, at approximately 6:00 p.m. on or about April 1, 2002, he and Officer Dan O'Brien of the Memphis Police Department were patrolling the West Precinct of Memphis, Tennessee, in an unmarked police vehicle. They were driving behind a black 1996 Ford Mustang when they saw the Mustang twice straddle the yellow center line. They then saw the Mustang run a red light at the corner of East Lauderdale and South Parkway. The officers pulled over the Mustang by signaling it with blue lights and "bumping" the police vehicle siren.

There were two men in the Mustang: Stewart, the driver, and a passenger. Officer Schafer exited the police vehicle and stayed near its rear fender while Officer O'Brien approached the driver. Officer O'Brien asked Stewart for identification and a driver's license. Stewart confessed that he had no driver's license with him and that his license was suspended. Officer O'Brien then ordered Stewart out of the Mustang and instructed him to place his hands on the hood of the police vehicle. Simultaneously, Officer Schafer drew away from the police vehicle with a hand to his sidearm, so that he could keep Officer O'Brien, Stewart, and the Mustang's passenger in full view. Officer O'Brien patted Stewart down, recovering a firearm from Stewart's rear waistband. Upon seeing Stewart's weapon, Officer Schafer drew his firearm and "drew down" upon the Mustang's passenger. Stewart was handcuffed and his weapon secured, and the Mustang's passenger was removed from the vehicle and also patted down. Stewart was subsequently charged with driving without a license; driving on a suspended license; possession of a firearm; and possession of crack cocaine with intent to distribute. He was not ticketed for running a red light.

Officer Schafer also testified that when a driver carries no license or other identification, Memphis Police have a departmental policy of transporting the driver to jail for identification.

PROPOSED CONCLUSIONS OF LAW

Because the initial stop, the search of Stewart's person, and

the seizure of evidence were all performed without a warrant, the government bears the burden of proving that they were lawful under the Fourth Amendment. 5 WAYNE R. LAFAVE, SEARCH AND SEIZURE § 11.2(b) (3d ed. 1996). Each of the government's acts must be considered separately. *United States v. Bentley*, 29 F.3d 1073, 1075 (6th Cir. 1994).

A. Initial Stop and Detention

Generally, the Fourth Amendment prevents law enforcement officers from detaining a person unless they have probable cause to believe that person is committing a crime. *United States v. Sokolow*, 490 U.S. 1, 7 (1989). A traffic stop and the attendant detention of a driver or passenger is reasonable under the Fourth Amendment if law enforcement officers have probable cause to believe a traffic violation occurred, "and it is irrelevant what else the officer knew or suspected about the traffic violator at the time of the stop." *United States v. Ferguson*, 8 F.3d 385, 391 (6th Cir. 1993), *cert. denied* 513 U.S. 828 (1994). *See also United States v. Heath*, 259 F.3d 522, 528 (6th Cir. 2001) (discussing the *Terry* stop as an exception to the probable cause requirement). In addition, law enforcement officers who have a reasonable and articulable suspicion that criminal activity is afoot may detain a person long enough to confirm or dispel that suspicion. *Terry v. Ohio*, 392 U.S. 1, 21-22 (1968).

This court submits that law enforcement officers were clearly justified in stopping and initially detaining Stewart because they saw Stewart run a red light in violation of the Memphis Municipal Code. *See* MEMPHIS, TENN., MUNI. CODE § 21-371(a)(3) (obligating vehicles to stop at a red traffic signal). A reasonable officer, observing the same thing, would believe that a traffic violation had occurred.

B. Search of Stewart's Person and Seizure of Evidence

Generally, the Fourth Amendment prohibits warrantless searches. U.S. CONST. amend. IV; *United States v. Roarke*, 36 F.3d 14, 17 (6th Cir. 1994) (quoting *Katz v. United States*, 389 U.S. 347, 357 (1967)). However, exceptions apply. The government argues that the warrantless search of Stewart's person is justified under an exception to the warrant requirement, that is, a search incident to lawful arrest. Evidence seized during a search incident to a lawful arrest is exempt from the warrant requirement, *Chimel v. California*, 395 U.S. 752, 762-63 (1969), as long as the evidence was within the defendant's "immediate control" prior to or concurrent with his arrest, *New York v. Belton*, 453 U.S. 454, n5 (1981). Accordingly, two issues must be examined: first, whether a lawful arrest occurred, and second, whether the search was incident to that arrest.

A warrantless arrest is lawful when the arresting officer has probable cause to believe a crime has been or is being committed.

See, e.g., Gerstein v. Pugh, 420 U.S. 103, 112-14 (1975) (noting that the Supreme Court "has never invalidated an arrest supported by probable cause solely because the officers failed to secure a warrant"). "Probable cause is defined as 'reasonable grounds for belief, supported by less than prima facie proof but more than mere suspicion.'" *Ferguson*, 8 F.3d at 392 (quoting *United States v. Bennett*, 905 F.2d 931, 934 (6th Cir. 1990)). Here, Officer Schafer testified that, at or near the beginning of Officer O'Brien's exchange with Stewart, Stewart admitted he had no license and was driving on a suspended license. Stewart's own statement gave rise to probable cause to arrest Stewart for the offense. Accordingly, the warrantless arrest of Stewart was lawful.

