

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,)	
)	
Plaintiff)	
)	
v.)	Criminal Action No. 02-134 GMS
)	
MARK A. PHILLIPS,)	
)	
Defendant)	

MEMORANDUM AND ORDER

I. INTRODUCTION

On November 12, 2002, a federal grand jury indicted Mark A. Phillips, charging him with being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1). On February 14, 2003, Phillips filed a motion to suppress the evidence of the firearms, ammunition, and cocaine seized from his house and truck. Specifically, the defendant argues that the officers lacked reasonable suspicion and probable cause to search his home and truck, and that the warrantless search therefore violated the Fourth Amendment of the United States Constitution.¹

The court held an evidentiary hearing in connection with this motion on March 12, 2003. After considering the testimony elicited during the hearing, and the arguments presented in the parties' briefs on these issues, the court will deny Phillips' motion to suppress in its entirety.

II. FINDINGS OF FACT

¹ Originally, the defendant also sought the suppression of certain statements he made to the arresting officers. Since the filing of the suppression motion, however, the United States has stated that it will not seek to introduce evidence of such statements at trial. *See* Gov't's Post-Hearing Proposed Findings of Fact and Conclusions of Law in Opposition to Def.'s Motion to Suppress Evidence at 1 n.1. Thus, the court need not address the admissibility of the defendant's statements.

At the evidentiary hearing, the United States presented two witnesses: Delaware State Police Corporal Rodney Layfield, and Delaware State Senior Probation Officer Mark Dawson. The defendant did not present any witnesses. In all relevant aspects, the testimony of Layfield and Dawson did not conflict. After listening to such testimony, and observing the demeanor of the witnesses, the court concludes that their account of the facts is credible. The following represents the court's essential findings of fact as required by Rule 12(e) of the Federal Rules of Criminal Procedure.

State police in Sussex, County, Delaware were aware that as early as 1995, the defendant's residence had been the site of several drug-related arrests, including an arrest of Phillips himself. Tr. at 4; 21-22.² Indeed, the defendant's property was considered an open air drug market for several years. *Id.* at 4. Drug activity at the defendant's house seemed to cease between 1999 and 2002. *Id.* at 22. During the week preceding the defendant's arrest on August 20, 2002, state police were investigating a suspected serial burglar named Eric North. *Id.* at 4-5. The police learned that North had been seen at the defendant's property. *Id.* at 5. As a result, the police began surveillance of the property. *Id.* During the course of their surveillance, the police observed activity on Phillips' property that the detectives believed to be consistent with drug sales. Tr. at 5; 20.

The state detectives informed members of the Governor's Task Force³ for Sussex County, Delaware of their belief that the defendant was harboring a suspected criminal, North, and engaging in drug sales. Senior Probation Officer Dawson was a member of the Sussex County Task Force.

² Transcript of the March 12, 2003 suppression hearing (D.I. 38).

³ The role of the Governor's Task Force is to monitor probationers who were convicted of crimes of violence or drug-related crimes. Tr. at 3-4; 35.

Id. at 35. Upon receipt of the information from the state police about the defendant and North, Dawson reviewed Phillips' criminal record in a computerized database maintained by the state's probation department. *Id.* at 48. Dawson learned that the defendant was a probationer, having been convicted of delivery of narcotics. *Id.* at 36. As part of his intensive supervision, Phillips was required to report to his probation officer on a weekly basis. *Id.* Entries in the database by the defendant's probation officer revealed that Phillips had not reported to his probation officer since the middle of June 2002. *Id.* at 36; 48; 50. The database revealed that for more than two months, the defendant's probation officer had unsuccessfully attempted to contact him by phone, letter, and home visits. Tr. at 48. Because Phillips had absconded from probation, Dawson decided to arrest him for violating the terms of his probation, as Dawson was authorized by state law to do. *Id.* at 38.

