

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

UNITED STATES : CRIMINAL ACTION
 :
 v. :
 :
 JAMES MILLER :
 a/k/a "James Warren" : No. 04-cr-636

MEMORANDUM and ORDER

April 1, 2005

PRATTER, DISTRICT JUDGE

I. BACKGROUND

Defendant James Miller has been indicted on one count of possession of a firearm by a convicted felon, in violation of 18 U.S.C. §§ 922(g)(1) and 924(e). On the eve of the originally-scheduled trial date, Defendant filed a Motion to Suppress all illegally seized physical evidence and any resulting statements made by the Defendant to his parole officer on the day on which the officer found contraband in Defendant's bedroom in Defendant's mother's home. (Docket No. 28). An evidentiary hearing and oral argument (hereafter "Oral Arg. Tr. at ___") with regard to this motion was held on March 29, 2005, during which Parole Agent Frontis Cue testified for the Government and Deidre Hansford, Defendant's mother, testified for the defense.

The charge in this case arises from Defendant's possession of an AK-47 type rifle while Defendant was on state parole. Defendant had been convicted in the Philadelphia Court of Common Pleas for distribution of a controlled substance and was sentenced in June 2002 to a term of 1.5 years to 3 years imprisonment. He was released on February 25, 2004, under the supervision of the Pennsylvania Board of Probation and Parole. One of the terms and conditions

of his parole was that he not use or distribute illegal controlled substances. Another term and condition was that he not possess a firearm.

Defendant's approved residence while under the supervision of the Parole Board was 1520 N. Frazier Street, his mother's home. Agent Cue testified that on July 20 and July 21, 2004, Defendant's mother called him, as Defendant's parole supervisor, to inform Agent Cue that she suspected Defendant may be selling drugs from her house. Oral Arg. Tr. at 30-34. Agent Cue told her to call him again on July 22, 2004 because he needed to discuss the issue with his supervisor. Oral Arg. Tr. at 30-34. He also told her that he was going to search her house. Oral Arg. Tr. at 31.

On July 22, 2004, Defendant's mother called Agent Cue again. Oral Arg. Tr. at 32-33. Agent Cue told her to have Defendant call him under the pretext that the agent had some job leads for Defendant. Oral Arg. Tr. at 32-33. Defendant called Agent Cue soon thereafter. Agent Cue told him to report to the office immediately, which he did. Oral Arg. Tr. at 33-34.

Parole agents detained Defendant when he arrived. Oral Arg. Tr. at 33-34. Agent Cue and others then searched Defendant's home, using Defendant's keys to enter the property. Oral Arg. Tr. at 33-34. Agent Cue and Parole Agent Dominic Compano searched Defendant's bedroom,¹ where Agent Cue saw drug paraphernalia on Defendant's dresser. Agent Compano opened a closet door, where he saw something covered with a pillow case in the right corner of the closet leaning against the wall. Oral Arg. Tr. at 34-35. It resembled a machine gun. He felt it, then pointed it out to Agent Cue, who subsequently removed the pillow case and recovered a

¹ Agents knew this was Defendant's room because the house and room had been inspected earlier as part of the pre-approval process prior to Defendant being permitted to live with his mother. Oral Arg. Tr. at 18-20.

7.62x39 mm, AR-1 (AK type) semi-automatic assault rifle made in Romania, serial number S1-79579-03, loaded with a magazine containing 13 live rounds, including one in the chamber. Oral Arg. Tr. at 35-38; Gov't Ex. 30 (the rifle). The rifle was set on "fire" and, thus, armed and ready to shoot. Oral Arg. Tr. At 38. Additional drug paraphernalia was recovered from a shoe box, also found in Defendant's closet. Oral Arg. Tr. at 38-39.

