

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
Abingdon Division

UNITED STATES OF AMERICA)	
)	
v.)	
)	Case No. 1:08cr00017
STEPHANIE EILEEN MORGAN,)	<u>REPORT AND</u>
Defendant)	<u>RECOMMENDATION</u>
)	

This matter is before the undersigned on the defendant’s Motion To Suppress Evidence, (Docket Item No. 24) (“Motion”). The court heard the Motion on April 29, 2009. Based on the evidence presented, the arguments and representations of counsel and for the reasons set forth below, I recommend that the court deny the Motion.

I. Facts

Many of the relevant facts in this case are not in dispute. On February 9, 2007, the defendant, Stephanie Eileen Morgan, was a passenger in a vehicle driven by Susan Sawyers when Galax Police and Virginia State Police conducted a traffic stop of the vehicle. At the time of the stop, Morgan was in the back seat on the passenger’s side with her purse at her feet partially under the front seat. A male passenger was seated behind the driver and in front of him was a locked box. A female passenger was in the front passenger seat.

Police searched the vehicle based on consent given by Sawyers. When Sawyers consented to the search of the vehicle, Morgan attempted to reach for her purse, while

at the same time, an officer opened Morgan's door and grabbed her purse away from her. A search of the purse disclosed a quantity of methamphetamine and the key to the locked box. The police used the key to open the box and found a handgun inside. The evidence found in the search of Morgan's purse and the box was used to obtain a search warrant for Morgan's apartment.

Virginia State Police Special Agent Ronald Williams testified that he was the officer who searched Morgan's purse and found the methamphetamine and the key to the locked box. Williams testified that he and other officers of the Twin County Drug Task Force were contacted on February 9 by Sawyers, who was working as a confidential informant, and told that she could make a controlled purchase of methamphetamine from Morgan. Williams said that the officers wired Sawyers to record the transaction, searched Sawyers to ensure that she had no drugs on her and gave her \$400 to purchase two "eightballs"¹ of methamphetamine from Morgan. Officers watched Sawyers as she traveled to Morgan's Galax apartment. After she left Morgan's apartment, officers followed Sawyers to an arranged meeting spot, where they received 6.6 grams of methamphetamine from Sawyers.

Williams stated that Sawyers had made several controlled purchases of illegal drugs for the Task Force in the past. He also said that Sawyers had provided information that Morgan carried a handgun in a locked box with her on at least one other occasion. Williams stated that after the controlled purchase of drugs on February 9, Sawyers contacted the officers and told them that Morgan wanted her to drive her

¹An "eightball" is 3.5 grams.

to a club in North Carolina later that evening. Sawyers also said that Morgan would be making a delivery of some methamphetamine on the way. The officers arranged for Sawyers, under surveillance, to return to Morgan's apartment to drive her to North Carolina. The officers also arranged with Sawyers to conduct a traffic stop of her vehicle after Morgan was in the vehicle and for Sawyers to consent to a search of the vehicle.

Williams watched as Sawyers arrived at Morgan's residence and kept the residence under surveillance for roughly two hours while Sawyers waited for Morgan to get ready to go. During this time, Williams observed multiple people come to and go from Morgan's residence. Eventually, Sawyers, Morgan and two other people, one male and one female, left the residence and entered Sawyers's vehicle. Williams stated that when Morgan entered the vehicle she was carrying a black bag which resembled a backpack.

Williams stated that he followed Sawyers's vehicle at a distance, losing sight of it briefly before it was stopped by other law enforcement officers. He stated that he purposefully waited a few minutes until the other officers had stopped the vehicle and gotten the occupants of the vehicle out of the vehicle before he approached the vehicle. Williams testified that when he approached the vehicle, Morgan already was out of the vehicle. He stated that he approached her because she was irate and being "mouthy." Williams stated that another officer approached him and told him that he had discovered two methamphetamine smoking devices in Morgan's black bag. Williams said that Morgan acknowledged that the black bag was hers, but denied knowledge of the smoking devices.

