

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA, :
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 Plaintiff, :
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 v. :
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DEON BOLDEN, :
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 Defendant. :
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Colm F. Connolly, Esquire, United States Attorney, and April M. Byrd, Esquire, Assistant United States Attorney, UNITED STATES ATTORNEY'S OFFICE, DISTRICT OF DELAWARE, Wilmington, Delaware. Attorneys for Plaintiff.

Christopher S. Koyste, Esquire, Assistant Federal Public Defender, FEDERAL PUBLIC DEFENDER'S OFFICE, Wilmington, Delaware. Attorney for Defendant.

MEMORANDUM OPINION

January 17, 2003

Wilmington, Delaware

FARNAN, District Judge.

Presently before the Court is Defendant Deon Bolden's Motion to Suppress Evidence (D.I. 15). For the reasons set forth below, the Motion (D.I. 15) will be denied.

INTRODUCTION

Defendant has been charged with possession of a firearm by a felon, possession with the intent to distribute more than five grams of cocaine base, and possession of a firearm during and in relation to a drug trafficking crime. Defendant moves, pursuant to the Fourth Amendment of the United States Constitution, to suppress any evidence directly or indirectly derived from the search of his residence on April 12, 2002.

The Court held a hearing on the Motion to Suppress (D.I. 15) on October 2, 2002, and ordered the parties to submit proposed findings of fact and conclusions of law. This Memorandum Opinion sets forth the Court's findings of fact and conclusions of law regarding the instant Motion (D.I. 15).

FINDINGS OF FACT

1. On April 8, 2002, Probation and Parole Officers Mark Lewis ("Officer Lewis") and Nicole O'Boyle ("Officer O'Boyle") went to the Fairview Inn at 1015 South Market Street to assist in the investigation of a hit and run accident. Tr. at 10.¹

¹ Transcript of the October 2, 2002, Suppression Hearing (D.I. 29).

2. Officer Lewis testified that the Fairview Inn is a high crime area. Tr. at 10-11.

3. While at the Fairview Inn, Officers Lewis and O'Boyle encountered Deon Bolden, a black male who was being interviewed by the Delaware State Police as a possible witness to the accident. Tr. at 11.

4. Officer O'Boyle ran a routine criminal check on Mr. Bolden, which revealed Mr. Bolden had an extensive criminal history, including a recent arrest on a handgun charge. Tr. at 13.

5. Officer O'Boyle's initial criminal check did not reveal that Mr. Bolden was on probation. Tr. at 14:24-15:1.

6. When the interview ended, Mr. Bolden and a female acquaintance left the Fairview Inn in a 1979 Chevy, Delaware license plate 218865. Tr. at 14.

7. When Officers Lewis and O'Boyle returned to their office on the night of April 8, 2002, they ran further computer checks on Mr. Bolden and discovered he was on probation for reckless endangering, an offense that involved a handgun and car chase through Wilmington, and learned that he resided at 204 West 23rd Street, Wilmington. Tr. at 15, 18.

8. Upon learning of Mr. Bolden's criminal history, Officer O'Boyle informed Officer Lewis that an informant working with Detective Crotty of the Delaware State Police Department had

provided information concerning a shooting in Wilmington that the informant had allegedly witnessed two months earlier. Tr. at 16.

9. On April 10, Officer Lewis spoke with Detective Crotty about the shooting in Wilmington. Id.

10. Detective Crotty relayed to Officer Lewis that a confidential informant identified the shooter as a black male named "Deon" who lived in the city of Wilmington. Id.

11. Officer Lewis testified that Detective Crotty had used the informant in the past and that information provided by the informant had been proven reliable and had led to the arrests of multiple individuals. Tr. at 16-17.

12. Based on the above knowledge, Officer Lewis sought and received permission to conduct an administrative search of Mr. Bolden's residence. Tr. at 17-18.

