

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	Criminal Action No. 7:04CR00117
	)	
v.	)	<b><u>MEMORANDUM OPINION</u></b>
	)	
JOVAN MANNING,	)	By: Hon. Glen E. Conrad
	)	United States District Judge
Defendant.	)	

This case is before the court on defendant’s motion to suppress the seizure of a 1999 Chrysler 300M and the items found therein during a search of the vehicle. The defendant contends that the search violated his rights under the Fourth Amendment because it was outside the scope of a search warrant executed the same day on defendant’s place of business and because law enforcement lacked probable cause for the seizure and search. For the reasons stated below, the court will deny defendant’s motion to suppress.

**FACTUAL BACKGROUND**

The defendant stands charged in a two count indictment with conspiracy to distribute and to possess with intent to distribute more than fifty grams of crack cocaine and more than five kilograms of cocaine and knowingly and intentionally possessing with intent to distribute a mixture or substance containing more than five hundred grams of cocaine. These charges stem from a search conducted of a white 1999 Chrysler 300M on August 10, 2004 by officers from Roanoke City’s police department and agents of the federal Drug Enforcement Administration (“DEA”).

A search warrant for Manning’s place of business, Herbie’s Car Sales & Care, was supported

by the affidavit of Kenneth D. Garrett, a Task Force Officer of the DEA. In that affidavit, dated August 2, 2004, Agent Garrett describes a fraud and money laundering scheme involving an individual by the name of Herbert Kennedy. Kennedy is the owner and operator of Herbie's Used Cars, a used car dealership in Greensboro, North Carolina. Kennedy and Herbie's Used Cars had first come to the attention of law enforcement in August 2003, when Agent Garrett served a DEA administrative subpoena on the business in order to obtain records regarding the sale of a vehicle owned by the target of a drug investigation. Officers observed a large quantity of cash on the premises and spoke with employees who advised that paperwork on the vehicle was incomplete.

A confidential source disclosed during an interview in December 2003 that numerous vehicles owned by suspected narcotics traffickers in the Roanoke area had been purchased from Herbie's Used Cars. Over the following months, law enforcement officers discovered that several other cars seized during the arrest of several individuals on drug trafficking charges had been purchased from Herbie's Used Cars and that certain documents related to their sale had been altered or falsified in order to show a larger lien than the actual lien to discourage forfeiture proceedings. Because the documents had been sent in the mail, law enforcement believed they had found evidence of mail fraud.

A confidential source provided law enforcement with information concerning a vacation residence owned by Kennedy in Henry County, Virginia. The source indicated that Kennedy invited known narcotics traffickers to this residence. Another confidential source informed law enforcement that a known narcotics trafficker worked at Herbie's Used Cars and indicated that they had discussed cocaine purchases at the business.

The warrant affidavit goes on to indicate that numerous confidential sources provided law

enforcement with information that Kennedy was helping the defendant, Jovan Manning, to establish a legitimate business in Roanoke. The government believes that the purpose of this business, Herbie's Car Sales & Care, was to provide a legitimate front for the laundering of drug proceeds. In June 2004, Agent Garrett learned that Manning had purchased a garage on Melrose Avenue in Roanoke. Agent Garrett also discovered that Manning had obtained a business license for the garage.

Agent Garrett's affidavit goes on to conclude that there was probable cause that Kennedy and others committed money laundering, mail fraud, wire fraud, failure to file returns, and structuring. The search warrant authorized searches of Kennedy's residence in Henry County and Herbie's Car Sales & Care on Melrose Avenue in Roanoke, as well as any outbuildings and motor vehicles located on the curtilage of those properties. Search warrants were also issued by courts in North Carolina to search two locations in that state. The items to be seized included records, documents, materials, and files related to Kennedy, Herbie's Used Cars or other businesses affiliated with Kennedy as well as firearms, currency, safes, vehicles located on the property or curtilage, and computer records. Agent Garrett indicated in his affidavit that it was his experience that individuals "maintain important records, documents, financial instruments and currency within their residences, businesses, outbuildings, and motor vehicles."

Law enforcement officers executed the search warrant at Herbie's Car Sales & Care in Roanoke, as well as all three other locations, on August 10, 2004. During the search of the location, officers observed Manning approach the location on foot from the direction of a Burger King across the street. During past surveillance, officers had always observed Manning drive a vehicle to the location and had frequently seen him park a white Chrysler with Virginia registration JKJ-5203 at the business.

At the suppression hearing, Agent Garrett testified that he had learned from confidential sources that Manning was a large scale drug dealer and that his drug source was in Greensboro, North Carolina. Agent Garrett had also received information from two confidential sources who linked the defendant to the Chrysler. In addition, Agent Garrett had previously obtained information from confidential sources that Manning sometimes drove vehicles that contained “traps,” or concealed compartments for contraband including illegal narcotics, specifically a Mercedes and the Chrysler 300M involved here. During surveillance conducted on Herbie’s Car Sales & Care during the summer of 2004, Agent Garrett had observed the Chrysler 300M parked on the property between five and twenty times and observed Manning driving the vehicle one time.

