

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION**

UNITED STATES OF AMERICA)	
)	
v.)	<u>REPORT AND RECOMMENDATION</u>
)	CASE NO. 1:06cr00042-002
DONTE LAMAR WILLIAMS,)	
Defendant)	

This matter is before the undersigned on the motion to suppress filed on behalf of the defendant, Donte Lamar Williams, (“the Motion”) (Docket Item No. 45). The Motion is before the undersigned magistrate judge by referral pursuant to 28 U.S.C. § 636(b)(1)(B). As directed by the order of referral, the undersigned now submits the following report and recommended disposition on the Motion. An evidentiary hearing was held before the undersigned on November 20, 2006. Based on the evidence presented and the arguments of counsel, and for the reasons set forth below, I recommend that the court deny the Motion.

I. Facts

The defendant, Donte Lamar Williams, is charged with David Donte Frazier in a multiple-count indictment with use or possession of a firearm in furtherance of a drug trafficking crime in violation of 18 U.S.C. § 924(c), possession of a firearm after having been convicted of a crime punishable by imprisonment for a term exceeding one year or while being an unlawful user of a controlled substance in violation of 18 U.S.C. § 922(g)(1) and (3), conspiracy to distribute or to possess with intent to distribute five

gram or more of cocaine base or “crack” cocaine in violation of 21 U.S.C. § 846 and possession with intent to distribute or distribution of more than five grams of crack cocaine in violation of 21 U.S.C. § 841(a)(1). Williams has moved to suppress a statement made by him at the time of his arrest regarding the location of a firearm.

Williams and Frazier were arrested on September 16, 2005, in Wythe County, Virginia. Frazier was driving a Ford Expedition in which Williams was traveling in the front passenger seat. Wythe County Sheriff’s Deputy John Haley testified that he was operating radar on Interstate 81 in Wythe County when he observed the vehicle driven by Frazier traveling 80 miles per hour in a 65-mile-per-hour zone. Haley stated that he pulled the vehicle over and approached the vehicle on the driver’s side to speak with Frazier. Haley stated that as he approached the vehicle, he smelled the strong odor of burning marijuana and he observed plant material which resembled marijuana on Williams’s shirt. Haley stated that he asked Frazier whether there was any marijuana in the vehicle and that Frazier stated that there was approximately one-fourth of an ounce. Frazier then asked Williams to give him the marijuana, and Williams gave Frazier a bag of marijuana, which Frazier, in turn, gave to Haley. Haley then asked Frazier if there was any more marijuana in the vehicle, and Williams retrieved another bag of marijuana from near the center console and handed it to Frazier, who, in turn, handed it to Haley.

Haley testified that he then asked both men to step out of the vehicle, walk to the back of the vehicle, face the vehicle and place their hands on the vehicle. Haley testified that while Williams remained with his hands on the vehicle, he placed Frazier under arrest, placed him in handcuffs, read him his *Miranda*¹ rights and searched him. After

¹*Miranda v. Ariz.*, 384 U.S. 436 (1966).

placing Frazier in a police vehicle, Haley then returned to speak to Williams. He requested consent to search Williams, and Williams gave consent. He stated that a search of Williams's pockets revealed a baggy with a small offwhite rock, another baggy with six pills and an Eclipse mints tin containing other small offwhite rocks. Haley stated he advised Williams of his *Miranda* rights after finding the first baggy containing the small offwhite rock. Haley stated that he then asked Williams what the rock was, and Williams replied that he did not know. Haley stated that each time he found another item, he asked Williams what it was and Williams, each time, replied that he did not know. Haley stated that as he was placing Williams in handcuffs, Williams stated that there was a handgun located under the front passenger seat of the vehicle. Haley stated that he then retrieved the handgun. It is this statement that Williams has moved to suppress, as well as moving to suppress the handgun. Haley stated that Williams made the statement regarding the location of the handgun voluntarily and not in response to any questioning.

Williams also testified at the November 20 hearing. Williams stated that he got in the vehicle with Frazier in Warren, Ohio, on the evening of September 15. He stated that he believed that he was traveling to Columbus, Ohio, to see his children, a drive of about one and a half to two hours. Williams stated that he started smoking marijuana when he entered the vehicle and that he eventually fell asleep. When he woke up the next morning, Williams stated that he again began smoking marijuana. Williams stated that he did not know how long he had been in the vehicle, although he acknowledged that it was daylight when he woke up. Williams also stated that he did not know that he was traveling in Virginia when the vehicle was pulled over.

