

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

UNITED STATES OF AMERICA :  
 :  
 v. : CRIMINAL ACTION  
 : NO. 15-383  
 DEKOR PERRY :

MEMORANDUM OPINION

SCHMEHL, J.

JUNE 27, 2016

The defendant was indicted on one count of possession with intent to distribute crack cocaine and heroin in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(B), one count of possession of a firearm in furtherance of a drug trafficking crime in violation of 18 U.S.C. § 924(c)(1) and one count of possession of a firearm by a convicted felon 18 U.S.C. § 922(g)(1). Presently before the Court is the defendant’s motion to suppress. The Court held a hearing on the motion on May 6, 2016. For the reasons that follow, the motion is denied.

At the hearing, the government presented testimony from Detectives Alex De La Iglesia (“De La Iglesia”) and Charles Roca (“Roca”) of the Allentown Police Department, while the defendant presented testimony from his wife, Sheila Perry.

On February 16, 2015, at approximately 8:35 p.m., De La Iglesia and Roca and Patrolman David M. Howell, III (“Howell”) of the Allentown Police Department responded to 2020 W Cedar Street, apartment #1 in Allentown, following a citizen complaint that a black male with a blind eye was selling and using marijuana from his residence. Specifically, the citizen complaint documented by the police noted the following:

Complainant called to report that people in Apt. 1 of 2020 W Cedar Street are

smoking a lot of marijuana. Complainant also reports that numerous individuals will arrive in vehicles and enter Apt. 1. On one occasion, Complainant observed a White male arrive and enter Apt. 1 and after a short while the White male exited holding an unknown item inside his coat. Complainant states that the tenant of Apt. 1 is a female who receives section 8 housing. The male boyfriend of the tenant is described as being a Black male who is blind in one eye. Complaint reports that activity occurs at all hours of the day.

Roca, a 15-year veteran with the Allentown Police Department, testified that during the course of his career, he had handled thousands of drug cases, hundreds of marijuana cases and approximately 75-100 cases involving drugs and firearms. De La Iglesia testified that he had been a detective for three years with the Narcotics and Firearms division and had been trained in detecting marijuana and other drugs.

When the three officers arrived at the apartment building, they approached the front common door. Apartment 1 is a basement apartment which contained a ground-level window. The officers observed a sign in the window of apartment 1 that read, "Please knock on window." A few days earlier, De La Iglesia and two other officers had responded to the same location based on a complaint of drug activity by the same complainant. The officers left the scene at that time when no one responded to their knock on the basement window. On this occasion, Officer Howell knocked on the basement window. Through the common door, the officers observed a black female emerge from apartment 1 and walk up a small set of steps to the landing leading to the common door of the apartment building. The door to the apartment from which the female came remained open. This female was later identified as the defendant's wife. Ms. Perry voluntarily cracked open the common door. Detective De La Iglesia testified that when Ms. Perry cracked open the door, he immediately detected the odor of raw unburnt marijuana. After the officers identified themselves, Ms. Perry opened the door wider and turned and yelled toward the apartment from where she had just exited that the police were present. De La Iglesias

testified that at this point he smelled the strong odor of unburnt or raw marijuana, while Roca testified that he smelled the strong odor of burnt marijuana. As Roca was talking to Ms. Perry, the defendant exited apartment 1 and came up the steps to the common door. The defendant left the door to the apartment wide open. Roca noticed that the defendant's right eye was closed and partially white. After the officers advised defendant that they were responding to a citizen complaint and could smell marijuana emanating from the basement apartment, defendant turned and moved quickly back to the apartment.

Roca testified that in order to prevent the destruction of evidence or allow the defendant to gain access to weapons, the officers ordered the defendant to stop. Defendant did not comply. Instead, defendant attempted to reenter apartment 1 and shut the door. As Roca approached the apartment, he noticed that the odor of marijuana was becoming stronger. As defendant was breaking the threshold of the door to the apartment, De La Iglesia grabbed the defendant's right arm. Defendant and De La Iglesia struggled and defendant tried to shut the open door. At this point, Howell pointed a taser at defendant and told him to calm down. After defendant calmed down, he was placed in handcuffs. Defendant was not patted down. The officers pulled Perry out of the apartment because they viewed the apartment as an unknown threat area.

