

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

UNITED STATES OF AMERICA

v.

ALAN WOMACK

:
:
: CRIMINAL ACTION
:
: NO. 16-218-13
:

MEMORANDUM

SURRICK, J.

SEPTEMBER 19, 2018

Presently before the Court is Defendant's Supplemental Motion to Suppress Physical Evidence (ECF No. 653). For the following reasons, Defendant's Motion will be denied.

I. BACKGROUND

On August 9, 2017, a grand jury returned a Second Superseding Indictment charging defendant Alan Womack with conspiracy to distribute 1000 kilograms or more of marijuana, in violation of 21 U.S.C. §§ 846, 841(a)(1), (b)(1)(A) (Count 1); and conspiracy to commit money laundering, in violation of 18 U.S.C. §§ 1956(a)(1)(B)(i) and (h) (Count 9). The charges arise from Defendant's involvement in a conspiracy to transport bulk amounts of drugs from the west coast to locations on the east coast. Defendant seeks to suppress evidence obtained by officers of the Philadelphia Police Department ("PPD") during the entry and warrantless search of a home in Philadelphia on March 25, 2006. The evidence was discovered when the officers were responding to a 911 call about a possible burglary at 1129 North 63rd Street, Philadelphia, Pennsylvania.

Defendant filed the instant Motion to Suppress on May 21, 2018.¹ The Government filed a Response on June 11, 2018. (ECF No. 677.) An evidentiary hearing was held on September 4,

¹ Defendant's original Motion to Suppress was denied on May 17, 2018.

2018. Three witnesses testified at the hearing. Michele Cordalis, a representative from the PPD, testified about police dispatching procedures and the radio call for the burglary on March 25, 2006. (Sept. 4, 2018 Hr’g Tr. 4-5.) Two of the responding police officers to the burglary call—Sergeant Stanley Sanford and Officer Christopher Egan—also testified. In addition to witness testimony, the Government admitted four exhibits into evidence (Sept. 4 Hr’g Tr. 125): (1) a transcript of the testimony of the 911 calls (911 Tr., Gov’t’s Ex. A); (2) PPD policy on the cancelling of 911 calls (PPD Policy, Gov’t’s Ex. B); (3) CAD Reports detailing the 911 and dispatch calls (CAD Reports, Gov’t’s Ex. C); and (4) a summary timeline of the 911 transcript and the CAD Reports (Timeline, Gov’t’s Ex. D). After the hearing, the Government and Defendant each filed Supplemental Memoranda in support of their respective positions. (ECF Nos. 738, 739.)

Defendant contends that the search was unconstitutional because it was not justified by either a warrant or probable cause. The Government contends that Defendant lacks standing to contest the search, and that the search otherwise satisfied Fourth Amendment protections and standards. As we will explain in more detail, we agree with the Government that the search was proper and that the evidence should not be suppressed.

II. FACTUAL FINDINGS

At 8:21 p.m. on March 25, 2006, an anonymous female called 911 to report that five black men were removing things from a basement window at 1129 North 63rd Street, Philadelphia, Pennsylvania. (911 Tr. 1, Gov’t’s Ex. A; Sept. 4 Hr’g Tr. 10-11.) Approximately one minute later, the same anonymous female called 911 and spoke to a different operator about her desire to “cancel” her last call regarding 1129 North 63rd Street. (911 Tr. 2; Sept. 4 Hr’g Tr. 12.) The caller explained that she saw the owner of 1129 North 63rd Street, and that the

individuals were now using the front door. (911 Tr. 2.) The 911 dispatcher stated to the anonymous female caller that the police cannot cancel 911 calls once they are made, but that she would put a notation in the system regarding her follow-up phone call. (*Id.*; Sept. 4 Hr'g Tr. 12-14.) Just prior to the conclusion of this second call, the PPD dispatch unit put out the radio call to police officers in the field for a burglary in progress. (911 Tr. 3.)

