

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

UNITED STATES OF AMERICA : CRIMINAL NO. 98-40
 :
 v. :
 :
 GLENN S. HOLMES, SR. :

MEMORANDUM

R.F. KELLY, J.

JANUARY 7, 1999

The Defendant, Glenn Holmes, has filed a Motion to Suppress Evidence obtained by local and federal law enforcement agents at the scene of Defendant's warehouse on December 31, 1997. The Defendant also seeks to suppress statements he allegedly made to law enforcement agents at the Phoenixville Hospital. A hearing was held on the motion on October 9, 1998 and from the testimony produced at that time, I make the following:

FINDINGS OF FACT

1. Charles Quinn, Jr. has been a police officer with the Royersford Police Department for approximately two years. N.T. 50, 51. During the morning hours of December 31, 1998, he was on duty when he responded to a call from a Mrs. Holmes to go to 155 Railroad Plaza to keep the peace between her husband and his brother. The brothers were in the process of dissolving a partnership. N.T. 51, 52.

2. When Quinn arrived, he spoke with Glenn Holmes who seemed to know why the officer was there. He told the officer that his brother Craig was to come there in order to remove items that were on a list contained in a court order to dissolve their

partnership. At that time, Glenn Holmes gave the officer a brief tour of the lower levels of the warehouse building. N.T. 53.

3. Before Craig Holmes arrived, Officer Quinn was called away to a vehicle accident. While still at the accident scene, Officer Quinn was called back to 155 Railroad Plaza because of a disturbance. N.T. 54. When he returned, Craig Holmes was also present and the officer attempted to calm the brothers. After working this out, Officer Quinn left the scene again. N.T. 55, 56.

4. Within minutes he was called back again to 155 Railroad Plaza, this time the brothers were not only arguing but there had been some sort of physical confrontation. N.T. 56. In attempting to mediate this dispute over the division of property, Officer Quinn walked through the warehouse with the brothers. When the three of them were on the fourth floor, Craig alleged that there were items belonging to him on the fifth floor, Glenn alleged that all such items had been taken downstairs. N.T. 57.

5. Officer Quinn offered to go up one flight of stairs to the fifth floor and take a look. At this suggestion, Officer Quinn noticed that Glenn Holmes seemed very hesitant, but Craig Holmes wanted to go up to the fifth floor to make certain that none of his property was there and Glenn reluctantly agreed. N.T. 57, 58.

6. The three proceeded up the flight of stairs from the fourth to the fifth floor, with Glenn Holmes leading the way, walking up the stairs backwards facing Craig and Officer Quinn. N.T. 58. While on the stairs, Officer Quinn noticed a strong

chemical odor which in his opinion was methamphetamine. N.T. 58, 59.

7. When they reached the fifth floor landing, Craig commented to Glenn, "your pretty stupid bringing the police officer up here this place stinks, you ought to know better." N.T. 60. Officer Quinn pretended not to hear this comment. On the fifth floor Quinn could see only one room because a sliding door was locked. Quinn asked Craig if he saw anything that belonged to him and when Craig responded "no", Officer Quinn indicated there was no reason for them to remain on the fifth floor and they left. N.T. 61.

8. Officer Quinn stated that because of the odor of methamphetamine and the comment of Craig Holmes that he overheard he believed that there was a methamphetamine lab somewhere in close proximity to the area where he had been. The parties exited the warehouse and as Office Quinn was getting ready to leave, he made the comment to Glenn Holmes that he hoped that it would not be necessary for him to return. To this, Glenn Holmes stated, look Officer, I have nothing to hide here, if you want we'll take a tour of every square inch of this place. To this comment the officer turned the engine off in the police car and indicated that he was willing to then take the tour. Glenn Holmes responded that it would have to be done some other time. N.T. 62, 63.

9. After some discussion, Glenn Holmes said that his security man Bob Smith, who lived on the premises, could give the officer his tour. He told the officer to find Bob Smith, that he

had the keys to the whole place, he'll give you a tour of the place. Officer Quinn found Mr. Smith and they proceeded to go through the building. N.T. 64, 65.

10. When they got to the fifth floor, Officer Quinn asked Mr. Smith what was behind the sliding door. Smith told him that it was an area of the warehouse that Glenn had either been renting or leasing to a friend of his and that he was not sure what was on the other side. The officer asked Mr. Smith if there was another entrance to the area behind the sliding door and Smith responded that there was. When they sought to gain entrance by the alternate route, they were confronted by another locked door that Smith stated he did not have a key to. N.T. 65, 66, 67. After this, Officer Quinn left the warehouse. N.T. 67.