As a condition of his state probation, the defendant signed a form entitled "Conditions of Supervision." Gov't's Ex. 2. Among the conditions of his supervision, Phillips was required to report to his probation officer as directed, to refrain from the possession or consumption of illegal drugs, and to refrain from the possession of deadly weapons. *Id.* In addition, the form included the following condition, typed in capital letters: "YOU ARE SUBJECT TO ARREST AND TO A SEARCH OF YOUR LIVING QUARTERS, PERSON OR VEHICLE WITHOUT A WARRANT AT ANY TIME BY A PROBATION/PAROLE OFFICER." *Id.*; *see also* Tr. at 36-38.

During the evening of August 20, 2002, Dawson, together with Layfield, Corporal Whitelock, and another probation officer, all members of the Governor's Task Force unit, and a detective investigating Eric North, went to the defendant's residence to arrest the defendant and to investigate North's activities. Tr. at 6. The officers arrived at Phillips' property, where Phillips and his brother reside, at approximately 9:50 p.m. *Id.* at 6; 39. The defendant's property includes a

house and, approximately 70 to 80 yards behind the house, a two-car garage for auto-repair. *Id.* at 6-8. There is a small parking lot between the house and garage. *Id.* An old farm-style flat-bed truck was parked between the house and the garage. *Id.* at 6-7. The flat-bed of the truck was open in the rear, and had open railings on either side, such that one could see past both sets of railings across the flat-bed. *Id.* at 8. The weather was clear that evening, and although the area was not well-lit, there was a small amount of light near the flat-bed truck emanating from a streetlight next to the garage. The officers were carrying flashlights. Tr. at 11-12; 42.

Layfield was the first to arrive on the property. *Id.* at 9. As Layfield walked around the front of the house toward the rear, he noticed the defendant and North engaged in conversation next to the flat-bed truck. *Id.* at 9-10. Layfield announced “state police” at the same time that he saw both Phillips and North look at him. *Id.* at 10. Layfield was wearing a vest with the words “STATE POLICE” written in large, bold print across the front and back. *Id.* at 12. Layfield was within approximately 10 to 15 feet of the defendant when he announced his presence. *Id.* at 10-11. Dawson was walking toward the rear of the house when he heard Layfield announce his presence to Phillips and North. Tr. at 41.

As soon as the defendant perceived Layfield, Phillips lunged toward the rear of the truck and reached onto the truck’s flat-bed and touched or manipulated what appeared to be an automobile brake drum or booster resting on the flat-bed. *Id.* at 10-11. The defendant had been standing approximately five to eight feet from the back of the truck before lunging toward it. *Id.* at 11-12. Layfield saw the defendant lunge toward the truck and reach toward an object on the truck’s flat-bed, but Layfield was not able to see what the defendant was manipulating. *Id.* at 23-25. Layfield was standing approximately six to eight feet from Phillips as Phillips reached onto the truck bed.

Id. at 25. Layfield took hold of the defendant and moved him away from the truck to put distance between the defendant and the unknown object or objects. *Id.* at 10; 24. For officer safety reasons, Whitelock then searched the area on the truck's flat-bed toward which the defendant had lunged. Tr. at 13. Whitelock found a small opaque container under the brake drum that Phillips had appeared to manipulate. *Id.* at 13; 27-28. Whitelock opened the container and saw a substance that appeared to be crack cocaine. *Id.* Whitelock immediately shouted "sixteen," which both Layfield and Dawson, who by then had arrived to the area by the truck, understood to be a police code referring to illegal narcotics. *Id.* at 13; 43. Dawson placed the defendant in handcuffs, while another officer handcuffed North. *Id.* at 14; 43.

Dawson then decided to conduct an administrative search of Phillips' house because he suspected the defendant may have had other narcotics in his house. *Id.* at 14; 43-44. As a senior probation officer, Dawson had the authority to authorize his own search of a probationer's residence. Tr. at 44-45; 65. Dawson made the decision to search Phillips' house after verifying a mental checklist of pre-search factors, and he concluded that reasonable suspicion existed that Phillips was keeping contraband in his home. *Id.* at 44; 60; 62; 64-65. Dawson's conclusion was based on the fact that the defendant was known to have had a history in drug dealing, that surveillance officers had recently observed activity on the defendant's property indicative of drug dealing, and that the defendant had tried to conceal crack cocaine when officers arrived at his property that evening. *Id.* at 44; 35-36. In addition, Dawson knew that Phillips had failed to appear for weekly probation monitoring for more than two months. *Id.* at 36; 48.

