

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
	:	CRIMINAL ACTION
v.	:	
	:	NO. 05-440
ALTON COLES	:	

SURRICK, J.

OCTOBER 5, 2007

MEMORANDUM & ORDER

Presently before the Court is Defendant Alton Coles' Motion to Suppress Physical Evidence Seized on October 24, 2004 (**Doc. No. 308**). A **Suppression Hearing was held on August 13, 2007**. For the following reasons, Defendant's Motion will be **denied**.

I. BACKGROUND

On February 21, 2007, the grand jury returned a 194-Count Fifth Superseding Indictment ("**Indictment**") charging Defendant Alton Coles and twenty-one co-defendants with offenses related to their participation in a wide-ranging drug conspiracy. The Indictment charged Coles with conspiracy to distribute narcotics in violation of 21 U.S.C. § 846; engaging in a continuing criminal enterprise in violation of 21 U.S.C. § 848(a), (b); being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1); possession of a firearm in furtherance of a drug trafficking crime in violation of 18 U.S.C. § 924(c); distribution and possession with intent to distribute narcotics in violation of 21 U.S.C. § 841(a)(1); and other related offenses.

II. FINDINGS OF FACT

On October 24, 2004, at about 2:45 a.m., Philadelphia Police Officer James Finnegan

was on duty in uniform in the 600 block of Spring Garden Street. (Suppression Hr'g Tr. 60, 71, August 13, 2007.) Officer Finnegan, along with other police officers, was assigned to the night club detail. (*Id.* at 61.) There are a number of nightclubs in the vicinity of the 600 block of Spring Garden Street, including Palmer's Club at 6th and Spring Garden Street. (*Id.* at 61.) This area is known to be a high-crime area, and police frequently respond to shootings in the neighborhood. (*Id.* at 61, 67.) The night club detail officers also handle crowd control and traffic control. (*Id.* at 61.)

Officer Finnegan received a report over the police radio that several men with guns were in a dark-colored Bentley in the area of 6th and Spring Garden Street. (*Id.* at 61.) Bentley automobiles are not common in Philadelphia. (*Id.* at 62.) Almost immediately after receiving the radio call, a dark-colored Bentley pulled into Officer Finnegan's view. (*Id.* at 62.) As Officer Finnegan and other officers began walking toward the vehicle, several men exited the vehicle and started running. (*Id.* at 63.) Defendant was one of the individuals who exited the Bentley. (*Id.*) Defendant started running away from the vehicle heading west on Spring Garden Street towards 7th Street. (*Id.*) Officer Finnegan and his partner, Officer Dave Chism, began to chase Defendant westbound on the 600 block of Spring Garden Street. (*Id.*) At the corner of 7th Street and Spring Garden Street, Defendant turned right onto 7th Street and the officers followed. (*Id.*) They ran approximately one-half of a city block northbound on 7th Street, on the west side of the street. (*Id.*)

When Officer Finnegan was approximately five to ten feet away from Defendant, Defendant turned towards Officer Finnegan, reached into his waistband, pulled out a silver handgun, and pointed the gun at Finnegan. (*Id.* at 64, 73.) Defendant then threw the gun over a

fence that separated the sidewalk from a housing project. (*Id.* at 65, 63–64, 73-74.) Officer Finnegan and Officer Chism tackled Defendant, and Defendant fought with the officers. (*Id.* at 64–65.) The officers had to call for back-up to help bring Defendant under control. (*Id.* at 65.) Thereafter, Officer Chism climbed over the fence and retrieved the gun that Defendant had pointed at Officer Finnegan. (*Id.* at 65–66, 74.) Defendant was arrested and he gave his name as “Naseem Coles.” (*Id.* at 65.)

III. CONCLUSIONS OF LAW

Defendant’s argues that the gun was illegally seized by the officers. (Doc. No. 308 at 2.) This argument is premised on Defendant’s interpretation of the Criminal Complaint. (*Id.* at 2–3.) Defendant states that, “the Criminal Complaint reads as if the firearm was found concealed on the person of Mr. Coles, who was in the vehicle parked on the 600 block of Spring Garden Street.” (*Id.* at 2.) Based upon this reading of the Criminal Complaint, Defendant argues that the officers did not have probable cause or reasonable suspicion to search Defendant and seize the weapon. (*Id.* at 3.) Defendant reads too much into the Criminal Complaint. The Criminal Complaint merely states that Defendant carried a concealed loaded weapon, in a vehicle, on a street, without a license, and that he is a prohibited person. It does not say that Defendant was in a parked vehicle with a concealed weapon when he was searched by the police and when a weapon was seized. Moreover, the police report regarding this incident is perfectly consistent with the testimony of Officer Finnegan at the Suppression Hearing. Based upon that testimony, it is clear that Defendant abandoned the gun after he exited the car, when he threw it over the fence while fleeing from Officer Finnegan and before he was ultimately seized by the officers.

Initially, we note that after the officers received the radio call of men with guns in a dark

colored Bentley, they could have lawfully made an investigatory stop of the men as they exited the Bentley. *See Terry v. Ohio*, 392 U.S.1 (1968). The officers never got the chance. As the men were exiting the Bentley, they saw the officers and they began to flee. This case is very similar factually to the case of *California v. Hodari D.*, 499 U.S. 621 (1991). In *Hodari D.*, police officers were walking toward a group of juveniles that included Hodari D. When the juveniles saw the officers they began to run. One officer ran after Hodari D. While chasing Hodari D., the officer saw him throw away what appeared to be a small rock. A short time later, the officer tackled Hodari D. and placed him under arrest. The officer then retrieved the rock that Hodari D. had tossed away and discovered that it was crack cocaine.

The Supreme Court held that the officer's seizure of the crack cocaine was lawful, even though the officer did not have the reasonable suspicion required to stop Hodari D. before he started to run. *Hodari D.*, 499 U.S. at 624 n.1. The Court held that even if the officer's pursuit of Hodari D. qualified as a "show of authority," Hodari D. was not seized during the pursuit because he did not submit to the officer's show of authority. Hodari D. was not seized until he was tackled by the officer. At that point, Hodari D. had already abandoned the cocaine. Therefore, the cocaine was not the fruit of the seizure. *Id.* at 629.

In this case, as the police walked toward Defendant, he ran. There was no show of authority and Defendant never submitted to a show of authority. Defendant and the other men ran before the officers said or did anything. Defendant was not seized until the officers tackled him. This was after he had thrown the gun away. When the officers saw Defendant pull the gun from his waistband and toss it over the fence, they had probable cause to arrest the Defendant. *See United States v. Embry*, 546 F.2d 552, 556 (3d Cir. 1976) (defendant's action in discarding

incriminating evidence while being chased by police “more than satisfies the probable cause requirement for [that defendant’s] arrest.”). Defendant was placed under arrest after he was tackled. Since Defendant abandoned the gun before being seized, the gun was not the fruit of a seizure.

Accordingly, Defendant’s motion to suppress will be denied.

An appropriate Order follows.

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ORDER

AND NOW, this 5th day of October, 2007, upon consideration of Defendant Alton Coles' Motion to Suppress Physical Evidence Seized on October 24, 2004 (Doc. No. 308), and all documents submitted in support thereof and in opposition thereto, it is ORDERED that the Motion is DENIED.

IT IS SO ORDERED.

BY THE COURT:

/s/ R. Barclay Surrick
U.S. District Court Judge