After the search, the agents took the recovered weapon and the drug paraphernalia to the Parole office at 5828 N. Market Street, and received a warrant to detain Defendant. When Agent Cue, while holding the weapon in his hands, told Defendant that he was being detained because of the recovery of the gun from his closet, Defendant spontaneously stated ("mumbled") something along the lines of his having obtained the weapon from his recently deceased father. Oral Arg. Tr. at 39-40. Defendant was subsequently transported to the 18th Police District, where he was formally arrested and processed.

II. DISCUSSION

A. DEFENDANT'S MOTION TO SUPPRESS THE GUN RECOVERED FROM HIS ROOM

At a suppression or evidentiary hearing, "credibility determinations are uniquely the province of the [judge]." Gov't of the Virgin Islands v. Gereau, 502 F.2d 914, 921 (3d Cir. 1974). Furthermore, "[c]redibility determinations may be influenced by factors such as a witness' demeanor, his tone of voice and other matters not subject to appellate scrutiny." Id.

After giving due weight to the testimony of the witnesses and reviewing the physical evidence in support of this testimony, the Court finds that Parole Agent Frontis Cue had a reasonable suspicion that Defendant was violating his parole by engaging in criminal activity.

Therefore, Agent Cue was justified in searching Defendant's previously-approved residence without a warrant. Courts have consistently held that parole, probation or supervised release is a privilege, not a right, and that the government must maintain a supervisory role over the parolees or other similarly-situated individuals to ensure the safety of the community. See Griffin v. Wisconsin, 483 U.S. 868, 874-75 (1987); Morrissey v. Brewer, 408 U.S. 471, 480 (1972).

Conditions are imposed on the parolee to ensure not only that the parolee is in fact engaged in a fruitful rehabilitative process but also to protect the safety of the community. Id. “[I]t must be remembered that ‘the very assumption of the institution of [parole]’ is that the [parolee] ‘is more likely than the ordinary citizen to violate the law.’” United States v. Knights, 534 U.S. 112, 120 (2001), quoting Griffin, 483 U.S. at 880.

The parole agency is, therefore, permitted to act based upon a lesser degree of certainty than the Fourth Amendment would otherwise require in order to intervene before a parolee does damage to himself or society. The agency, moreover, must be able to proceed on the basis of its entire experience with the probationer, and to assess probabilities in the light of its knowledge of his life, character, and circumstances. Griffin, 483 U.S. at 879.

Given these unique needs of the parole system, the Fourth Amendment neither requires a warrant nor probable cause before a parole agent may search a parolee, his property, or his residence. In fact, the law is very clear that parole officers may conduct warrantless searches of parolees and their residences based on “no more than reasonable suspicion” of parole violations. Knights, 534 U.S. at 120; Griffin, 483 U.S. at 873; United States v. Baker, 221 F.3d 438, 443-44 (3d Cir. 2000); United States v. Hill, 967 F.2d 902, 910 (3d Cir. 1992); Shea v. Smith, 966 F.2d 127, 132 (3d Cir. 1992); Latta v. Fitzharris, 521 F.2d 246, 250 (9th Cir. 1975)(en banc). In Hill,

the Court of Appeals for the Third Circuit held that because a parolee has a diminished expectation of privacy, when parole officers, in conjunction with their responsibility to the larger community, have reason to believe that a parolee may have violated parole, they are “duty-bound to investigate,” including searching the parolee’s residence when there is reasonable suspicion that such a search may turn up evidence of noncompliance with the conditions of parole. Hill, 967 F.2d at 911.