A call of a suspected burglary is considered a "priority" assignment. (Sept. 4 Hr'g Tr. 11-12.) PPD policy directs that priority assignments not be cancelled once they are made. (Sept. 4 Hr'g Tr. 19.) Michele Cordalis, who works in the dispatch unit at the PPD, confirmed that radio calls cannot be cancelled, particularly priority ones like a burglary, which is the call at issue in this Motion. (*Id.* at 22-23.) The reason stated for this policy is that 911 dispatchers are unable to know the reasons why a call is cancelled, and whether the cancellation was perhaps coerced. (*Id.* at 19-23.) In addition, the initial 911 call and the cancellation call could have been received by different 911 operators, as was the case here. (*Id.* at 35.) Under these circumstances, the 911 operator would not be able to tell if the individual who initiated the 911 call was the same individual who attempted to cancel the call. (*Id.* at 35-36.)

Sergeant Stanley Sanford and his partner, Officer Anthony Waters, were located in the area of 1129 North 63rd Street, and responded to the 911 dispatch call for a burglary in progress. (*Id.* at 47-48.) Sergeant Sanford and Officer Waters were dressed in plain clothes at the time. They responded to the call within minutes. (*Id.* at 47.) Police Officer Christopher Egan, who was dressed in police uniform, also responded to the call. (*Id.* at 49.) Neither Sergeant Sanford nor Officer Egan received information about the anonymous female caller's attempt to cancel her initial call about the suspected burglary. (*Id.* at 51, 100.) Sergeant Sanford testified that even if he had been told that the call was cancelled, his approach in investigating the scene would not

have been different because the call was a priority call. (*Id.* at 51.) Officer Egan testified that even if a burglary call is cancelled, responders still have to go to the property to assure that people are alright. (*Id.* at 101.)

When they arrived at 1129 North 63rd Street, Sergeant Sanford, Officer Waters, and Officer Egan began to approach the property on foot. (*Id.*) The front of the house faced 63rd Street, and there was a driveway on the side of the house. (*Id.* at 49-50.) The house appeared to be undergoing renovations. (*Id.* at 50.) As they approached, they saw a male in the driveway, later identified as Dalion Baskerville, who was standing approximately five feet away from the side entrance of the house. (*Id.* at 53.) Sergeant Sanford approached Baskerville and patted him down for weapons. (*Id.* at 54.) During this time, Officers Waters and Egan walked to the rear of the property where they saw a vehicle with its headlights turned on. (*Id.*) As soon as Officer Egan stepped out of the shadow into the vehicle's headlights, the vehicle quickly backed up and drove down the alleyway at a high rate of speed. (*Id.* at 94.) When Officers Egan and Waters walked back toward Sergeant Sanford, they observed another male standing in the doorway of the side entrance. (*Id.* at 96.) The individual was later identified as Defendant, Alan Womack. He was ordered to walk toward the officers, and was placed in handcuffs. (*Id.* at 97.) Defendant did not identify himself for the officers, nor did he make any statements at the time he was detained. (*Id.* at 97-98.) Neither Defendant nor Baskerville carried identification that tied them to the 1129 North 63rd Street property. (*Id.* at 60.)

After Baskerville and Defendant were detained, the police officers entered the home to search for additional people and to confirm that nobody was in danger. Sergeant Sanford testified that he believed that the officers had witnessed a burglary in progress, which justified their entrance to the home. (*Id.* at 61.) During their sweep of the inside of the home, they

discovered large bales in plain view in the basement. (*Id.* at 99.) The bales were wrapped in cellophane, and appeared to be narcotics. (*Id.* at 99-100.) Members of PPD’s Narcotics Field Unit were called to the location. (*Id.* at 100.) A search warrant was obtained to search the location for controlled substances. It was ultimately determined that the cellophane-wrapped bales contained large quantities of marijuana. (*Id.*)

III. LEGAL CONCLUSIONS

The initial burden of proof is on a defendant who seeks to suppress evidence. *United States v. Johnson*, 63 F.3d 242, 245 (3d Cir. 1995). However, once the defendant has established a basis for their motion, such as establishing that the search or seizure was conducted without a warrant, “the government bears the burden of showing that each individual act constituting a search or seizure under the Fourth Amendment was reasonable.” *United States v. Ritter*, 416 F.3d 256, 261 (3d Cir. 2005). The Government must show the reasonableness of its search by a preponderance of the evidence. *United States v. Matlock*, 415 U.S. 164, 177 n.14 (1974).