At this point, the defendant spontaneously volunteered that there were 10 grams of marijuana on a couch in the living room and that the officers were welcome to enter the apartment and seize it. Defendant also volunteered that all he does all day is "stay home, smoke marijuana and play video games." Defendant also volunteered that he had previously been the victim of two home invasion armed robberies, that he did not sell drugs, and that there were no other drugs in the apartment. Roca observed a rolled up baggie on a couch that was approximately 10 feet from the front door. De La Iglesia and Howell entered the apartment and

conducted a protective sweep of the apartment which took about 30 seconds. During the sweep, two small children were found in one of the bedrooms. Howell looked in closets, underneath beds and in the bathroom. Either De La Glesia or Howell seized the baggie on the couch as well as a grinder. Based on their training and the odor, the officers recognized the contents of the baggie contained marijuana. The officers brought the defendant and his wife into the apartment. De La Iglesia took Ms. Perry to the kitchen where he tried to obtain Ms. Perry's consent to search the apartment by going over a "consent to search form" with her. About halfway through the form, Ms. Perry advised that she was under the influence of oxycontin from a recent dental procedure and therefore was unable to give her consent. Because defendant was now being cooperative, Howell took defendant to the couch where Howell removed the handcuffs. Roca testified that at no time was defendant interrogated.

When defendant was seated on the couch, the officers read to him from a written consent to search form. Defendant asked his wife whether he should give his consent to search. Defendant did not want the house to get "flipped." Defendant told the officers to get a search warrant.

De La Iglesia left the apartment to get the search warrant. De La Iglesia drafted the affidavit of probable cause and presented it and the warrant application to the Chief Deputy District Attorney. The Chief Deputy District Attorney approved the request for a warrant. A magistrate judge subsequently issued a nighttime search warrant. After the warrant was issued, De La Iglesia contacted the officers at the scene and told them to commence the search. By the time De La Iglesia returned to the scene, another six or seven officers had arrived to assist in the search at the request of Roca. After conducting a three to four hour search, the officers recovered 4 semi-automatic handguns, magazines, bags and boxes containing ammunition, 78 grams of

crack cocaine, 130 grams of heroin and a digital scale, wrapping papers, a grinder, glass smoking pipe and marijuana and \$1555 in United States currency. Defendant seeks to suppress the physical evidence seized from defendant's apartment and evidence of defendant's oral statements made to the officers.

Specifically, defendant argues that "this Court must decide whether these officers had to do a 'knock and talk' simply because they received an anonymous Citizen complaint, in part, that a black male with one eye was smoking marijuana and selling marijuana from apartment 1, without any corroboration of further investigation." (ECF 22, p.8.) Defendant concludes that since there was "no indication through independent investigation or corroboration prior to the knock that defendant or the occupants of Apt. 1 were engaged in any form of criminal activity," nor any "information about the reliability of the citizen," the police violated defendant's Fourth Amendment rights by knocking on his window. (ECF 22, p. 9.)

Our Court of Appeals has held that "knock and talk" investigations do not normally raise Fourth Amendment concerns because "when police come on to private property to conduct an investigation or for some other legitimate purpose and restrict their movements to places visitors could be expected to go (e.g., walkways, driveways, porches), observations made from some vantage points are not covered by the Fourth Amendment.'" Estate of Smith v. Marasco, 318 F. 3d 497, 519 (2003)(quoting Wayne R. LaFave, 1 Search and Seizure: A Treatise on the Fourth Amendment § 2.3(f) (3d ed. & Supp. 2003); see also United States v. Chambers, 395 F. 3d 563, 568 n.2 (6<sup>th</sup> Cir. 2005)("Courts generally have [the 'knock and talk'] investigative procedure as a legitimate effort to obtain a suspect's consent to search."); United States v. Jones, 239 F. 3d 716, 720 (5<sup>th</sup> Cir. 2001)("Federal courts have recognized the 'knock and talk' strategy as a reasonable investigative tool when officers seek to gain an occupant's consent to search or when officers

reasonably suspect criminal activity.”) United States v. Cormier, 220 F. 3d 1103, 1109 (9<sup>th</sup> Cir. 2000)(concluding that “no suspicion needed to be shown in order to justify the ‘knock and talk’”).

In addition, there is no requirement that the police need to conduct an independent investigation or obtain corroboration before conducting a “knock and talk.” The citizen complainant who provided police with the information was not anonymous. The police knew his name, but redacted it to protect his safety. Moreover, the information the complainant provided was very detailed and specific, i.e. black male who is blind in one eye using and selling marijuana to others at all hours from apartment 1 at 2020 W Cedar Street in Allentown. Having received such a complaint, the police acted reasonably and within the Fourth Amendment by conducting a “knock and talk” at the apartment building.