“Reasonable suspicion” is determined from the totality of circumstances. United States v. Arvizu, 534 U.S. 266, 273 (2002). “This process allows officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that ‘might well elude an untrained person.’” Id., quoting United States v. Cortez, 449 U.S. 411, 418 (1981). “[T]he likelihood of criminal activity need not rise to the level required for probable cause, and it falls considerably short of satisfying a preponderance of the evidence standard.” Arvizu, 534 U.S. at 274, citing United States v. Sokolow, 490 U.S. 1, 7 (1989). Furthermore, “[t]he fundamental task of any Fourth Amendment analysis is assessing the reasonableness of the government search.” United States v. Sczubelek, __ F.3d __, 2005 WL 638158 at *6 (slip opinion), quoting Knights, 534 U.S. at 118. Thus, if a search is reasonable, no constitutional problem exists, because the Fourth Amendment only protects individuals from unreasonable searches and seizures. Skinner v. Railway Labor Executives' Ass'n, 489 U.S. 602, 619 (1989). To determine whether a search was reasonable, the Court must weigh all of the circumstances surrounding the search or seizure and the nature of the search or seizure itself. See id. This analysis involves balancing “on the one hand, the degree to which [the search] intrudes upon an individual's privacy and, on the other hand, the degree to which [the search] is needed

for the promotion of legitimate governmental interests." Knights, 534 U.S. at 119.

In determining the existence of reasonable suspicion, this Court may not ignore circumstances that contribute, in light of Agent Cue's experience, to reasonable suspicion, even if those circumstances considered individually may be susceptible to an innocent explanation. See Arvizu, 534 U.S. at 274. Reasonable suspicion may also be determined by the collective knowledge of the law enforcement agents. Cf. United States v. Cook, 277 F.3d 82, 85-86 (1st Cir. 2002) (collective knowledge or fellow officer doctrine applies to investigative detentions whose legality is evaluated under a reasonable suspicion standard).

Here, Agent Cue had reasonable suspicion to believe that Defendant was engaged in criminal activity in violation of his parole. Agent Cue testified that he received a call from Defendant's mother, in whose house Defendant was living, during which she stated her belief that her son was dealing drugs from her very house. Oral Arg. Tr. at 30-31. At the time Agent Cue received this call, he had been supervising Defendant for about five months and he had established a relationship not only with Defendant, but with Defendant's mother as well, having visited them both at their home and spoken with her over the phone on numerous occasions. Oral Arg. at 15-33. Based upon the totality of the circumstances in this case, it was reasonable for Agent Cue to have relied on Ms. Hansford's information regarding her son's activity.

Defendant's counsel, in his oral argument, conceded that, if Agent Cue was indeed contacted by Defendant's mother and told that she thought that Defendant was selling drugs, Agent Cue had legal justification to conduct the search of Defendant's room on July 22, 2004. Defense counsel argued, however, that Agent Cue's version of the events that took place between July 20-22, 2004, is not credible and that the Court should instead believe the testimony of

Defendant's mother, who denies having called Agent Cue with concerns about her son's activities. Oral Arg. Tr. at 72-73.

The Court finds that Agent Cue's version of the events leading up to and resulting in Agent Cue's search of Defendant's room is more credible in this instance. Most notably, Agent Cue kept a contemporaneous hand-written log that included notes regarding his conversations with Defendant's mother. Oral Arg. Tr. at 25-27; Gov't Ex. 9A-9E. Defendant's mother acknowledged that she personally felt pressure to ensure that her son conform to the rules of his parole while he was living in her house. Oral Arg. Tr. at 75-78. She also admitted that she had called Agent Cue on a prior occasion when she thought there may have been a problem with her son following the rules of his parole. Oral Arg. Tr. at 73-76. Thus, Deidre Hansford's previous behavior supports the conclusion that she would indeed have contacted Agent Cue if she thought that Defendant was exhibiting problematic behavior while on parole and living in her home.

Motivations of understandable bias also favor the credibility of Agent Cue's testimony over that of Defendant's mother. Defendant's mother has a powerful incentive to deny having contacted Agent Cue with any concerns about her son dealing drugs given the severity of what has turned out to be the potential consequences to Defendant. It is reasonable to believe that Ms. Hansford would try to do everything within her power to prevent further negative consequences to her son, including calling Agent Cue in an attempt to protect her son or deny making these calls in this criminal proceeding. The Court found no motivation nor was there testimony presented to support an allegation that Agent Cue has a motivation to lie to the Court with regard to his phone conversations with Defendant's mother. Furthermore, although Ms. Hansford testified that she found Agent Cue "intimidating", Oral Arg. Tr. at 76, the defense did not present

any evidence of animus that Agent Cue may have felt for Defendant or his mother. Rather, there is evidence in the record that Agent Cue had previously helped Defendant get a job. Oral Arg. Tr. at 32.