A. Standing to Contest the Search

The Government argues initially that Defendant lacks standing to contest the search.² In order to have standing, Defendant must have had a reasonable expectation of privacy in the place to be searched—1129 North 63rd Street. *Minnesota v. Olson*, 495 U.S. 91, 95-97 (1990)). To establish a legitimate expectation of privacy, Defendant must demonstrate (1) that he has “an actual or subjective expectation of privacy in the subject of the search”; and (2) that the “expectation of privacy is objectively justifiable under the circumstances.” *United States v.*

² The Government did not raise this argument in its Response to Defendant’s Motion to Suppress. Nor was standing raised at the hearing on the Motion to Suppress. The first time the argument was raised was in the Government’s Supplemental Memorandum filed after the hearing. As a result, Defendant has had no opportunity to respond. However, Defendant bears the initial burden of establishing that he has standing to contest a search. *Minnesota v. Olson*, 495 U.S. 91, 96-97 (1990). Accordingly, Defendant should have addressed his standing at the hearing or in his briefing.

Donahue, 764 F.3d 293, 298 (3d Cir. 2014) (citations omitted). “A person who is aggrieved by an illegal search and seizure only through the introduction of damaging evidence secured by a search of a third person’s premises or property has not had any of his Fourth Amendment rights infringed.” *Rakas v. Illinois*, 439 U.S. 128, 134 (1978) (citation omitted).

The Supreme Court has determined that overnight social guests have standing to challenge the search of the premises. *Olson*, 495 U.S. at 98. On the other hand, “one who is merely present with the consent of the householder” may not claim the protections of the Fourth Amendment. *Minnesota v. Carter*, 525 U.S. 83, 90 (1998).

There is no clear evidence in this record establishing who owned the property at 1129 North 63rd Street. Baskerville told the police officers that it was owned by his mother or grandmother. (Sept. 4 Hr’g Tr. 60-61; 81.) A neighbor questioned during the incident advised the officers that “a grandmother” was the owner of the property; however, the neighbor did not say whether Baskerville was an associated family member. (*Id.* at 83.) Even assuming that Baskerville had a possessory interest in the property given his alleged family ties to it, there is no evidence in the record regarding Defendant’s relationship to Baskerville. We do not know whether Defendant was an invited overnight social guest. It is likely that he was not since the house was under construction, and it did not appear as though anyone lived at the property at the time of the search. (*Id.* at 57.) In fact, Defendant presented no evidence explaining why he was present at 1129 North 63rd Street during the night of the search. Based upon this dearth of information, we are unable to determine whether Defendant had any reasonable expectation of privacy at 1129 North 63rd Street. As a result, Defendant has failed to meet his burden in establishing that he has standing to seek suppression of the evidence obtained during the search.

B. The Reasonableness of the Search

Even assuming Defendant has standing, the Motion would nevertheless be denied because the record establishes that there were no Fourth Amendment violations.

“It is a basic principle of Fourth Amendment law that ‘searches and seizures inside a home without a warrant are presumptively unreasonable.’” *Ware v. Riley*, 25 F. Supp. 3d 492, 499 (D. Del. 2014) (quoting *Brigham City, Utah v. Stuart*, 547 U.S. 398, 403 (2006)), *aff’d*, 587 F. App’x 705 (3d Cir. 2014). A warrantless search of a home requires both probable cause and exigent circumstances. *Kentucky v. King*, 563 U.S. 452, 460 (2011); *see also United States v. Morgan*, 33 F. App’x 603, 605 (3d Cir. 2002); *see also Ware*, 25 F. Supp. 3d at 500 (noting that warrants are required to search a person’s home “unless the exigencies of the situation make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment.” (quoting *Mincey v. Arizona*, 437 U.S. 385 at 393-94 (1978))).

“Exigent circumstances exist when (1) evidence is in imminent danger of destruction; (2) the safety of either law enforcement or the general public is threatened; (3) the police are in hot pursuit of a suspect; or (4) a suspect is likely to flee before officers can obtain a warrant.” *Morgan*, 33 F. App’x at 605 (internal citations omitted); *see also United States v. Sculco*, 82 F. Supp. 2d 410, 417 (E.D. Pa. 2000). “Exigent circumstances are determined by reviewing the objective facts reasonably known to the officers at the time of the search using the totality of the circumstances facing the officers when the search was performed.” *Morgan*, 33 F. App’x at 605; *see also Sculco*, 82 F. Supp. 2d at 417 (“[W]e are to look to the ‘totality of the circumstances’ when reviewing an officer’s evaluation of the existence of exigent circumstances.”).