13. On April 12, 2002, Officer Lewis and Probation and Parole Officer Jeff Kay ("Officer Kay") went to Mr. Bolden's residence at 204 West 23rd Street, Wilmington. Tr. at 19.

14. At 204 West 23rd Street, Officer Lewis noticed that the same 1979 Chevy in which Mr. Bolden departed from the Fairview Inn was parked in front of the house. Tr. at 19.

15. The Officers then knocked on the door of Mr. Bolden's residence and received no answer; however, as the Officers were stepping off the porch, a neighbor told the Officers that he was in the house. Tr. at 20.

17. The Officers then decided to set up surveillance on 204 West 23rd Street, and, approximately fifteen minutes later, Mr. Bolden emerged from the residence. Id.

18. The Officers stopped Mr. Bolden on 23rd Street, identified themselves, and told him they were there to conduct an administrative search of his house. Tr. at 21.

19. Mr. Bolden denied living in the house and said that it was not his address. Id.

20. The Officers handcuffed Mr. Bolden, patted him down for weapons, and removed a set of keys from his pocket. Id.

21. At the front door to Mr. Bolden's residence, Officer Lewis called his supervisor, Pat Cronin, to tell him that Mr. Bolden denied living in the residence and to request back-up. Id.

22. Using the keys obtained from Mr. Bolden's pocket, Officers Lewis and Kay entered Mr. Bolden's residence, searched it, and found contraband, including four handguns and crack cocaine. Tr. at 21-22, 29-30.

CONCLUSIONS OF LAW

1. The Fourth Amendment provides that the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated...." U.S. Const. amend. IV.

2. "A probationer's home, like anyone else's, is protected

by the Fourth Amendment's requirement that searches be 'reasonable.'" Griffin v. Wisconsin, 483 U.S. 868, 872 (1987).

3. However, "[a] State's operation of a probation system ... presents 'special needs' beyond normal law enforcement that may justify departures from the usual warrant and probable-cause requirements." Id. at 873-74.

4. Accordingly, probation officers may search a probationer's residence based on a reasonable suspicion that the probationer is engaged in criminal activity therein. United States v. Knights, 534 U.S. 112 (2001); Griffin v. Wisconsin, 483 U.S. 868 (1987); United States v. Baker, 221 F.3d 438 (2000); United States v. Hill, 967 F.2d 902 (3d Cir. 1992).

5. The United States Supreme Court has noted that "the concept of reasonable suspicion is somewhat abstract." United States v. Arvizu, 534 U.S. 266, 274 (2002). "While 'reasonable suspicion' is a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence, the Fourth Amendment requires at least a minimal level of objective justification...." Illinois v. Wardlow, 528 U.S. 119, 123 (2000).

6. Additionally, "[r]easonable suspicion, like probable cause, is dependent upon both the content of information possessed by police and its degree of reliability. Both factors--quantity and quality--are considered in the totality of

the circumstances--the whole picture that must be taken into account when evaluating whether there is reasonable suspicion." Alabama v. White, 496 U.S. 325, 329 (1990) (internal citations and quotation marks omitted).

7. Generally, for a suspicion to be reasonable, an officer must be able to articulate specific facts that support the suspicion and thus justify the intrusion. Terry v. Ohio, 392 U.S. 1, 21 (1968). "Anything less would invite intrusions upon constitutionally guaranteed rights based on nothing more substantial than inarticulate hunches." Id. at 22.

8. In evaluating whether a particular search was reasonable, "it is imperative that the facts be judged against an objective standard: would the facts available to the officer at the moment of the seizure or the search 'warrant a man of reasonable caution in the belief' that the action taken was appropriate?" Id. at 21-22.

