

IP 04-0122-CR 1 M/F U.S. A. v Shepherd
Judge Larry J. McKinney

Signed on 10/25/04

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

| | | |
|------------------|---|-------------------------------|
| USA, |) | |
| |) | |
| Plaintiff, |) | |
| vs. |) | |
| |) | |
| SHEPHERD, SHANE, |) | CAUSE NO. IP04-0122-CR-01-M/F |
| |) | |
| Defendant. |) | |

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)
Plaintiff,)
)
vs.) IP 04-122-CR-M/F
)
SHANE SHEPHERD,)
Defendant.)

ORDER ON DEFENDANT’S MOTION TO SUPPRESS

On July 29, 2004, the Defendant, Shane Shepherd (“Shepherd”) was indicted for violation of 18 U.S.C. § 922(g)(1), felon in possession of a firearm. Defendant filed a Motion to Suppress on August 11, 2004, and a hearing was held on September 23, 2004. Shepherd claims his warrantless arrest was without probable cause, in violation of his Constitutional Fourth and Fourteenth Amendment rights, and moves for suppression of the firearm recovered by law enforcement authorities during the arrest. The Court has fully considered the parties’ arguments, and, for the reasons discussed below, **DENIES** Defendant’s Motion to Suppress.

I. BACKGROUND

The following facts were established by the testimony of the police witnesses and substantiated by exhibits admitted into evidence. Shepherd was a suspect in the April 21, 2004, double homicide of Charles Havvard (“Havvard”) and Herman Gilmore (“Gilmore”), that occurred in the vicinity of 40th and Boulevard streets in Indianapolis, Indiana. Indianapolis Police Department Homicide Detective Todd Lappin (“Detective Lappin”) conducted the investigation.

Before Havvard lost consciousness and was transported to Wishard Hospital, Officers Bryan

Zotz (“Zotz”) and Brian Gable (“Gable”) asked Havvard who shot him. He responded: “Shocky.” Officers Zotz and Gable gave tape-recorded statements describing this exchange to Detective Lappin. Through previous investigations, Detective Lappin was aware that Shepherd uses the nickname “Shocky.” Detective Lappin also sent a department-wide e-mail to determine if any officer was aware of an individual by the name of “Shocky,” and he received seven responses from officers that two individuals used the nickname. One was Shepherd, the other was deceased. During the course of the investigation, two witnesses positively identified Shepherd as the individual who shot Havvard and Gilmore. Detective Lappin sent out an Indianapolis Police Department inter-departmental communication that Shepherd was sought in connection with the double homicide. No arrest warrant was issued.

Detective Lappin turned over the search for Shepherd to the Fugitive Task Force (“Task Force”) – a law enforcement unit that looks for wanted individuals. On May 19, 2004, Indianapolis Police Department Detective Mark Hess (“Detective Hess”) and Deputy United States Marshall Brian Aldridge (“Deputy Aldridge”), members of the Task Force, were attempting to locate Shepherd. Detective Hess observed Shepherd leave a residence at 5506 North Kessler Boulevard, Indianapolis, Indiana, driving a black Dodge Intrepid. Deputy Aldridge summoned marked Marion County Sheriff’s Department (“MCSD”) units to stop Shepherd’s vehicle. Three units arrived and positioned themselves, lights and sirens activated, behind and to the side of Shepherd’s vehicle, as Shepherd waited a few cars behind a school bus unloading students. Shepherd fled, driving his vehicle into a residential yard, striking Officer Hess’ unmarked vehicle, and attempting to evade capture until Detective Aldridge’s vehicle eventually forced Shepherd from the roadway. Officers approached, found Shepherd behind the wheel, and observed the butt end of a firearm between

Shepherd's knees. After removing Shepherd from the car and arresting him, a loaded handgun, the subject of the suppression motion, was found on the driver's floorboard.

II. STANDARD

Under the Fourth Amendment, police officers may conduct warrantless arrests and searches only upon a finding of probable cause. *United States v. Funches*, 327 F.3d 582, 586 (7th Cir. 2003). Probable cause “does not require evidence sufficient to support a conviction, nor even evidence demonstrating that it is more likely than not that the suspect committed a crime.” *United States v. Carrillo*, 269 F.3d 761, 766 (7th Cir. 2001) (internal quotation omitted). Rather, probable cause demands only that “given the facts and circumstances within their knowledge at the time of arrest, the agents reasonably believed that the suspect had committed or was committing a crime.” *Id.* The probable cause standard is a flexible, practical common-sense one. *See United States v. Colonia*, 870 F.2d 1319, 1323 (7th Cir. 1989) (citations omitted); *United States v. Evans*, 27 F.3d 1219, 1228 (7th Cir. 1994). In other words, “so long as the totality of the circumstances, viewed in a common sense manner, reveals a probability or substantial chance of criminal activity on the suspect's part, probable cause exists.” *United States v. Mounts*, 248 F.3d 712, 715 (7th Cir. 2001). Even if, ex post facto, probable cause is found not to have existed, “the probable cause standard permits reasonable mistakes by arresting authorities based on the information then and there available.” *Id.*

III. ANALYSIS

The government asserts that law enforcement officers had probable cause to arrest Shepherd for homicide at the time of the vehicle stop, and, if the police lacked probable cause, Shepherd's

flight and resistance provided an intervening circumstance that purged any taint from the initial stop under the attenuation doctrine. Pl.'s Resp. at 1. Shepherd bases his motion to suppress on the following arguments: (1) his warrantless arrest was without sufficient probable cause and in violation of his Constitutional rights, therefore, the fruits of the arrest – the firearm – should be suppressed, (2) the attenuation doctrine does not apply, and (3) Shepherd did not actually flee from law enforcement. Def.'s Mem. Supp. at 4, Def.'s Rep. at 3, 7.