Officer Jerry Bingeman with the Roanoke City police department checked the area immediately surrounding the business and located the white Chrysler 300M with Virginia registration JKJ-5203 within two blocks of the business location and in the direction from which Manning had arrived on foot. The hood of the vehicle was still warm. After searching Manning’s personal effects, officers discovered the key to this vehicle in his right pants pocket. Officer Bingeman requested a K-9 unit to run the car, however the dog failed to alert on the car. The officer searched the vehicle after transporting it to Herbie’s and discovered no evidence of illegal activity.

Acting on instructions from Agent Garrett’s supervisor, Special Agent Melick, Officer Bingeman then drove the vehicle to the DEA office in Roanoke. Sometime later, Officer Bingeman received a call from an informant, Keelan Bailey, who had been present during the search at Herbie’s, who informed him that there was a “bird” in the car and that the officer should search the vehicle. Based upon his experience with the drug task force, Officer Bingeman understood a “bird” to refer to a

kilo of cocaine. While conducting this second search of the vehicle at the DEA office, officers discovered an electronic concealment compartment within the dash. Approximately one kilogram of cocaine powder was located in the compartment. Manning was then arrested and charged with the instant violations.

The defendant filed this motion to suppress claiming that the search of the Chrysler 300M had exceeded the scope of the original search warrant and that the officers did not have probable cause to search the vehicle under any of the recognized exceptions to the warrant requirement. The court held a hearing on defendant's motion on April 4, 2005.

### **DISCUSSION**

The Fourth Amendment protects the "right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures." U.S. Const. amend. IV. Searches conducted without a properly issued warrant are generally per se unreasonable unless they fall into one of the established exceptions to the warrant requirement. United States v. Gastiburo, 16 F.3d 582, 585-86 (4<sup>th</sup> Cir. 1994).

While he does not specifically dispute the validity of the original search warrant in this case, Manning does contend that the seizure and subsequent search of his vehicle were outside the scope of the search warrant because the vehicle was not located on the premises of Herbie's Car Sales and Care. The affidavit in support of the authorized search warrant at issue in this case stated that "[a]uthorization is specifically requested to search the residence and business locations listed below, *as well as any outbuildings and motor vehicles located on the curtilage of the described properties.*"

The officers admitted that they located the Chrysler 300M approximately two blocks away from Herbie's, not on the curtilage of the business property, and the government does not now argue that the search of the vehicle was valid under the warrant. Because the search of the vehicle was clearly outside the scope of the search warrant, it cannot be upheld on that ground.

The government contends that the seizure was valid because it was the seizure of an asset subject to forfeiture on the ground that it facilitated the distribution of narcotics. The applicable forfeiture statute provides as follows:

Seizures pursuant to this section shall be made pursuant to a warrant obtained in the same manner as provided for a search warrant under the Federal Rules of Criminal Procedure, except that a seizure may be made without a warrant if - . . .

- (B) there is probable cause to believe that the property is subject to forfeiture and -
  - (i) the seizure is made pursuant to a lawful arrest or search; or
  - (ii) another exception to the Fourth Amendment warrant requirement would apply . . .

18 U.S.C. § 981(b)(2).

The government contends that there was probable cause to believe the vehicle was subject to forfeiture. For the government to demonstrate probable cause, it must show a "substantial connection" between the property at issue and the underlying criminal activity, in this case narcotics trafficking. See United States v. Santoro, 866 F.2d 1538, 1542 (4<sup>th</sup> Cir. 1989). Agent Garrett testified that seven different sources had indicated that Manning was known to be a dealer of large quantities of cocaine. Agent Garrett had also learned from confidential sources that Manning's drug source was in Greensboro, North Carolina. The white Chrysler 300M had been seen at defendant's rental house in Greensboro, North Carolina. Two confidential sources had linked the Chrysler 300M to Manning and informants had also told Agent Garrett that Manning drove vehicles, including the Chrysler 300M,

which were outfitted with traps that could conceal illegal narcotics. During past surveillance of Herbie's in Roanoke, officers had always observed Manning drive a vehicle to the location and had frequently seen him park a white Chrysler with Virginia registration JKJ-5203 at the business. Agent Garrett had personally observed the Chrysler 300M parked on the property between five and twenty times during the summer prior to the execution of the search warrant and observed Manning driving the vehicle one time.

The defendant counters that the officers had only a hunch that the car might have been used to facilitate Manning's alleged criminal activity. He points out that one of the sources of information regarding the hidden compartment in the vehicle was a convicted felon and contends that there is no information to show that this individual is reliable. However, this source's information was corroborated by a second source who also informed Garrett about the concealed compartment and tied Manning to the Chrysler 300M.