9. Under Terry, in order to determine if Officers Lewis and Kay had reasonable suspicion to search Mr. Bolden's residence, the Court must evaluate the facts known to the officers at the moment they entered Mr. Bolden's residence. Based on the findings of fact above, the Court concludes that the officers were aware of the following facts when they entered Mr. Bolden's residence:

- a) Mr. Bolden's probation records indicated that he

resided at 204 West 23rd Street, Wilmington;

- b) Mr. Bolden was on probation for reckless endangering, an offense that involved a handgun;
- c) A confidential informant with some indicia of reliability had informed the police that he had personally witnessed a shooting in Wilmington by a black male named "Deon" who lived in the city of Wilmington;
- d) Mr. Bolden is a black male named "Deon" who lives in the city of Wilmington;
- e) The same 1979 Chevy automobile that Mr. Bolden had been seen in on April 8, 2002, was parked in front of Mr. Bolden's residence when the officers arrived on April 12, 2002;
- f) Mr. Bolden did not respond to the officers' knocks on his door, despite the fact that he was inside;
- g) Fifteen minutes after the officers knocked on Mr. Bolden's door, Mr. Bolden emerged from his residence;
- h) When the officers confronted Mr. Bolden on the street, he denied living at 204 West 23rd Street, the location from which he had just emerged, and told the officers it was not his address.

10) In sum, before arriving at Mr. Bolden's residence on

April 12, 2002, the officers knew that Mr. Bolden was on probation for an offense involving a handgun and that a confidential informant had witnessed a shooting by a black male named "Deon" who lived in the City of Wilmington. The officers also knew that Detective Crotty of the Delaware State Police Department had used the informant in the past and that information provided by the informant had been proven reliable and had led to the arrests of multiple individuals. Nonetheless, Mr. Bolden contends that the informant's tip is insufficiently reliable to be able to support a finding of reasonable suspicion. Because the informant has a personal basis of knowledge and has proven reliable in the past, the Court concludes that the informant's tip was sufficiently reliable to serve as one of several facts supporting the reasonableness of the officer's suspicion in this case.

11) In addition to Mr. Bolden's criminal history and the informant's tip, the officers' suspicion was also based on Mr. Bolden's conduct on the day of the search. Mr. Bolden asserts that his conduct on the day of the search is irrelevant because the officers had already decided to search his residence before they arrived; however, Mr. Bolden's argument does not comport with the applicable legal standard, which dictates that the Court must evaluate "the facts available to the officer at the moment of the seizure or the search...." Terry, 392 U.S. at 21-22. At

the moment of the search, the officers were aware of Mr. Bolden's evasive and dishonest conduct and thus the Court will consider the conduct as part of its reasonable suspicion analysis.

12) On April 12, 2002, the officers knocked on the door of Mr. Bolden's reported address after noticing his car was parked out front. After receiving no response, the officers set up surveillance and, fifteen minutes later, saw Mr. Bolden emerge from the door upon which they had previously been knocking. When the officers confronted Mr. Bolden and announced their intent to search his residence, he lied by denying that he lived at 204 West 23rd Street, despite the fact that he had just emerged from the apartment, had reported the address to his probation officer, and had a key to the apartment in his pocket. The Court concludes that Mr. Bolden's untruthful responses, coupled with his failure to respond when the officers knocked on his door, raised the suspicion that he had something to hide in his residence.

13) Based on the totality of the circumstances, i.e., Mr. Bolden's previous handgun conviction, the informant's tip, and Mr. Bolden's evasive conduct on April 12, 2002, the Court concludes that the officers had reasonable suspicion to search Mr. Bolden's residence. Accordingly, the Court further concludes that the officers' search of Mr. Bolden's residence did not violate the Fourth Amendment and that suppression of the

contraband discovered during the search is not warranted.

CONCLUSION

For the reasons discussed, Defendant's Motion to Suppress Evidence (D.I. 15) will be denied.

An appropriate Order will be entered.

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FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA, :
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Criminal Action No. 02-45-JJF

ORDER

At Wilmington this 17th day of January, 2003, for the reasons set forth in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED that Defendant's Motion To Suppress Evidence (D.I. 15) is **DENIED**.

 JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE