

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,       :       CRIMINAL ACTION  
  :       :  
  :       NO. 05-00357  
  :       :  
DENROY GAYLE.                     :       :

**MEMORANDUM AND ORDER**

Stengel, J.

August 14, 2006

Denroy Gayle is charged with the illegal possession of a firearm, possession of more than five grams of crack cocaine with the intent to distribute, and possession of a firearm in furtherance of a drug trafficking crime. Presently before the Court is Mr. Gayle's motion to suppress physical evidence and statements allegedly obtained in violation of his rights under the Fourth and Fifth Amendments to the United States Constitution. For the reasons described below, Mr. Gayle's motion is denied.

**I. BACKGROUND**

On September 10, 2004, officers of the Easton Police Department executed a search warrant of a residence located at 30 South 15th Street, in Easton, Pennsylvania (the "Residence"). Magisterial District Judge Nancy Matos Gonzalez of Northampton County, Pennsylvania issued the search warrant based on a two-page affidavit submitted by Detective Matthew Lohenitz of the Easton Police Department. The search warrant authorized a search of the Residence for controlled substances, drug paraphernalia, and

other items related to drug trafficking. Detective Lohenitz's affidavit stated that a confidential informant made two controlled purchases of crack cocaine at the Residence while under surveillance by the police.

Before entering the Residence, the police knocked twice and announced that they were police officers with a search warrant. After no one inside the Residence responded, the police entered the building by force and discovered a safe in the middle of the living room with a loaded handgun lying next to it. Police brought Mr. Gayle, his brother, his sister, and his mother into the living room, where each individual was seated, handcuffed, and advised of his or her Miranda rights. Detective Lohenitz asked each individual if they understood their rights and if they wished to make a statement. Mr. Gayle agreed to speak with the police, but when the police questioned him about the living room safe, he merely shrugged his shoulders to indicate that he did not know anything about it.

The police searching the Residence found and seized contraband, as well as a number of items related to packing and distributing contraband. The police recovered an unloaded handgun and several bags of crack cocaine from inside the living room safe. The police also searched the kitchen and found a digital scale with crack cocaine residue and Mr. Gayle's fingerprints on it.

## II. DISCUSSION

### A. Mr. Gayle's Fourth Amendment Rights Were Not Violated

Mr. Gayle argues that his Fourth Amendment rights were violated by the issuance of the search warrant and by his arrest. He seeks suppression of the evidence recovered by police officers as a result of the execution of the search warrant under the exclusionary rule.

#### 1. Search Warrant Supported By Probable Cause

The probable cause necessary to issue a search warrant is defined by the United States Supreme Court as "a fair probability that contraband or evidence of a crime will be found in a particular place." New York v. P.J. Video, Inc., 475 U.S. 868, 876 (1986) (quoting Jones v. United States, 362 U.S. 257, 271 (1960)). The Supreme Court applies a "totality of the circumstances" test to determine whether probable cause existed for the issuance of a search warrant. Illinois v. Gates, 462 U.S. 213, 238 (1983). Federal courts give a magistrate judge's determination of probable cause great deference, United States v. Conley, 4 F.3d 1200, 1204-05 (3d Cir. 1993), and "[a] reviewing court must determine only that the magistrate judge had a substantial basis for concluding that probable cause existed to uphold the warrant." United States v. Whitner, 219 F.3d 289, 296 (3d Cir. 2000) (quotation and citation omitted).

In this case, the Magisterial District Judge had a substantial basis for concluding that probable cause existed to issue the warrant authorizing the search of the Residence

based on the evidence set forth in Detective Lohenitz's affidavit. The affidavit submitted in connection with the search warrant contained the following information: (1) the Easton Police Department received information about the distribution of crack cocaine from the Residence; (2) this information was corroborated by controlled purchases of crack cocaine from the Residence on September 8 and September 9, 2004; (3) these controlled purchases were made by a confidential informant using pre-recorded monies and under law enforcement surveillance; (4) the confidential informant was searched prior to making the transactions; and (5) the defendant was observed by police on each occasion coming from inside the Residence to meet with the confidential informant. The affidavit also included a detailed description of Detective Lohenitz's training, experience, and expertise in narcotics investigations and drug trafficking.