Williams stated that he cannot remember which officer brought the bag and the smoking devices to him. He said that he does not know why the officer looked into the bag, but he said that he assumed the officer did so to look for a weapon because all of the officers participating in the stop of the vehicle had been told that Morgan might be carrying a handgun. Williams stated that, at some point, he told Morgan that she was going to be arrested and charged with possession of the smoking devices. Williams stated that Morgan told him that she wanted her bag back so that she could get a cigarette from it. Williams testified that he told Morgan that he would not give her bag back to her without looking through it first. He said that he asked Morgan if there was anything else he needed to know about in the bag. Williams said that Morgan told him that there was not. Williams said that he asked Morgan if he could look in the bag and that she told him that he could.

Williams stated that when he searched the purse he found a small jewelry case containing two earrings. Williams stated that he removed a small piece of plastic from the case revealing some methamphetamine. Williams stated that Morgan told him that the earrings and case had been given to her by someone else and that the methamphetamine was not hers. Williams stated that he also found a key in Morgan's bag which he used to unlock a locked box found in the vehicle. The locked box contained a .38 caliber Davis handgun. Williams said that Morgan denied that the locked box was hers and denied any knowledge of the locked box or its contents. Williams stated that he also recovered \$690 in cash from Morgan's bag, \$400 of which was the money given to Sawyers to use for the controlled purchase of methamphetamine from Morgan earlier in the day.

Williams specifically denied opening a door on the vehicle and retrieving Morgan's bag from the vehicle. He also specifically testified that Morgan was out of the vehicle before he approached the vehicle.

Williams stated that regardless of whether Morgan had consented to the search of her bag or not, he would have searched it incident to placing her under arrest on the charge of possessing drug paraphernalia. Williams testified that no one requested or received specific consent from anyone to search the locked box.

Detective R. J. Isom with the Galax Police Department stated that he had participated in arranging the controlled purchase of methamphetamine from Morgan on February 9. He also stated that Sawyers contacted him later that day to inform him that Morgan wanted Sawyers to drive her to North Carolina and to deliver some methamphetamine. Isom stated that he participated in the surveillance of Morgan's apartment that evening and watched Sawyers arrive, waited for two to two-and-one-half hours and watched Sawyers, Morgan and the others leave. Isom stated that while Sawyers was waiting on Morgan to get ready to leave, she telephoned him from her cellular telephone. Sawyers told him that numerous people came and went from the apartment and when they would arrive Morgan would take them into a bedroom for a short period of time and then they would leave. Isom stated that he observed numerous people come and go from the apartment during this same time period. Isom stated that during one of these call, Sawyers told him that Morgan was going to be delivering methamphetamine on the trip to North Carolina.

Isom testified that he and Williams followed Sawyers's vehicle when it left

Morgan's apartment. Isom stated that after the vehicle was stopped by police, he and Williams waited several minutes before approaching the vehicle. He also stated that, to the best of his recollection, all the occupants of the vehicle were outside of the vehicle by the time that he and Williams approached the vehicle.

Morgan testified that when Sawyers's vehicle was stopped, she had her purse, the black bag she was carrying, in the floorboard near her feet. Morgan stated that after officers stopped the car, she reached for her purse to get a cigarette as Williams opened the car door, reached in and attempted to take her purse from her. She stated that she and Williams each tugged on the purse before he took it from her. Morgan stated that Williams began searching her purse while she protested loudly. Morgan testified that Williams told her not to become belligerent and had her escorted by a female police officer to a patrol car. Morgan testified that the locked box found in the vehicle was not hers and that she had no knowledge of the locked box being in the vehicle before the officers discovered it.

II. Analysis

The defendant seeks to suppress evidence gathered as a result of the February 9, 2007, search of her purse and subsequent searches of a locked box and her apartment. Based on the facts presented, I recommend that the court deny the Motion. Morgan argues that the search of her purse violated the Fourth Amendment's prohibition on unreasonable searches. In particular, she argues that the search was conducted without a warrant or probable cause and without her consent. She further alleges that the search of the locked box and her apartment also violated her Fourth

Amendment rights because these searches were based on evidence found in the illegal search of her purse.