Dawson ascertained from the defendant the location of Phillips' bedroom within the house and entered the home, leaving Phillips in Layfield's custody. *Id.* at 14; 43. Dawson began the

search a few minutes before 10:00 p.m. Tr. at 44.

During the search, between 10:00 p.m. and 10:25 p.m, Dawson found a loaded 22-caliber Winchester Model 75 long rifle in a carrying case in a locked gun cabinet with a clear glass front located in the den area. *Id.* at 14; 15; 45-46; 55. Layfield assisted Dawson in opening the rear of the gun cabinet to seize the 22-caliber Winchester gun. *Id.* at 15; 57. Dawson also found a 12-gauge shotgun in the defendant's bedroom closet. *Id.* at 14-15; 46. A box of nine millimeter ammunition and several nine millimeter casings were recovered near the gun cabinet. *Id.* at 15; 46. In addition, Dawson found two boxes of primer, which is used to ignite gun powder in bullets. *Id.* at 15.

The search concluded at approximately 10:35 p.m, and Phillips was placed in a police vehicle to be transported to state police headquarters in Georgetown. Tr. at 46-47. At headquarters, Dawson issued an administrative warrant for Phillips' violation of the terms of his probation, citing several grounds. The citations consisted of possession of a controlled substance and drug paraphernalia; failure to report to the probation office on a weekly basis; possession of a firearm by a person prohibited; and use of a controlled substance. *Id.* at 57-58. Phillips was subsequently arraigned in Delaware Superior Court for violation of the terms of his probation and on new charges stemming from his possession of narcotics and firearms. *Id.* at 16-17.

III. DISCUSSION

The defendant alleges that the warrantless search of his truck and house violated the Fourth Amendment prohibition against unreasonable searches and seizures. “[A] search conducted without a warrant issued upon probable cause is *per se* unreasonable subject only to a few specifically established and well-delineated exceptions.” *Scneckloth v. Bustamonte*, 412 U.S. 218, 219 (1973) (quoting *Katz v. United States*, 389 U.S. 347, 357 (1967)). In a warrantless search case, the

government bears the burden of establishing that the search falls within one of these exceptions. *Coolidge v. New Hampshire*, 403 U.S. 443 (1971). The defendant urges that no valid exception applies to the present case, while the government asserts that, because Phillips is a probationer, only reasonable suspicion was required for the searches, which reasonable suspicion existed. For the reasons that follow, the court concurs with the latter viewpoint, and concludes that the searches of the defendant's truck and home were reasonable.

Law enforcement officers may search the home of a probationer without a warrant if reasonable suspicion exists that the probationer is in possession of contraband and if such a search is a condition of probation. *United States v. Knights*, 534 U.S. 112, 121-22 (2001); *Griffin v. Wisconsin*, 483 U.S. 868, 876 (1987). The Third Circuit has extended this principle to warrantless searches of probationers' cars. *United States v. Baker*, 221 F.3d 438, 444 (3d Cir. 2000); *see also United States v. Hill*, 967 F.2d 902, 909 (3d Cir. 1993) (extending *Griffin* to search of parolee's store).

Delaware's probation scheme subjects probationers to warrantless searches of their person, homes, and vehicles. The defendant acknowledged this condition of his probation by his signature on the "Conditions of Supervision" form. Thus, the reasonable suspicion standard applies to the searches in this case.⁴ The court, therefore, must determine whether reasonable suspicion existed to justify a search of Phillips' truck and home.

The reasonable suspicion standard is, of course, less demanding than the probable cause standard; the quality and quantity of information may be less in the former context than in the latter.

⁴ This is not altered by the fact that the officers had placed Phillips under arrest before the search of his home. *See Hill*, 967 F.2d at 911.