All of this information, when viewed in the totality of the circumstances surrounding this case, provided the Magisterial District Judge with a substantial basis for determining that "a fair probability" existed that evidence of drug trafficking would be found at or inside the Residence. Accordingly, the exclusionary rule does not warrant suppression of the evidence recovered by the police.

## **2. Good Faith Exception To Exclusionary Rule Applies**

Even if the affidavit submitted by Detective Lohenitz did not support a finding of probable cause, the good faith exception to the exclusionary rule would preclude suppression of the evidence recovered at the Residence. The Supreme Court established

the broad good faith exception to the exclusionary rule in United States v. Leon, 468 U.S. 897, 922 (1984). The good faith exception allows the introduction of evidence when a law enforcement officer executes a search in reasonable reliance on a warrant subsequently found to have been unsupported by probable cause. Id. The Leon case allows courts "to instruct magistrates on the contours of the probable cause requirement without discouraging conscientious officers from seeking warrants, and it does so while preserving valuable evidence of criminal wrongdoing." U.S. v. Ritter, 416 F.3d 256, 278 (3d Cir. 2005).

There is no evidence suggesting that the police officers unreasonably relied on the search warrant in this case. Rather, a police officer viewing the evidence described in Section II.A.1 above could reasonably connect the Residence to drug trafficking activity. The fact that the police had recently monitored two controlled purchases at the Residence is particularly compelling in finding that the police reasonably relied on the search warrant here. Accordingly, the good faith exception would bar application of the exclusionary rule in this case even if the Magisterial District Judge erroneously found probable cause based on the warrant affidavit.

### **3. Mr. Gayle is Not Entitled to a Franks Hearing**

A defendant is entitled to a Franks hearing to question the probable cause underlying a search warrant when he shows by a preponderance of the evidence that:

- (1) the affiant either intentionally, or with a reckless disregard for the truth, included false

statements (or omitted information creating a falsehood) in the warrant affidavit; and (2) the allegedly false statements or omissions are necessary to a finding of probable cause. See Franks v. Delaware, 438 U.S. 154, 171-72 (1978); Sherwood v. Mulvihill, 113 F.3d 396, 399 (3d Cir. 1997) (citation omitted). Allegations of negligence or innocent mistakes by the affiant do not warrant a Franks hearing. Franks, 438 U.S. at 171. Moreover, the defendant must support his allegations of intentional or reckless falsehoods by offering proof, such as affidavits or otherwise reliable statements of witnesses. Id.

In support of his argument for a Franks hearing, Mr. Gayle states that he was not present at the Residence during the controlled purchases. Any statements in the affidavit that he was present are, according to Mr. Gayle, therefore false. Mr. Gayle's presence during the controlled purchases, however, was not material to a determination of probable cause. The statements in the warrant affidavit that drugs were being sold by someone at the Residence, as well as the statement that two controlled purchases occurred at that location, were sufficient to provide the Magisterial District Judge with a reasonable certainty that contraband and related items would be found at the Residence. Thus Mr. Gayle is not entitled to a Franks hearing.

#### **4. Police Had Probable Cause to Arrest Mr. Gayle**

"The Fourth Amendment prohibits arrests [made] without probable cause." Berg v. County of Allegheny, 219 F.3d 261, 269 (3d Cir. 2000). Warrantless arrests are reasonable under the Fourth Amendment when the arresting officer has probable cause to

believe that a criminal offense has been committed. Devenpeck v. Alford, 543 U.S. 146, 152 (2004) (citations omitted). Probable cause is defined by the Supreme Court as "facts and circumstances 'sufficient to warrant a prudent man in believing that the [suspect] had committed or was committing an offense.'" Gerstein v. Pugh, 420 U.S. 103, 111-12 (1975) (quoting Beck v. Ohio, 379 U.S. 89, 91 (1964)).

Courts in the Third Circuit apply a "common sense approach," based on the totality of the circumstances, to determine whether law enforcement officials had probable cause to arrest. Paff v. Kaltenbach, 204 F.3d 425, 436 (3d Cir. 2000). Courts must assess "the knowledge and information which the officers possessed at the time of arrest, coupled with the factual occurrences immediately precipitating the arrest," to determine whether probable cause existed. United States v. Stubbs, 281 F.3d 109, 121 (3d Cir. 2002) (quotations and citations omitted).