The court finds Agent Garrett's testimony to be credible. Law enforcement had information indicating that Manning was a trafficker in cocaine, that he drove the Chrysler 300M, and that the vehicle had a trap in which Manning transported illegal narcotics. Therefore, the government has demonstrated a substantial connection between the vehicle and the underlying criminal activity and that there was probable cause to seize the vehicle for forfeiture on the ground that it facilitated the transportation and distribution of illegal narcotics. Furthermore, a warrantless seizure of an automobile from a public street for the purposes of forfeiture is permitted under the automobile exception to the warrant requirement. See Florida v. White, 526 U.S. 559 (1999).

The evidence defendant seeks to suppress, however, was not obtained during the initial seizure

and search of the Chrysler 300M, but during a second search that took place at the DEA office in Roanoke. This second search of the vehicle at the DEA office in Roanoke was also justified under the automobile exception, based upon probable cause. Under this exception to the usual warrant requirement, law enforcement officers may search a vehicle without a warrant if it is “readily mobile and probable cause exists to believe it contains contraband.” United States v. Brookins, 345 F.3d 231, 235 (4<sup>th</sup> Cir. 2003) (quoting Maryland v. Dyson, 527 U.S. 465, 466 (1999) (per curiam)). The fact that the vehicle was immobilized prior to the search does not negate the justification to search the vehicle. Michigan v. Thomas, 458 U.S. 259, 261 (1982).

The facts in this case are similar to those present in United States v. Gastiaburo, 16 F.3d 582 (4<sup>th</sup> Cir. 1994). In Gastiaburo, the defendant was pulled over for a traffic stop for reckless driving. 16 F.3d at 584. After the defendant consented to a search of his vehicle, an officer searched the vehicle and discovered, among other things, scales, a knife, a substantial quantity of cash, and several baggies of crack cocaine. Id. The officer arrested the defendant and the Commonwealth of Virginia seized his car for forfeiture. Id. The vehicle was transported to an impoundment lot. Id. A subsequent inventory search of the vehicle revealed no additional contraband. Id. Just over a month later, the passenger who had been in the car at the time of defendant’s arrest encountered the officer who had conducted the search. Id. at 584-85. The passenger asked the officer whether he had discovered the gun in the vehicle. Id. at 585. When the officer responded that he had not, the passenger went on to inform the officer that there was a hidden compartment in the vehicle containing a handgun, drugs and money. Id. The officer immediately went to the impound lot and conducted another search of the vehicle without a warrant. Id. He discovered a handgun along with additional crack cocaine in the concealed

compartment behind the car's radio. Id.

The defendant moved to suppress the items discovered in this final search of the vehicle. Id. The district court denied the motion, resolving any credibility conflicts in favor of the officer, and the defendant was convicted. Id. On appeal, the United States Court of Appeals for the Fourth Circuit upheld the search based upon probable cause and the automobile exception to the warrant requirement. Id. The Fourth Circuit noted that the officer had probable cause to search the vehicle based on the new information provided by the passenger in the defendant's vehicle and that the officer had properly confined his search to the scope of that information. Id. at 586. In addition, the Court held that "the fact that impoundment may have made it virtually impossible for anyone to drive the car away or to tamper with its contents is irrelevant to the constitutionality of a warrantless search under the circumstances of the present case." Id. Finally, the Court found that the passage of time between the impoundment and the final search was "legally irrelevant." Id. at 587.

Likewise, in this case, law enforcement had probable cause to seize the vehicle for forfeiture, as previously discussed. They conducted an inventory search of the vehicle at the scene and did not discover any contraband. A drug dog ran the car and failed to alert, although the officer testified that the drug dog may have been thrown off by the presence of other dogs in a fenced yard nearby. After the vehicle was taken to the DEA lot, Officer Bingeman received a tip from an informant who had been at the scene of the search of Herbie's. The informant told him that there was a "bird" in the car, a term Officer Bingeman understood to indicate a kilo of cocaine. Based on that information, officers conducted a further search of the vehicle and discovered the concealed compartment containing a kilogram of cocaine. Because the second search of the Chrysler 300M was based upon probable

cause and no warrant was required under the automobile exception, the search was valid. Therefore, for the foregoing reasons, the defendant's motion to suppress the evidence obtained pursuant to the seizure and search of the Chrysler 300M will be denied.

The Clerk is directed to send certified copies of this Memorandum Opinion and the accompanying Order to all counsel of record.

ENTER:        This 7<sup>th</sup> day of April, 2005.

/s/ Glen E. Conrad  
United States District Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA

ROANOKE DIVISION

UNITED STATES OF AMERICA,	)	
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Plaintiff,	)	Criminal Action No. 7:04CR00117
	)	
v.	)	<b><u>ORDER</u></b>
	)	
JOVAN MANNING,	)	By: Hon. Glen E. Conrad
	)	United States District Judge
Defendant.	)	

For the reasons stated in the accompanying Memorandum Opinion, it is hereby

ORDERED

that the defendant's motion to suppress is denied.

The Clerk is directed to send certified copies of this Order to all counsel of record.

ENTER: This 7<sup>th</sup> day of April, 2005.

/s/ Glen E. Conrad  
United States District Judge