See Illinois v. Gates, 462 U.S. 213, 238 (1983) (defining probable cause as “a fair probability that contraband or evidence of a crime will be found”); *Sokolow*, 490 U.S. at 7-8 (discussing standards and noting that reasonable suspicion exists when an officer can cite “articulable facts that criminal activity ‘may be afoot,’ even if the officer lacks probable cause”) (quoting *Terry v. Ohio*, 392 U.S. 1, 30 (1968)); *see also Alabama v. White*, 496 U.S. 325, 330 (1990) (“[R]easonable suspicion can arise from information that is less reliable than that required to show probable cause.”). Generally, reasonable suspicion exists when an officer suspects, based on articulable facts, that proof of contraband or a crime will be found. *Sokolow*, 490 U.S. at 7 (citing *Terry*, 392 U.S. at 30). Although the reasonable suspicion standard requires less than probable cause, and “considerably less” than a preponderance of the evidence standard, *Sokolow*, 490 U.S. at 8, it must constitute more than an “inchoate and unparticularized suspicion or ‘hunch.’” *Terry*, 392 U.S. at 27. Nonetheless, a finding of reasonable suspicion necessarily is grounded in “commonsense judgment and inferences from human behavior.” *Illinois v. Wardlow*, 528 U.S. 119, 124 (2000). In addition, “great deference” will be accorded “to the officer’s knowledge of the nature and nuances of the type of criminal activity that he had observed in his experience, almost to the point of permitting it to be the focal point of the analysis.” *United States v. Nelson*, 284 F.3d 472, 482 (3d Cir. 2002). The court must examine the government’s actions in light of the totality of the circumstances of the case at hand. *Sokolow*, 490 U.S. at 8; *Alabama v. White*, 496 U.S. 325, 330 (1990); *United States v. Coggins*, 986 F.2d 651, 654 (3d Cir. 1993).

In this case, law enforcement officers went to the defendant’s property to arrest him for having absconded from parole. Before arriving at the defendant’s house, the officers knew that the defendant was a convicted drug distributor; that Phillips had failed to report to his probation officer

on a weekly basis, as required, for more than two months; that surveillance of the defendant's property suggested that drug sale activity had been occurring there; and that a suspected burglar had been sighted there. Furthermore, as soon as the defendant saw the officers approaching him, he quickly lunged forward to grab, hide, or otherwise manipulate something. To hold that these circumstances combined did not create a reasonable suspicion that the defendant was in possession of contraband or evidence of a crime would place an unreasonably high burden upon law enforcement officers and, indeed, would fly in the face of common sense. "Long before the law of probabilities was articulated as such, practical people formulated certain common-sense conclusions about human behavior; jurors as factfinders are permitted to do the same – and so are law enforcement officers." *United States v. Cortez*, 449 U.S. 411, 419 (1981).

Reasonable suspicion existed to believe that proof of contraband or a crime would be found even before the defendant lunged toward the truck.⁵ After his sudden lunging motion, and the discovery of the suspected crack cocaine, reasonable suspicion to search Phillip's home certainly existed. Therefore, the court cannot conclude that the officers in this case acted unreasonably, given the particular circumstances which they confronted. The search of the defendant's truck and home did not violate the Fourth Amendment.

⁵ The government also argues that the officers were permitted to make a protective search of the area within the defendant's reach because they had a reasonable suspicion that Phillips may have been concealing or reaching for a weapon in the truck bed. The defendant objects that, even if a protective search were warranted, the officers were not justified in opening the small, opaque container in which the cocaine was found, because the container was much too small to have contained a weapon. Because the court finds that reasonable suspicion that Phillips possessed evidence of contraband existed even before he lunged toward the truck, it need not reach the merits of this debate.

IV. CONCLUSION

The defendant has not shown that the search of his truck or home violated the Constitution. Senior Probation Officer Dawson possessed ample articulable facts by which he could reasonably suspect that proof of contraband or a crime would be found in the probationer's truck and home. Given the circumstances, the search was reasonable, and the firearms and ammunition discovered as a result are admissible evidence.

Therefore,

IT IS HEREBY ORDERED that:

1. The defendant's Motion to Suppress Evidence and Statements (D.I. 33) is DENIED.

Dated: May 1, 2003

Gregory M. Sleet
UNITED STATES DISTRICT JUDGE