Based upon the evidence in the record, we are satisfied that a warrantless entry into 1129 North 63rd Street was justified by probable cause and by exigent circumstances. As to probable

cause, the officers received a 911 radio call about a burglary in progress involving five black men removing items out of the basement of the property at issue. Once the officers arrived to the property, they encountered two black males and a fleeing vehicle. Clearly, the police officers had probable cause to believe that the burglary was in progress.

The evidence in the record also establishes that exigent circumstances justified the search of the property. When the officers approached, they observed a fleeing vehicle, and two individuals standing outside the home. The officers reasonably believed that a burglary was in progress, which is a priority assignment. Based upon their training, the procedure is to conduct a sweep of the house to make sure that there are no other individuals that pose a threat to the safety of the officers and to the occupants of the home. Sergeant Sanford testified that when they arrived at the scene:

[W]e had a male standing there and other males immediately take flight. Once those males took flight and another male exits the property, we had to sit there and find out if a burglary had occurred, whether the owner was in distress, and whether there was any other defendants or anyone injured inside the property.

(Sept. 4 Hr'g Tr. 61.) Based upon the totality of circumstances, exigencies existed justifying the reasonableness of the officers' search of the property. *See Sculco*, 82 F. Supp. 2d at 417 (“Because the officers reasonably believed under the circumstances that a burglary was in progress, we find that probable cause and exigent circumstances existed.”); *see also Morgan*, 33 F. App'x at 605 (affirming district court's finding of probable cause and exigent circumstances in the warrantless search of an apartment).

Finally, we reject Defendant's argument that the PPD acted unreasonably by not communicating to the officers on the street that the 911 caller attempted to cancel her initial burglary call. It is PPD policy to not cancel 911 calls after they are made, particularly when the call is a priority assignment such as a burglary in progress, as was the case here. This makes

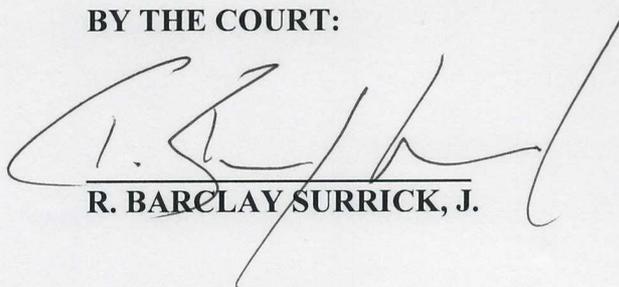
perfect sense. There is no guarantee that the second cancellation call is received by the same 911 operator, and therefore no way that the 911 operator can determine if the initial caller and subsequent caller are in fact the same individual. In addition, there is no way to determine if the second call is made voluntarily and without coercion. In any event, the officers responding to the burglary at 1129 North 63rd Street were not notified that an attempt had been made to cancel the assignment. Defendant may take issue with the PPD's policy; however, the policy did not result in any constitutional violations when applied in this case. The search of the property was based on probable cause to believe a burglary was in progress and exigent circumstances existed. Accordingly, Defendant has not established any Fourth Amendment violations.

IV. CONCLUSION

For the foregoing reasons, Defendant's Motion to Suppress Physical Evidence will be denied.

An appropriate Order follows.

BY THE COURT:



R. BARCLAY SURRICK, J.

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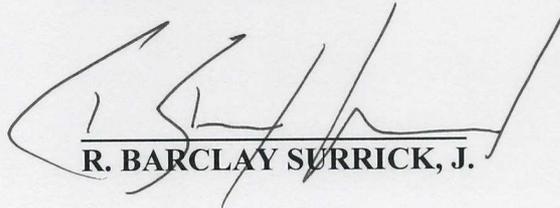
NO. 16-218-13

ORDER

AND NOW, this 19th day of September, 2018, upon consideration of Defendant's Supplemental Motion to Suppress Physical Evidence (ECF No. 653), and all documents submitted in support thereof, and in opposition thereto, it is **ORDERED** that the Motion is **DENIED**.

IT IS SO ORDERED.

BY THE COURT:


R. BARCLAY SURRICK, J.