11. While leaving the premises, Officer Quinn stopped on the driveway to speak with Craig Holmes and another man who were loading a truck. Officer Quinn asked Craig about the comments that Craig had made on the stairwell in the warehouse on their way to the fifth floor. Craig said that you would have to be a fool not to realize that my brother is making or manufacturing meth upstairs. N.T. 67, 68.

12. Officer Quinn returned to his police station where he advised his sergeant of the events that had just taken place. His sergeant advised him to get in touch with the Montgomery County Narcotics Enforcement Team (hereinafter "NET Team") to see how they wanted to handle the situation. N.T. 68.

13. The NET Team advised Officer Quinn to return to the

warehouse and secure it. Officer Quinn took this to mean that as a safety factor he was to get everybody out of there while the Met Team was on route. N.T. 69. Upon returning to the warehouse, Officer Quinn encountered Glenn Holmes' son and another individual. Officer Quinn told them that the building was being secured and that they should leave. They said they did not know where Glenn Holmes was. Officer Quinn reentered the warehouse to remove any people who were inside. Officer Quinn was unable to go to the fifth floor of the building because the door that he had entered previously was now locked. N.T. 69, 70, 71. Officer Quinn had to go back outside of the building and go through a separate entrance that led to the fifth floor. As he was going upstairs, he could hear footsteps on the floor above him but could not get there because the door was locked. Although Officer Quinn could not enter the fifth floor, he could hear activity on the other side of the door such as glass breaking and liquid being poured. N.T. 71, 72. Officer Quinn knocked on the locked door, announced who he was and that he was here to remove people from the building and that whoever was on the other side of the door should open it. He received no response, however, the breaking of glass and the pouring of liquid continued. N.T. 72.

14. At this time, Officer Quinn went back downstairs and outside the building. As he looked up, he could see black smoke billowing from the top of the structure. The smoke was coming from the fifth floor. Officer Quinn, at that point, called the fire department. N.T. 73.

15. Officer Quinn then heard what he described as a difference sound of breaking glass coming from the back side of the warehouse. Upon investigating, Officer Quinn observed Glenn Holmes breaking a glass window on the fifth floor with heavy black smoke billowing out of the window and throughout the whole top floor of the warehouse. Officer Quinn again advised his radio room that the situation now involved a rescue, that it appeared that an individual was trapped on the fifth floor and to expedite their response. N.T. 72, 73. Mr. Holmes was rescued from the fifth floor and the fire was extinguished. N.T. 74

16. Richard W. Woodcock an agent with the Drug Enforcement Agency (hereinafter "DEA") testified that he has been employed by DEA since 1990. He stated that he had been trained at Quantico, Virginia in narcotics law enforcement, narcotics identification, money laundering and other things of that nature. He also been trained at Quantico, Virginia for investigating and identifying clandestine labs as well as being trained as a site safety officer for overseeing the dismantling and evidentiary collection at clandestine laboratory sites. N.T. 2-4.

17. On December 31, 1997, Agent Woodcock received a call to respond to 155 Railroad Plaza, Royersford, PA that there had been a fire there and it was suspected that a clandestine lab might be present at that location. N.T. 4.

18. Based upon this call, Woodcock put together a clandestine lab team composed of six to eight members and proceeded to Royersford. N.T. 4, 5.

19. Woodcock arrived at the scene at approximately 6:30 p.m. and by 6:45 p.m. all of the members of the team were present. N.T. 5.

20. When they responded to the scene, the DEA agents were told by the fire fighters that they did not know what they had and were afraid to touch anything. N.T. 5, 6.

21. The DEA team put on special clothing to protect them against toxic chemicals and air purifying respirators to go up and assess the area where the fire was located. N.T. 5.

22. Woodcock, was told that a police officer had been to the location prior to the start of the fire for a domestic dispute. That he had smelled some type of odors and that in the process of letting people out of the building he had heard glass breaking on the fifth floor of the building. When he arrived the fire had been extinguished. N.T. 7.

23. Woodcock and his partner put on special protective clothing and went to the fifth floor of the building. He felt the protective clothing was necessary because of the information that a police officer had smelled some odor consistent with methamphetamine and that he had heard breaking glass and a subsequent fire. N.T. 7, 8.