Williams stated that Frazier drove approximately one mile after Haley pulled

behind his vehicle. Williams admitted that he had reached between the front seats to retrieve the two bags of marijuana he gave to Frazier, who gave them to Haley. Williams stated, however, that he did not get out of the vehicle when Frazier got out of the vehicle. Williams stated that Haley came back to the vehicle and got him out of the vehicle after placing Frazier under arrest. Williams stated that Haley searched him and found two baggies. Williams stated that when Haley found the mints tin, he said either “Bingo” or “Jackpot;” he could not remember which. Williams said that Haley then placed him in handcuffs. Williams said that Haley never informed him of his *Miranda* rights and never told him that he was under arrest. Williams stated that Haley then asked him if there was anything else in the car. Williams stated that, in response to this question, he told Haley that there was a handgun under the front passenger seat of the vehicle.

II. Analysis

Williams argues that his statement regarding the location of the handgun, and also the handgun, should be suppressed because they were taken in violation of his right against self-incrimination and his right to counsel.

The United States Supreme Court has held that the Constitution requires that certain warnings be given to a person before he may be interrogated while in custody. *See Dickerson v. U. S.*, 530 U.S. 428, 444 (2000). These so-called “*Miranda* warnings” or “*Miranda* rights” include:

[T]hat he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed.

Miranda v. Ariz., 384 U.S. 436, 444 (1966). The Court has further held that, if such warnings are not provided, a defendant's statements resulting from a custodial interrogation may not be used in the prosecution's case in chief. *See Dickerson*, 530 U.S. at 443-44. Once advised of these rights, however, a person is free to waive these rights and voluntarily submit to interrogation. Also, "waiver of the right to counsel and the right not to incriminate oneself need not be explicit, but may be inferred from all of the circumstances." *U. S. v. Hicks*, 748 F.2d 854, 859 (4th Cir. 1984) (citing *N.C. v. Butler*, 441 U.S. 369 (1979)). Furthermore, a statement given following *Miranda* warnings rarely will be deemed involuntary. *See Dickerson*, 530 U.S. at 444 (citing *Berkemer v. McCarty*, 468 U.S. 420, 433 n.20 (1984)).

In this case, the government does not contest Williams's assertion that he was in custody when he made the statement regarding the location of the handgun. Instead, the government asserts that the statement was made voluntarily by Williams after having been advised of his *Miranda* rights. Williams, on the other hand, asserts that the statement was made in response to custodial interrogation before being advised of his right to remain silent or his right to counsel.

While there are disputes in the evidence with regard to whether Williams had been advised of his *Miranda* rights prior to making the statement at issue and whether the statement was made in response to a question, I find that the more credible version of the events comes from Haley. I base this finding on the fact that Williams admitted that he had begun smoking marijuana from the moment he awoke that morning and continued to do so until the vehicle was pulled over. Williams also admitted that at the time the

vehicle was pulled over, he did not know how long he had been traveling or where he was. That being the case, I do not find Williams's version of the events of that day credible.

Based on Haley's testimony, I find that Williams was advised of his *Miranda* rights prior to making the statement regarding the location of the firearm. I further find that the statement was made voluntarily and not in response to any questioning by Haley. I further find that this evidence shows that Williams waived his rights and voluntarily spoke with law enforcement officers.

III. Conclusion

Based on the above-stated reasons, I recommend that the court deny the Motion.

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the evidence presented at the hearing, the undersigned now submits the following formal findings of fact, conclusions and recommendations:

1. Williams was advised of his *Miranda* rights prior to his statement to Haley with regard to the location of a firearm on September 16, 2005;
2. Williams's statement to Haley with regard to the location of the firearm at issue was made voluntarily and was not in response to questioning;

3. Williams's statement to Haley with regard to the location of the firearm at issue was not made in violation of his right against self-incrimination or his right to counsel;
4. There is no basis to suppress either Williams's statement to Haley with regard to the location of the firearm at issue or to suppress the firearm; and
5. The Motion should be denied.

Notice to Parties

Notice is hereby given to the parties of the provisions of 28 U.S.C.A. § 636(b)(1)(c) (West 1993 & Supp. 2006):

Within ten days after being served with a copy [of this Report and Recommendation], any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions.

Failure to file timely written objections to these proposed findings and recommendations within 10 days could waive appellate review. At the conclusion of the 10-day period, the Clerk is directed to transmit the record in this matter to the Honorable Glen M. Williams, Senior United States District Judge.

The Clerk is directed to send copies of this Report and Recommendation to all counsel of record.

Entered: November 28, 2006.

/s/ Pamela Meade Sargent
UNITED STATES MAGISTRATE JUDGE