The Fourth Amendment to the United States Constitution protects people, not property, against “unreasonable searches and seizures.” U.S. CONST. amend. IV; *see United States v. Hylton*, 349 F.3d 781, 785 (4th Cir. 2003). Furthermore, a person who denies ownership of certain property loses standing to challenge the property’s search or seizure. *See United States v. Leshuk*, 65 F.3d 1105, 1111(4th Cir. 1995). In this case, Morgan, through her own testimony, denied any ownership interest in or knowledge of the locked box found in the vehicle. That being the case, she lacks standing to challenge the search of the locked box.

Regarding the search of Morgan’s purse, although reasonableness generally requires that a search be conducted pursuant to a warrant, a warrantless search may be reasonable if it falls within one of the narrow exceptions to the warrant requirement. *See Hylton*, 349 F.3d at 785. One of these narrow exception is a *Terry* stop. An investigative or *Terry* stop may be conducted where there is “reasonable suspicion” based on articulable facts that criminal activity has occurred. *See Terry v. Ohio*, 392 U.S. 1, 30 (1968). Furthermore, if there is reasonable suspicion to stop a suspect, and the officer believes the suspect may be armed and dangerous, the officer may conduct a frisk and limited search for weapons. *See Terry*, 392 U.S. at 30.

The evidence before the court shows that the officers involved in the search of Morgan’s bag had “reasonable suspicion” that she was involved in the distribution of methamphetamine and may be carrying a handgun. The officers had conducted a

controlled purchase of methamphetamine from Morgan earlier in the day, and the person who had made that purchase had told the officers that Morgan was on her way to make a delivery of methamphetamine and that Morgan had carried a handgun on another occasion. Having “reasonable suspicion” to stop and question Morgan, I find that the officers had the authority to take her bag from her and search it for weapons.

Furthermore, once the smoking devices were found in Morgan’s bag, Williams had probable cause to arrest and charge her with possession of drug paraphernalia. Therefore, Williams had the authority to more fully search her bag incident to her arrest on those charges. *See United States v. Miller*, 925 F.2d 695, 698-99 (4th Cir. 1991) (where formal arrest quickly follows challenged search, it does not matter that search conducted before formal arrest if probable cause for arrest existed at time of search). That being the case, the methamphetamine and key found in Morgan’s purse should not be suppressed.

I specifically hold that the Supreme Court’s recent opinion in *Arizona v. Gant*, No. 07-542, slip op. at 18 (Apr. 21, 2009), does not invalidate this search. In *Gant* the Court held that police may search a vehicle incident to a recent occupant’s arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense for which the person was arrested. Slip op. at 18. Here it was reasonable to believe that Morgan’s bag, from which the smoking devices were taken, also might contain methamphetamine.

Based on the above analysis, I do not find it necessary to address the

government's argument that Morgan voluntarily consented to the search of her bag. I recommend that the Motion to suppress the evidence seized from Morgan's bag be denied. Having found that the search of Morgan's bag did not violate her Fourth Amendment rights against unreasonable search and seizure, there is no reason to suppress the evidence found in the search of Morgan's residence.

PROPOSED FINDINGS OF FACT

As supplemented by the above summary and analysis, the undersigned now submits the following formal findings, conclusions and recommendations:

1. Morgan lacks standing to contest the search of the locked box of which she denied knowledge or ownership;
2. The investigative stop of Morgan and the search of her bag to determine if it contained weapons did not violate Morgan's rights against unreasonable search and seizure;
3. Once the smoking devices were discovered in Morgan's bag, the officer had authority to more thoroughly search the bag incident to Morgan's arrest; and
4. The February 9, 2007, investigative stop of Morgan and the police search of the bag in her custody at the time of her stop did not violate Morgan's Fourth Amendment right against unreasonable search and seizure.

RECOMMENDED DISPOSITION

The undersigned recommends that this court deny the Motion.

Notice to Parties

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

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 could waive appellate review.

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

DATED: This 30th day of April 2009.

/s/ *Pamela Meade Sargent*
UNITED STATES MAGISTRATE JUDGE