



2004, that the defendant was residing with his girlfriend, Kendra Anderson, at 1979 Yarnell Road, Pottstown, Pennsylvania.

The controlled buy on August 27 was scheduled to take place at a motel, which was located approximately one mile from defendant's residence. When he appeared as scheduled, he was arrested, on the three outstanding arrest warrants, and was found to have in his possession several "baggies" of crack cocaine.

As the foregoing facts demonstrate, and as is uncontested, the detectives had ample reason to believe that there was probable cause for the issuance of a warrant to search defendant's residence. They knew for at least a week before August 27 where his residence was, and had decided to conduct such a search as soon as the defendant was actually arrested. They did not, however, attempt to obtain a search warrant. Instead, four or five of the officers approached the house. One of their number, Kenneth Roberts, approached the door, and knocked. Ms. Anderson opened the door, whereupon Roberts reminded her that she had met him before (he claimed to be the defendant's cousin), and asked to come in. When Ms. Anderson allowed him to enter, two or three other officers, who had been lurking nearby, also entered the property, and immediately undertook what they describe as a "protective" search. Ms. Anderson was told that the defendant was in trouble, and that the officers wished to obtain her consent for a search of the

premises. Ms. Anderson declined to give her consent, stating that she wished at the very least to consult with her parents, since she was not familiar with police procedures and the like.

In addition to Ms. Anderson, there was present in the house a friend of the defendant's, Kevin Jones, who occupied a small basement apartment. Mr. Jones was asleep when the police arrived, and the basement apartment was dark. Unable to find a light switch, a police officer obtained a flashlight and descended the stairs to Mr. Jones's apartment, whereupon, as directed by the police, Mr. Jones joined Ms. Anderson on the first floor.

The police were reluctant to allow Ms. Anderson further time to consult with her parents, stating that they had a very important meeting at noon, and were anxious to leave. One of the officers (described as wearing his hair in a ponytail) emphatically instructed Ms. Anderson that, although she was not being arrested at that time, the house was then under arrest ("seized"), and that "we'll get you next, bitch!"

Ms. Anderson telephoned her parents, her mother came in her car to get her. Mr. Jones decided to accompany Ms. Anderson and her mother. As the vehicle was proceeding down the driveway away from the house, Mr. Jones announced that he was very anxious to leave the area, because there was a firearm under the futon on which he had been sleeping. At that point, Ms. Anderson insisted

that her mother turn the car around so that Ms. Anderson could return to the house and grant permission for the search. She had not been aware that there was any contraband in the house, and she did not wish to be blamed for whatever crimes the defendant or Mr. Jones may have committed. Upon her return, Ms. Anderson signed the consent form. Her consent was formalized at 12:25 p.m. on that date.

In the course of their search(es) of the premises, the police discovered two firearms - one in a closet near the front door, the other under Mr. Jones's futon - and, in a computer drawer, some small packets of drugs similar to the ones they had seized from the defendant at the time of his arrest.

The testimony of the officers involved in the search makes clear that they were proceeding in the belief that, since there was probable cause to obtain a search warrant, they did not need a search warrant before entering the house and checking every room for the presence of other persons. They explained that they were proceeding to "secure" the residence and to guard against possible destruction of any evidence which might be in the house, and also to protect themselves from possible harm in the course of a search.

It is apparent that the officers violated the Fourth Amendment rights of the defendant and Ms. Anderson. Merely because Ms. Anderson politely allowed the first officer, the

defendant's alleged "cousin," to enter the house to discuss the situation, it does not follow that she thereby consented to the invasion of the premises by the several officers who barged in afterward. It is clear that they entered without her consent. Moreover, there were no exigent circumstances which would justify warrantless entry to prevent the potential destruction of evidence. And, absent a warrant, the officers had no right to enter the house, and therefore no right to search the premises for their own safety.

It is thus clear that, unless Ms. Anderson's later alleged consent to the search was voluntary, and unless the evidence was actually discovered pursuant to her consent (rather than in the course of the unauthorized search which preceded her consent), the evidence obtained must be suppressed.

There are, in my view, sound reasons for not upholding the validity of the purported consent. It was given because the police were already searching the house, and either had already discovered the weapon in Mr. Jones's bedroom, or were virtually certain to do so. It thus appears that her "voluntary" consent was, itself, a product of the officers' Fourth Amendment violations.

Moreover, it is far from clear that the contraband - or at least the weapons - had not already been discovered before the consent form was signed. The officers' testimony on that subject

is vague and incomplete, and notably inconsistent with the written record of their activities. It is clear that Ms. Anderson signed the consent form at 12:25 p.m. The first police photograph of the interior of the premises was taken at 12:31, and the gun in the front hall closet was photographed at 12:33. There is, in short, room for a strong inference that the police had already discovered one of the weapons before Ms. Anderson signed the consent. Interestingly, the inventory sheet which was prepared summarizing the results of the search states that the search began at 11:14 a.m. (first page) or at 10:54 a.m. (second page).

It should also be mentioned that, when the officers first entered, Ms. Anderson was rather scantily clad (a "t-shirt and bed shorts"). When she wished to get dressed in order to accompany her parents, she was required to change clothes in the full view of the officers, who refused to permit her to close the bedroom door while she changed. Thus, in addition to the absence of a warrant, the search was conducted in a highly unreasonable manner.

For the foregoing reasons, defendant's motion to suppress the evidence seized in the search of his residence will be granted.

Defendant also seeks suppression of his oral and written statements made to the police on the evening of his

arrest. Defendant argues that his statements should be deemed involuntary because (1) the long delay between his arrest and his ultimate arraignment was coercive, and (2) his statements were the product of the illegal search of his residence. I agree that there was unfortunate delay in bringing the defendant before a magistrate - he was arrested shortly before 11:00 a.m. and arraigned some time after 8:00 p.m. - but I am not persuaded that the delay exceeded constitutional limits. And, although defendant was made aware of the search of his residence before his police questioning was completed, he was already aware of the crucial fact that the police knew that he had arranged to take part in a sale of cocaine that very morning, and that he had the drugs in his possession when he was arrested. I am not persuaded that the additional information obtained as a result of the search of his residence significantly increased the pressure upon him to confess. It should also be noted that, given the suppression ruling set forth above, there is very little, if anything, in his statements to the police which significantly strengthens the government's case against him for the alleged drug sales. Defendant's motion to suppress his statements will be denied.