Finally, the presence of drug paraphernalia in Defendant's room (both in plain sight and in the searched closet) at the time of the agents' search corroborates Ms. Hansford's initial concern about her son's activities and lends further credence to Agent Cue's testimony that he was indeed contacted by Defendant's mother regarding her son's alleged drug dealing. Oral Arg. Tr. at 35-39; Gov't Ex. 31.

The search that led to the discovery of the evidence of the alleged parole violations was lawful. Therefore, Defendant's motion to suppress the physical evidence is denied.

B. AGENT CUE'S STATEMENT TO DEFENDANT WAS NOT AN INTERROGATION OR ITS FUNCTIONAL EQUIVALENT.

Based on the testimonial evidence, Defendant's statement regarding how he came into possession of the gun recovered from his closet was made spontaneously. Oral Arg. Tr. at 42, 55, 58-60. There is no evidence that Agent Cue attempted to get Defendant to admit anything about the weapon or to inculcate himself. Moreover, the Court finds that Defendant's statement was not a reasonably foreseeable consequence of Agent Cue's statement to him. See Miranda v. Arizona, 384 U.S. 436, 478 (1966) ("Volunteered statements of any kind are not barred by the Fifth Amendment and their admissibility is not affected by our holding today."); United States v. Benton, 996 F.2d 642, 644 (3d Cir. 1993) (the court held that it was not an interrogation where the suspect asked police why he was arrested and officer told him that officer had seen him near

where gun was found); cf. Riley v. Dorton, 115 F.3d 1159, 1165 (4th Cir.)(en banc)(“tawdry exchange of insults” between police and suspect is not the functional equivalent of interrogation), cert. denied, 522 U.S. 1030 (1997); United States v. Gelzer, 50 F.3d 1133, 1137-38 (2d Cir. 1995) (the court held that it is not an interrogation where an officer said arrest likely disrupted defendant’s New Year’s Eve, to which defendant replied, “we’re amateurs, not professionals”). On these facts, it seems highly likely that Defendant made his statement spontaneously to Agent Cue in response to being told about the gun found in his room, and not in response to interrogation or conduct calculated or reasonably foreseeable to elicit a confession. Mr. Miller’s Miranda rights, therefore, were not violated, and the statement will not be suppressed.

Defense counsel, in his oral argument on the motion, conceded that Defendant’s statement was not the result of custodial interrogation. Oral Arg. Tr. at 98-99. Rather, counsel has taken the position that the statement was procured as the result of an illegal search. Thus, he reasons, it should be suppressed as the “fruit of the poisonous tree.” Oral Arg. at 98. However, as demonstrated above, the search that led to the confiscation of the AK-47 from Defendant’s room was lawful. Accordingly, the resulting statement was also lawful and this portion of Defendant’s motion should also be denied.

III. CONCLUSION

For the reasons stated above, Defendant’s Motion to Suppress is denied in its entirety with regard to both the weapon and Defendant’s statement. An appropriate Order follows.

BY THE COURT:

/S/ _____
GENE E.K. PRATTER
UNITED STATES DISTRICT JUDGE

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ORDER

AND NOW, this 1st day of April, 2005, upon consideration of Defendant James Miller's Motion to Suppress Physical Evidence and a Statement (Docket No. 28), the Government's response thereto (Docket No. 30), and following an evidentiary hearing and oral argument with regard to the Motion to Suppress held on March 30, 2005, Defendant's motion is DENIED in its entirety.

BY THE COURT:

/S/ _____
GENE E.K. PRATTER
UNITED STATES DISTRICT JUDGE