UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 07-20759-CR-JORDAN
Magistrate Judge Torres

UNITED STATES OF AMERICA

v.

RICARDO OLMEDO,

Defendant.
_____/

GOVERNMENT'S OPPOSITION TO DEFENDANT'S MOTION TO SUPPRESS

The United States, by and through the undersigned Assistant United States Attorney, herby replies to the defendant's motion to suppress. The defendant moves to suppress 2 kilograms of cocaine seized following a search of his vehicle. As that search was supported by probable cause, the motion to suppress should be denied.

I. BACKGROUND

On June 25, 2007, agents of the Drug Enforcement Administration began conducting a judicially authorized interception of the cellular telephone of the defendant's son, Michael Olmedo. Law enforcement officers intercepted thousands of telephone calls in which Michael Olmedo discussed the distribution of ounce and kilogram quantities of narcotics. Among those thousands of calls were multiple calls between Michael Olmedo and the defendant regarding the distribution of narcotics. During the course of the wire interceptions, law enforcement agents conducted surveillance of Michael Olmedo and his co-conspirators in which they repeatedly observed members of the conspiracy engaging in suspected narcotics trafficking activities corresponding to conversations intercepted by the agents. Prior to September 12, 2007, agents

also seized over a kilogram of cocaine based upon information obtained during the wire interceptions.

On September 12, 2007, at approximately 5:41 p.m., agents intercepted a call in which Michael Olmedo told the defendant to go pick "that" up from "that" guy, and stated that he was trying to get the money together. At approximately 5:55 p.m., agents intercepted another call between Michael Olmedo and the defendant. During that call, the defendant indicated that the guy had two. The Olmedos also discussed the quality of the suspected narcotics, and Michael Olmedo indicated he was trying to get the "tickets." Michael Olmedo further stated that he was getting enough for one, and that he got 12 and would put in 10. $22,000 (12 plus 10) is an amount consistent with the price of a kilogram of cocaine. Based upon these intercepted calls, agents believed that Ricardo Olmedo would be receiving cocaine from a source of supply later that day and, as a result, agents established surveillance on the defendant.

While conducting this surveillance, a Miami-Dade undercover officer observed the defendant arrive in the vicinity of SW 114 Court and SW 35th Lane in a Green Ford F-150 and park near a black Mercedes sedan. The officer observed a Hispanic Male exit the black Mercedes with a plastic bag and enter the Ford F-150 driven by the defendant. Shortly thereafter, the officer observed the Hispanic Male exit the Ford F-150 with a different bag and then reenter the Mercedes. Both vehicles then departed the area. After making these observations, the officer contacted a marked Miami-Dade Police cruiser and requested that the Mercedes be stopped. In response to that request, a marked Miami-Dade Police cruiser activated its lights and performed a stop of the Mercedes. A search of the Mercedes led to the recovery of $20,000 in United States currency. While the Mercedes was being stopped, at approximately 7:21 p.m., the defendant called Michael Olmedo and stated that he had received two and

indicated that they were really good. Less than a minute after the conclusion of that call, Michael Olmedo called another co-conspirator, Raul Hernandez, and stated that he had a pair of shoes, a coded reference to two kilograms of cocaine. Approximately ten minutes later, and subsequent to the search of the Mercedes that led to the recovery of $20,000, a Miami-Dade Police officer in a marked cruiser stopped the defendant's vehicle, conducted a search of that vehicle, and seized two kilograms of cocaine and $2,000 in United States currency. The defendant consented to the search of his vehicle.[1]

II. ARGUMENT

The defendant incorrectly phrases the issue before this Court as follows: "the appropriate inquiry is whether there was, at least on the limited facts set forth by the Government's case agent in a sworn criminal complaint, probable cause to first stop Mr. Olmedo as he was driving, and secondly, once the stop was effectuated, to search his vehicle." As an initial matter, the stop of a vehicle need only be based on reasonable suspicion, not probable cause, s*ee United States v. Sharpe*, 470 U.S. 675 (1985); *United States v. Robertson*, 6 F.3d 1088, 1091 (5th Cir. 1993), though the defendant is correct that probable cause was required to conduct the search of the vehicle. *See United States v. Reid*, 69 F.3d 1109 (11th Cir. 1995). More importantly, as counsel for the defendant is well aware, the criminal complaint does not contain all of the facts that support a finding of probable cause for the vehicle search, nor was it required to do so.

