

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

UNITED STATES OF AMERICA,	:	CRIMINAL ACTION
	:	
v.	:	NO. 02-Cr-504
	:	
HAASHIM JOHNSON,	:	
Defendant.	:	

ORDER

AND NOW, this day of December, 2002, upon consideration of Defendant Haashim Johnson's Motion to Suppress, filed on September 26, 2002, it is hereby ORDERED and DECREED that the Motion is DENIED.

Defendant contends that cocaine seized in his residence should be suppressed because the cocaine was seized pursuant to an unlawful search of his residence. Having reviewed the evidence submitted by the parties, and upon consideration of the testimony presented at a hearing conducted on October 31, 2002, I hereby enter the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. On June 28, 2001, Officer Michael Pease, a United States Marshal, received a telephone call from an individual regarding the Defendant in this matter, Haashim Johnson, for whom a fugitive warrant had been issued. At that time, Officer Pease had determined that Defendant was using a driver's license displaying Defendant's photograph and listing Defendant's name as Hameen Abdullah; that a white Ford Excursion was registered to the name of Hameen Abdullah; that the address on the driver's license was 6834 Linford

Street; and that Defendant was residing at 6834 Lynford Street. See Hearing Transcript, Oct. 31, 2002 (hereinafter “Tr.”) at 5-9.

2. The individual, who lived “a few doors down” from Defendant’s residence at 6834 Linford Street, notified Officer Pease that he had seen Defendant driving a white Ford Excursion, and that Defendant had parked the car outside of 6834 Linford Street and had entered the residence. See Tr. at 9-10.
3. Officer Pease, along with four other officers, drove to the residence in question that afternoon and set up surveillance. The white Ford Excursion remained parked outside of the residence. See Tr. 10-11.
4. These officers were subsequently joined by additional officers later that afternoon and evening. Two of the officers who were surveying the back of the house saw an individual leave the back entrance of the residence, enter a vehicle, and drive away. The individual did not appear to the officers to be Defendant. See Tr. 11-13, 33-36.
5. After it became dark that evening, the officers witnessed lights that were on inside of the residence, and Officer Pease witnessed what he believed to be a television come on inside of the residence. See Tr. 13-14, 66.
6. A Philadelphia SWAT team subsequently arrived and forcefully entered the residence after knocking and announcing their presence and receiving no response for approximately thirty seconds. See Tr. 50-54.
7. The lights were on in the residence when the SWAT team members entered. They did not find anyone inside the residence and communicated this fact to the officers outside of the residence. However, Officer Patrick Whalen, a member of the SWAT team, observed

plates in plain view on the dining room floor. These plates contained a substance that he believed to be crack cocaine. A number of other officers observed the plates of cocaine at various points during the evening. The Court finds that Officer Whalen's observations were the initial observations. The Court also finds Officer Whalen's testimony to be clear and truthful. See Tr. 53-55.

8. Officer Whalen informed the officers outside of the residence that he believed there was cocaine on the floor in the dining room. See Tr. 55. The officers outside of the residence then entered the residence but did not seize the crack cocaine or any other items at that time. See Tr. 15-16.
9. The officers subsequently arrested Defendant outside of his residence, see Tr. 16-17, and obtained a search warrant for the residence based upon the sworn affidavit of Officer Richard Nicoletti that crack cocaine was present inside of the residence, see Tr. 81, Plaintiff's Motion to Suppress, Ex. F.
10. After obtaining the search warrant for the residence, the officers seized the substance which was later chemically analyzed and found to be crack cocaine.

CONCLUSIONS OF LAW

1. The entry of the residence by the SWAT team members to execute the warrant for Defendant's arrest was made pursuant to the reasonable belief that Defendant was inside of the residence at the time and was therefore lawful. See, e.g., Payton v. New York, 445 U.S. 573, 603 (1980) ("for Fourth Amendment purposes, an arrest warrant founded on probable cause implicitly carries with it the limited authority to enter a dwelling in which the suspect lives when there is reason to believe the suspect is within").

2. Officer Whalen observed a substance that he immediately suspected to be crack cocaine in plain view inside of the residence while he was lawfully inside of the residence, and he conveyed this information to the other officers at the scene. Under these circumstances, Officer Whalen would have been entitled to seize the cocaine pursuant to the “plain view” doctrine. See Horton v. California, 496 U.S. 128, 136-37 (1990). However, no seizure of the cocaine occurred at this time.
3. The seizure of the cocaine later occurred pursuant to a valid search warrant.

ORDER

Because I conclude that the entry into Defendant’s residence was lawful and that the seizure of the crack cocaine in question was likewise lawful, Defendant’s Motion to Suppress the crack cocaine as evidence is hereby DENIED.

BY THE COURT:

Legrome D. Davis