The crux of Shepard's argument is that the Court should undergo a comparison of facts known to arresting police officers in *Whiteley v. Warden, Wyoming State Penitentiary*, 401 U.S. 560 (1971), with the facts known to law enforcement officers in this case. However, Shepherd's reliance on that case is misplaced. In *Whiteley*, the Court found that the sole basis for the underlying arrest warrant was a complaint consisting of nothing more than a Sheriff's conclusion that the individual arrested had participated in the offense described in the complaint. *Whiteley*, 401 U.S. at 565. The actual basis for that conclusion was an informant's tip, but that fact, and all other operative facts, were omitted from the complaint. *Id.* The Court found that the complaint alone could not support the independent judgment of a disinterested magistrate and the warrant was issued without probable cause. *Id.*

The *Whiteley* Court next addressed the government's contention that regardless of the sufficiency of the complaint to support the arrest warrant, the arresting officers, acting pursuant to the issued state police bulletin, possessed sufficient factual information to support a finding of probable cause for arrest without a warrant. *Id.* at 565-66. The Court underwent an analysis of the facts known to the arresting officers, finding their knowledge of the bulletin, and observations that the defendants and their vehicle matched the description in the bulletin, was not sufficient to develop

probable cause. *Id.* at 567. Because the arresting officers did not possess any factual data that the defendants committed the crime in question or that corroborated the informant's tip, the arrest was in violation of the defendant's Fourth and Fourteenth Amendment rights. *Id.*

Shepherd argues that the officers in *Whiteley* had more personal knowledge of the charge and evidence in support of an arrest than officers in the present case. Def.'s Mot. Supp. at 7. However, as relied upon by Shepard, *Whiteley* provides no relevant guidance for the case at hand, nor does it provide support for his position. Whether arresting officers developed probable cause for arrest based upon their own knowledge and observation is not at issue. The appropriate inquiry is whether Detective Lappin, through his investigation, established sufficient probable cause for a warrantless arrest of Shepard. The Court answers this question in the affirmative.

Detective Lappin conducted a homicide investigation which yielded a victim's declaration that "Shocky" shot him, personal knowledge from prior investigations and information from other police officers that Shepherd uses the nickname "Shocky," and two eyewitnesses who positively identified Shepherd as the culprit. Looking at the totality of the circumstances, viewed in a common sense manner, the facts known to Detective Lappin revealed a probability or substantial chance of criminal activity on Shepherd's part, therefore probable cause existed.¹ *See Mounts*, 248 F.3d at 715. Shepherd argues that, "[J]ust as in *Whiteley*, the officers in the present case were acting on a tip as to the identity of the shooter by two unnamed persons," and this tip was insufficiently

¹ Shepherd also seems to argue that members of the Task Force and the MCS D deputies who assisted in the arrest must have "personal knowledge of the charge and evidence in support of an arrest." Def.'s Mot. Supp. at 7. An arresting officer need not personally be aware of the specific facts that established probable cause, but may rely on the "collective knowledge" of the police officers involved in the investigation. *See United States v. Ventresca*, 380 U.S. 102, 110-11 (1965); *United States v. Celio*, 945 F.2d 180, 184 (7th Cir. 1991); *United States v. Griffin*, 827 F.2d 1108, 1111 (7th Cir. 1987), *cert. denied*, 485 U.S. 909 (1988).

corroborated. Def.'s Mem. Supp. at 7-8. This cannot be deduced from an accurate reading of *Whiteley*, nor does it accurately characterize the facts of this case. The arresting officers in *Whiteley* did not rely on a tip as the basis for the defendant's arrest, instead they acted pursuant to a state police bulletin which was produced and distributed because an arrest warrant, later proved to be invalid, was issued. *Whiteley*, 401 U.S. at 565. Furthermore, as discussed, the information relied upon by Detective Lappin was far more than a "tip."

In sum, law enforcement authorities developed probable cause to effect a warrantless arrest of Shepherd and there was no violation of Shepherd's Fourth and Fourteenth Amendment rights. Accordingly, Shepherd's motion to suppress must be denied.

IV. CONCLUSION

For the reasons discussed herein, the Court **DENIES** Defendant's Motion to Suppress.

IT IS SO ORDERED this 25th day of October, 2004.

LARRY J. MCKINNEY, CHIEF JUDGE
United States District Court
Southern District of Indiana

Distributed to:

Timothy M Morrison
UNITED STATES ATTORNEY'S OFFICE
10 West Market Street, Suite 2100
Indianapolis, IN 46204-3048

Belle Choate
CHOATE & HAITH
151 North Delaware, Suite 740
Indianapolis, IN 46204