

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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GABRIEL BRANCH, :
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 Defendant. :

Criminal Action No. 02-43-JJF

Colm F. Connolly, Esquire, United States Attorney, and Adam Safwat, Esquire, Assistant United States Attorney, UNITED STATES ATTORNEY'S OFFICE, DISTRICT OF DELAWARE, Wilmington, Delaware. Attorneys for Plaintiff.

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

MEMORANDUM OPINION

June 10, 2003
Wilmington, Delaware

FARNAN, District Judge.

Presently before the Court is Defendant Gabriel Branch's Motion to Suppress Evidence (D.I. 12). For the reasons discussed below, the Motion (D.I. 12) will be denied.

INTRODUCTION

Mr. Branch has been charged with being a felon in possession of a firearm in violation of 18 U.S.C. §§ 922(g)(1), 922(k), 924(a)(1), and 924(a)(2). Mr. Branch moves, pursuant to the Fourth Amendment of the United States Constitution, to suppress any evidence directly or indirectly derived from the search of 306 Eighth Avenue, Wilmington, Delaware, on or about March 25, 2002.

The Court held a hearing on the Motion to Suppress Evidence (D.I. 12) on Friday, January 3, 2003, and subsequently, the parties submitted proposed findings of fact and conclusions of law to the Court. This Memorandum Opinion sets forth the Court's findings of fact and conclusions of law regarding the instant Motion (D.I. 12).

FINDINGS OF FACT

1. On March 24, 2002, while assigned to the Governor's Task Force, Probation and Parole Officer Jeffrey Kay ("Officer Kay") encountered an informant at a local motel.¹ (D.I. 16 at 7-9).

¹Defendant contends that Officer Kay's encounter with the Level 3 probationer at the motel violated the probationer's constitutional rights; however, Defendant lacks standing to

2. The informant was a Level 3 probationer who was in violation of his probation because he was out past his curfew. Id. at 9.

3. When Officer Kay confronted the informant with the fact that he was in violation of his probation and that he was subject to arrest, the informant offered to exchange information on Gabriel Branch for his freedom. Id. at 10.

4. The informant had a state issued ID card and provided specific information about his probation status that would enable Officer Kay to locate him again in the future. Id. at 9, 38, 45-46.

5. Officer Kay testified that the informant was lucid and was speaking clearly at the time of their exchange. Id. at 24.

6. The informant then told Officer Kay that the informant knew Gabriel Branch, that Mr. Branch was on probation, that Mr. Branch had been out past his curfew on several occasions, and that Mr. Branch had a gun in his basement, near his bed. Id. at 10, 13, 25. The informant told Officer Kay that the informant had personally seen the gun and had personally seen Mr. Branch violate his curfew. Id. at 13, 32.

7. After speaking with the informant, Officer Kay worked to

attack any alleged violation of the probationer's Fourth Amendment rights. Rakas v. Illinois, 439 U.S. 128, 134 (1978). For that reason, the Court finds it unnecessary to discuss the events leading up to Officer Kay's encounter with the probationer/informant.

verify the information that the informant had provided. Id. Officer Kay was able to verify that Mr. Branch was on probation for aggravated menacing, an offense involving the display of a deadly weapon. Id.

8. Based on this information, Officer Kay sought and received permission from his supervisor, Pat Cronin, to conduct an administrative search of Mr. Branch's residence. Id. at 11-12.

9. On March 25, 2002, at approximately 11:00 p.m., Officer Kay, accompanied by two probation officers and two state police detectives, arrived at Mr. Branch's residence at 306 Eighth Street, Wilmington. Id. at 14-15.

10. Mr. Branch's grandmother and uncle, with whom Mr. Branch resided, were present when Officer Kay arrived; however, Mr. Branch was not. Id. at 15.

11. As a probationer, Mr. Branch was subject to a 10:00 p.m. curfew. Id.

12. Officer Kay testified that probation officers generally do not engage in administrative searches if the resident is not home. Id.

13. Because of Mr. Branch's unexpected absence, Officer Kay called Mr. Cronin to request special permission to go forward with the administrative search. Id.

14. Because Officer Kay had a specific tip about a firearm,

Mr. Cronin gave Officer Kay permission to conduct the search.

Id. at 16.

15. Mr. Branch's grandmother informed Officer Kay that Mr. Branch lived in the basement, and thus, Officer Kay and the two other probation officers began their search there. Id. The two state police detectives provided security and did not participate in the search. Id.

16. Based on the informant's tip, Officer Kay concentrated his efforts around the bed in the basement. Id.

17. Upon lifting the mattress, Officer Kay found a firearm, a small baggie with white powder, and a pharmacy bag with Gabriel Branch's name on it. Id. at 16-17.