Here, the police had probable cause to arrest Mr. Gayle based on the following information that they had at the time of his arrest: (1) crack cocaine had been discovered in the Residence; (2) Mr. Gayle was present in the Residence at the time it was searched; (3) some of the crack cocaine had been packaged for sale, while some had not yet been packaged; (4) police found baggies and a scale with crack cocaine residue in the kitchen; (5) a loaded handgun lay next to the living room safe in which the police discovered crack cocaine; and (6) the police had observed Mr. Gayle's participation in the controlled purchases of crack cocaine at the Residence. This information, viewed in the totality of

the circumstances, was sufficient to warrant a prudent law enforcement officer's belief that Mr. Gayle had been involved in drug trafficking activity. The police therefore had probable cause to arrest Mr. Gayle.

**B. No Knock and Announce Violation**

The police testified as to the circumstances surrounding their entry of the Residence at the May 31, 2006 suppression. A police witness testified at the hearing that the police twice knocked and announced their presence before forcibly entering the Residence. A defense witness testified that she "heard a noise" slightly before the police entered the Residence, but that she did not hear anyone knock or announce their presence before the entry. Based on the testimony presented at the suppression hearing, the Court finds the testimony of the police witness to be more credible than the testimony of the defense witness. Accordingly, the Court finds that the police sufficiently knocked and announced their presence before entering the Residence.

Even if the police did not knock and announce their presence, Mr. Gayle's argument to suppress evidence is precluded by the recent Supreme Court decision in Hudson v. Michigan, 126 S. Ct. 2159, 2165 (2006) (eliminating suppression remedy for knock and announce violations because, *inter alia*, modern police departments are more often "staffed with professionals" and because lawyers are taking on more 42 U.S.C.

§ 1983 cases than in the past). Therefore, even if the police failed to knock and announce their presence before entering the Residence, the Hudson case precludes application of the exclusionary rule to the recovered evidence.

**C. Mr. Gayle's Fifth Amendment Rights Were Not Violated**

The Supreme Court requires law enforcement officials to warn a suspect held in custody of his or her constitutional rights before the officers begin an interrogation. Miranda v. Arizona, 384 U.S. 436, 478-89 (1966). The Court has also safeguarded defendants' Fifth Amendment rights by holding that "the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination." Id. at 444.

To establish a valid waiver of an individual's Miranda rights, the government must demonstrate two requirements by a preponderance of the evidence. First, the individual must have relinquished his or her rights voluntarily. See Moran v. Burbine, 475 U.S. 412, 421 (1996); United States v. Sriyuth, 98 F.3d 739, 748-49 (3d Cir. 1996). Second, the individual must have been aware of those rights and understood the consequences of waiving them. Id. When determining whether an individual has waived his or her Miranda rights, courts must consider the totality of the circumstances surrounding the interrogation. Alston v. Redman, 34 F.3d 1237, 1253 (3d Cir. 1994).

The uncontroverted police testimony presented at the May 31, 2006 suppression hearing established that the police read Mr. Gayle his Miranda rights before he made any statements. The testimony also established that Mr. Gayle appeared to understand these rights. After the police read Mr. Gayle his Miranda rights, they questioned him regarding the living room safe and the handgun found beside it. In response, Mr. Gayle merely shrugged his shoulders.<sup>1</sup> Thus, Mr. Gayle's Miranda rights were not violated.

### **III. CONCLUSION**

For the reasons described above, Mr. Gayle's motion to suppress is denied. An appropriate Order follows.

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<sup>1</sup>The Court is unaware of any actual statements made by Mr. Gayle after his arrest. To the extent that Mr. Gayle did not make any statements, his motion is denied. To the extent that he did make a statement, the Court will entertain a renewed motion to suppress at trial.

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**ORDER**

**AND NOW**, this 14th day of August, 2006, upon consideration of defendant Denroy Gayle's Motion to Suppress Physical Evidence and Statements (Docket No. 32), it is hereby **ORDERED** that the motion is **DENIED**.

BY THE COURT:

/s/ Lawrence F. Stengel  
LAWRENCE F. STENGEL, J.