Defense counsel argues that the government presented no proof that Stewart was actually arrested before the search, and therefore that the search cannot be justified as a search incident to arrest. The defense insists that a formal arrest must occur before Stewart can be searched incident to an arrest.

The Supreme Court, however, took the opposite stance in *Rawlings v. Kentucky*, 448 U.S. 98 (1980). In *Rawlings*, law enforcement officers had detained several suspects inside a house where the officers were lawfully executing an arrest warrant for one of the occupants. They waited for a search warrant for the premises. When it arrived, they instructed one of the detainees to empty her purse onto a coffee table. Rawlings, at the officers'

instruction, "claimed ownership of" controlled substances disgorged from the purse. Officers subsequently searched Rawlings and found money and a knife on his person. The officers then formally arrested him. When Rawlings sought to suppress the results of the search, the Supreme Court held that as soon as Rawlings "admitted ownership of the sizeable quantity of drugs found in [the other detainee's] purse, the police clearly had probable cause to place [him] under arrest. Where the formal arrest followed quickly on the heels of the challenged search of the petitioner's person, we do not believe it particularly important that the search preceded the arrest rather than vice versa." *Rawlings*, 448 U.S. at 110-11 (citations omitted) [emphasis added].

The Sixth Circuit had anticipated *Rawlings*, finding lawful searches in two cases where probable cause to arrest had arisen before the search and the subject was formally arrested after the search. *United States v. Prince*, 548 F.2d 164, 164-65 (6th Cir. 1977), held that a search of a hotel guest's luggage was justified when officers had probable cause to arrest the guest for narcotics trafficking at the time he arrived at his hotel but did not formally arrest him until after the search. Similarly, in *United States v. Lucas*, 360 F.2d 937, 938 (6th Cir. 1966), the Sixth Circuit held that "a search without a warrant may precede an arrest as long as it is substantially contemporaneous with the same and the arrest is based on probable cause and not on the results of the

search." *Lucas*, 360 F.3d at 938.[2] Lucas involved an automobile stop of a driver wanted for bank robbery. A warrant had issued for his arrest. Officers searched the vehicle before and after they formally placed the driver under arrest. See also *Manning v. Jarnigan*, 501 F.2d 408, 410-11 (6th Cir. 1974) (noting that "it does not take formal words of arrest . . . to complete an arrest" and holding that the proper inquiry is whether probable cause to arrest had arisen at the time of the search). *Rawlings*, when read in conjunction with these earlier holdings, not only bolsters their constitutional credibility but adds the proposition that a detainee's confession may give rise to probable cause to arrest him for that offense. *Rawlings*, 448 U.S. at 110-11.

Here, as in *Rawlings*, probable cause to arrest Stewart for driving on a suspended license arose when Stewart confessed to that offense. Although it is not clear from the record when the formal arrest occurred, it was implied that the formal arrest followed quickly and was substantially contemporaneous with the search. There was no proof to the contrary. Moreover, the arrest was not based on the fruits of the search; probable cause to arrest existed

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[2] Compare the pre-*Rawlings* case of *United States v. Dalpiaz*, 494 F.2d 374 (6th Cir. 1974), which held that a search of airport detainee's pockets, when the detainee was subsequently arrested as a potential hijacker, would not be analyzed as a search incident to lawful arrest because officer testified he had no subjective intent to arrest the detainee at the time of the search.

before the search occurred. In addition, the officers were acting in accordance with a departmental policy that permitted them to transport drivers who could show neither identification nor a valid driver's license. For these reasons, it is submitted that the search was lawful because it was conducted incident to a lawful arrest.

CONCLUSION

For the foregoing reasons, this court submits that the initial stop of Stewart's vehicle was justified because the officers observed a traffic violation; that the officers had probable cause to believe Stewart had committed the offense of driving on a suspended license; and that the gun was properly seized during a search incident to a lawful arrest for the offense of driving on a suspended license. Accordingly, this court recommends that Stewart's motion to suppress be denied.

Respectfully submitted this 25th day of November, 2002.

DIANE K. VESCOVO
UNITED STATES MAGISTRATE JUDGE

ANY OBJECTIONS OR EXCEPTIONS TO THIS REPORT MUST BE FILED WITHIN TEN (10) DAYS AFTER BEING SERVED WITH A COPY OF THE REPORT. 28 U.S.C. § 636(b)(1)(C). FAILURE TO FILE THEM WITHIN TEN (10) DAYS MAY CONSTITUTE A WAIVER OF OBJECTIONS, EXCEPTIONS, AND FURTHER APPEAL.

ANY PARTY OBJECTING TO THIS REPORT MUST MAKE ARRANGEMENTS FOR A TRANSCRIPT OF THE HEARING TO BE PREPARED.