The purpose of the criminal complaint was not to demonstrate probable cause for the search of the vehicle. Indeed, the complaint was drafted after the vehicle search had already occurred. There was no need for the officers to obtain a search warrant prior to conducting the vehicle search in light of the exigent circumstances inherent in any motor vehicle stop. *See*

[1] While the defendant's consent constitutes an independent basis upon which the search should be upheld, the Court need not adjudicate the issues regarding consent (such as voluntariness) given the overwhelming probable cause supporting the search of the vehicle.

United States v. Forker, 928 F.2d 365 (11th Cir. 1991) ("The requirement of exigent circumstances is satisfied by the 'ready mobility' inherent in all automobiles that reasonably appear to be capable of functioning."); *see also Pennsylvania v. Labron*, 518 U.S. 938 (1996); *United States v. Nixon*, 918 F.2d 895 (11th Cir. 1990). The sole purpose of the criminal complaint was to establish probable cause that the defendant had committed a violation of Title 21, United States Code, Section 841(a)(1). In fact, in the affidavit in support of the complaint the case agent expressly stated that "[b]ecause this affidavit is submitted for the limited purpose of establishing probable cause for a criminal complaint, it does not include all of the details of the investigation of which I am aware." Thus, the question before this court is not, does the criminal complaint establish probable cause for the vehicle search, but rather did the aggregate evidence in the hands of law enforcement officers engaged in this investigation create both reasonable suspicion for the stop and probable cause for the search. *See United States v. Willis*, 759 F.2d 1486, 1494 (11th Cir. 1985) ("'Probable cause ... exists where the facts and circumstances within the collective knowledge of law enforcement officials, of which they had reasonably trustworthy information, are sufficient to cause a person of reasonable caution to believe that an offense has been or is being committed.' A reviewing court may examine the collective knowledge of law officers if they maintained at least a minimal level of communication during their investigation.") (*quoting United States v. Blasco*, 702 F.2d 1315, 1324 (11th Cir. 1983)).

Prior to the vehicle stop, law enforcement officers had intercepted numerous telephone calls indicating that the defendant would be meeting with an unknown individual to take possession of two kilograms of cocaine and provide him with payment for one of those kilograms. Law enforcement officers then established surveillance on the defendant while

maintaining communication with other law enforcement agents in the wire room. The officers conducting surveillance then observed the defendant meet with an unidentified individual with whom he engaged in activity consistent with a narcotics transaction. After that meeting had concluded, officers stopped the Mercedes that was driven by the individual with whom the defendant had met and seized from it $20,000 in United States currency, an amount consistent with payment for a kilogram of cocaine.[2] Moreover, after the defendant met with the driver of the Mercedes, agents intercepted an additional telephone call between the defendant and Michael Olmedo in which the defendant indicated that he had received the two kilograms of cocaine. Immediately thereafter, Michael Olmedo called another co-conspirator to confirm that he had two kilograms of cocaine. All of this occurred prior to the stop of the defendant's vehicle and these facts are more than sufficient to establish probable cause for the search of the vehicle.

It should be noted that copies of the wire intercepted calls were produced to counsel for the defendant on October 11, 2007, and line sheets summarizing those calls were provided on November 2, 2007. Moreover, prior to the filing of the motion to suppress, the undersigned made clear to counsel for the defendant that the decision to stop the defendant's vehicle was based, in part, on information obtained from the wire interceptions. Indeed, it was the wire intercepted calls that led law enforcement officers to conduct surveillance of the defendant in the first place. Thus, the assertion in the motion to suppress that "the Government has provided no basis other than that which is set forth in the Criminal Complaint" in support of the stop and search of the defendant's vehicle is simply incorrect.

[2] It should be noted that the defendant does not challenge the search of the Mercedes, nor could he given that he lacks standing to do so. *See United States v. Padilla*, 508 U.S. 77 (1993).

III. CONCLUSION

Because there was probable cause for the search of the defendant's vehicle, the motion to suppress should be denied.

Respectfully submitted,

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

By: s/ Sean Paul Cronin
Sean Paul Cronin
Assistant United States Attorney
Court I.D. No. A5500940
11200 N.W. 20th Street
Suite 101
Miami, Florida 33172
Tel: (305) 715-7651
Fax: (305) 715-7639
Sean.P.Cronin@usdoj.gov

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 28, 2008, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF.

s/ Sean Paul Cronin
Sean Paul Cronin
Assistant United States Attorney