The officer’s actions in conducting a warrantless entry and sweep of the defendant’s apartment also did not run afoul of the Fourth Amendment. In United States v. Coles, our Court of Appeals held that “[w]arrantless searches and seizures inside someone’s home . . . are presumptively unreasonable unless the occupants consent or probable cause *and* exigent circumstances exist to justify the intrusion.” 437 F. 3d 361, 365 (3d Cir. 2006)(citations omitted).

However, there are exceptions to the warrant requirement and one of the more well-recognized ones “applies when the exigencies of the situation make the needs of law enforcement so compelling that [a] warrantless search is objectively reasonable under the Fourth Amendment.” Kentucky v. King, 131 S. Ct. 1849, 1856 (2011) (alteration in original)(citation and internal quotation marks omitted). One such exigency, “[t]he need to ‘prevent the imminent destruction of evidence,’ has long been recognized as a sufficient justification for a warrantless search.” Id. (quoting Brigham City, Utah v. Stuart, 547 U.S. 398, 403 (2006)).

Here, the exigency of the circumstances provided the officers with an objectively reasonable belief that a warrantless entry was justified. The officers detected the odor of marijuana when Ms. Perry voluntarily cracked open the common door and testified that the odor became stronger as they followed defendant to his apartment. Given defendant's voluntary admissions that he smoked marijuana and that there were 10 grams of marijuana on the couch in his apartment as well as the matching physical description of defendant, it was entirely reasonable for the officers to suspect that there was ongoing drug activity and that contraband was being destroyed and would continue to be destroyed or removed if they did not act immediately and conduct a sweep of the apartment.

Another exigency that would justify a warrantless entry is the protection of the officers from concealed threats. Maryland v. Buie, 494 U.S. 325, 327 (1990). The officers need only to have "articulable facts which, when taken together with the rational inferences from those facts, would warrant a reasonable prudent officer in believing that the area to be swept harbors an individual posing a danger to those on the arrest scene." Sharrar v. Felsing, 128 F. 3d 810, 824 (3d Cir. 1997), quoting Buie, 494 U.S. at 334.

Here, the officers responded to a report by a known complainant of "numerous individuals" engaged in drug trafficking at apartment 1, that was taking place "at all hours of the day." Once the officers told defendant they could smell marijuana emanating from the apartment, defendant retreated to his apartment. Under these circumstances, it was reasonable for the officers to believe there could be others in defendant's apartment who could have access to firearms and present a concealed danger to the officers. The initial entry only lasted 30 seconds and consisted of a quick sweep of all the rooms and places in the apartment where a suspect could hide. The entry was also executed contemporaneously with placing the defendant in

handcuffs.

For the same reasons, there was probable cause to believe there was criminal activity in the apartment. “Probable cause exists where the facts and circumstances within the arresting officer’s knowledge are sufficient to warrant a reasonable person to believe an offense has been committed.” United States v. McGlory, 968 F. 2d 309, 342 (3d Cir. 1992)(citation omitted). “It is well settled that the smell of marijuana alone, if articulable and particularized, may establish . . . probable cause.” United States v. Ramos, 443 F.3d 304, 308 (3d Cir. 2006)(citation omitted). Again, the officers smelled the odor of marijuana as soon as Ms. Perry cracked open the common door to the apartment building, and they noticed the odor became stronger as they followed defendant to his apartment. Those facts indicate that the smell was “articulable and particularized” so as to establish probable cause. Id. Accordingly exigent circumstances and probable cause existed to justify the initial warrantless entry. Coles, 437 F. 3d at 365.

Defendant also argues that he was arrested and therefore should have been read his Miranda rights, before the police elicited any incriminating information from him.

Under Miranda v. Arizona, 384 U.S. 436 (1966), a defendant’s statements made in the course of a custodial interrogation are not admissible as evidence unless the defendant receives appropriate warnings, or an exception applies. See, e.g., United States v. Leese, 176 F. 3d 740, 743(3d Cir. 1999). Here, the defendant’s statements were not made in the course of a custodial interrogation. Rather, it was defendant himself who, although handcuffed, voluntarily and spontaneously told the officers that there were 10 grams of marijuana on the couch in the living room and that all he did all day was smoke marijuana. Defendant simply did not make these statements in response to any interrogation by the officers. See United States v. Benton, 992 F.2d 642, 664 (3d Cir. 1993) (“unforeseeable” remarks made by defendant not part of an official

interrogation or its functional equivalent, do not implicate Miranda). Indeed, defendant's voluntary statements to police at the time he was handcuffed were likely made with the intent that the police would arrest him for possession of 10 grams of marijuana and then leave the apartment without discovering all the weaponry and drugs in the apartment

For the foregoing reasons, the motion to suppress is denied.