24. Woodcock went in to see what the situation was, to look for dangerous chemicals and to secure the situation. N.T. 9.

25. According to Agent Woodcock, there are chemicals used in methamphetamine labs that when mixed with water can blow up, some can generate heat which if not controlled can cause fire

and some that give off poisonous gas. N.T. 9, 10.

26. When Woodcock arrived on the fifth floor, he noticed a silver walk-in type freezer about 15 to 20 feet inside the door. He also noticed chemical containers which were charred and blackened and a sink containing broken glass. He then developed a plan to remove some of the items in order to end any potential volatility. N.T. 11.

27. Some containers had liquid in them and were cracked from the heat and therefore could not be removed. Samples from these were taken down for chemists to analyze. There was a chemist at the scene. N.T. 12.

28. Because he noticed the broken glass in the sink, he was concerned that an additional hazard might have been created by washing chemicals down the sink into a septic tank or sewer system. The drainpipe was followed down into the basement where part of the pipe was removed and a sample taken therefrom. N.T. 12, 13.

29. The DEA agents did not open drawers or remove papers or documents. The items they secured came out of the walk-in freezer-type room and around that enclosure that they felt could have been a hazard. This was the area that appeared to them to be the source of the fire. The only other items secured away from that area was the substance taken from the drainpipe. N.T. 13.

30. Agent Woodcock testified that the warehouse had 5 stories, was 40 to 50 yards long and 40 to 50 feet wide. N.T. 13.

31. When Agent Woodcock arrived at the scene, the fire was out but the firemen were still at the scene with hoses. N.T.

17.

32. The purpose of Woodcock's team was to make the area safe and to collect evidence of unknown substances. N.T. 18, 19.

33. When the agents finished removing all of the items they believed constituted a hazard, they stopped their work. N.T. 20, 21.

34. The items removed from this location were all discovered in the course of securing the laboratory. N.T. 29.

35. Detective Steven Forzato of Montgomery County testified that on December 31, 1997 he went to 155 Railroad Plaza, Royersford. N.T. 32. He arrived at about 12:45 p.m. and met with Glenn Holmes who was seated in an ambulance. He stated that Holmes was a little bit startled and physically he had soot from his hat to his shoes. He appeared to be alert and responsive to questions. N.T. 33. Other than to ask his name, no other questions were asked of Holmes at the scene. N.T. 34.

36. Detective Forzato followed the ambulance to the hospital where Holmes was examined by a doctor and nurse for about 20 minutes. Detective Forzato introduced himself and told him he was investigating what happened at 155 Railroad Plaza. N.T. 35. The detective then read Holmes his constitutional rights and Holmes indicated that he understood them. N.T. 36. Detective Forzato testified that Holmes appeared to understand his rights and that he appeared to be lucid. N.T. 36. The constitutional rights were read to Holmes from a card. N.T. 42. Holmes had indicated that he had been drinking that day and that he had been taking valium.

N.T. 46, 47.

37. Mr. Holmes answered the questions clearly, gave detailed answers and never requested a lawyer. N.T. 37.

38. At the close of the hearing held on October 9, 1998, the defense requested that it be allowed to supplement the record with the report of the Lincoln Fire Company Haz-Mat team. On October 30, 1998, Defendant Holmes filed a Supplemental Submission Sur Motion to Suppress.

CONCLUSIONS OF LAW

1. Because of what Officer Quinn observed and was told, he had reason to believe that there were dangerous chemicals in the Defendant's warehouse. Neither the firemen nor the local police were trained to deal with these dangerous chemicals.

2. It is clear from the report of the Lincoln Haz-Mat team (see Exhibit B, attached to government's response) that the Lincoln Haz-Mat team did not decontaminate the warehouse building.

3. The DEA agents called to the scene knew that there were chemicals used in methamphetamine labs that when mixed with water can blow up, cause fire and give off poisonous gas.

4. When the DEA team arrived at the scene there existed exigent circumstances which justified the entry and search of the premises conducted by the DEA agents.

5. Because the DEA agents were legitimately and lawfully on the premises, all of the items that the agents found during the process of dismantling the methamphetamine lab were

therefore legally seized.

6. The Defendant Glenn Holmes was advised of his Miranda rights at the Phoenixville Hospital. He understood those rights and he waived his rights before he was questioned by the police officers. From all of these circumstances described by the officers surrounding the questioning of the Defendant, the government has established by a preponderance of the evidence that the Defendant knowingly, intelligently, and voluntarily waived his rights prior to the making any statement to the detective.

Because of the foregoing, I therefore enter the following Order.