18. At that point, Officer Kay notified the state police detectives because the matter had become a criminal investigation. Id. at 17.

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).²

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

²Because the Court concludes that Officer Kay needed only reasonable suspicion to search Mr. Branch's residence, the Court will not discuss the Governor's Task Force's questionable tactic of applying varying standards, i.e., probable cause or reasonable suspicion, to justify warrantless searches under the Fourth Amendment. See generally D.I. 16 at 46-68 (suppression hearing colloquy between the Court and Officer Kay about same).

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. When a police officer's suspicion is based on information supplied by an informant, the suspicion is reasonable provided the information exhibits sufficient indicia of reliability. Adams v. Williams, 407 U.S. 143, 146-47 (1972); see also Florida v. J. L., 529 U.S. 266, 270 (2000).

10. Applying the above standards to the facts of the instant case, the Court concludes that Officer Kay had reasonable

suspicion to administratively search Mr. Branch's residence on March 25, 2002. At the time Officer Kay entered Mr. Branch's residence, Officer Kay was aware that: (a) an informant with a known identity relayed that he had personal knowledge that Mr. Branch was on probation, had violated curfew, and possessed a firearm; (b) Mr. Branch was on probation for aggravated menacing, an offense involving the display of a deadly weapon; and (c) Mr. Branch was out past his curfew on March 25, 2002.

11. The Court concludes that the informant's tip regarding the possession of a firearm by Mr. Branch had sufficient indicia of reliability to create reasonable suspicion. First, contrary to Mr. Branch's contention, the informant was not an anonymous tipster. The informant provided Officer Kay with the relevant facts in a face to face encounter, and "a tip given face to face is more reliable than an anonymous telephone call" because it provides the police an opportunity to assess the informant's credibility and to observe his demeanor. United States v. Valentine, 232 F.3d 350, 354 (3d Cir. 2000). The informant presented Officer Kay with a state issued ID card and gave Officer Kay specific information regarding the informant's probation status that convinced Officer Kay that he could locate the informant in the future. Because the informant's identity was known to Officer Kay, the informant had an incentive to provide reliable information. The informant knew that if he

provided unreliable information, Officer Kay could locate him and arrest him for the March 24, 2002, curfew violation. The potential for accountability makes the informant's tip more likely to be reliable.

Second, the informant's information was based on personal knowledge, and firsthand knowledge is inherently more reliable than hearsay. The informant personally saw Mr. Branch's firearm and gave specific information about where the firearm could be found. The specific nature of the informant's information and that it was obtained firsthand lends it credibility. Moreover, the fact that the informant knew Mr. Branch personally supports the informant's assertion that he saw Mr. Branch's firearm.

Third, after receiving a tip from a known informer with personal knowledge, Officer Kay corroborated significant portions of the tip information before executing the administrative search. Officer Kay verified that Mr. Branch was in fact on probation. In doing so, Officer Kay discovered that Mr. Branch was on probation for aggravated menacing, which alerted Officer Kay that Mr. Branch had used a firearm in the commission of a felony in the past. Knowledge of a person's prior criminal record alone is insufficient to give rise to reasonable suspicion; however, Officer Kay's reasonable suspicion was based not on Mr. Branch's criminal history per se, but rather on the informant's tip that was in part corroborated by Mr. Branch's

criminal history. Officer Kay was also able to corroborate the informant's assertion that Mr. Branch violated his curfew. Officer Kay arrived at Mr. Branch's residence on March 25, 2002, at 11:00 p.m., an hour after Mr. Branch's 10:00 p.m. curfew. Mr. Branch's March 25, 2002, curfew violation lends credibility to the informant's tip that Mr. Branch violated his curfew on past occasions. It is also significant to note that this piece of corroboration does not relate to an innocent fact that would indicate no violation of the law. Rather, the March 25, 2002, curfew violation standing alone was a probation violation that could have subjected Mr. Branch to arrest.

12. Upon entering Mr. Branch's residence and speaking with his grandmother, Officer Kay was able to corroborate the informant's information that Mr. Branch's bed was in the basement of the residence at 306 Eighth Street, Wilmington, Delaware, which is what the informant told Officer Kay i.e. the informant saw a gun by the bed in the basement of the Eighth Street residence and also that the informant had the correct address for Mr. Branch.

13. For all of these reasons, the Court is persuaded that the informant's tip was sufficiently reliable to make Officer Kay's suspicion that Mr. Branch was in possession of a firearm reasonable. Therefore, the Court concludes that Officer Kay's administrative search of Mr. Branch's residence did not violate

the Fourth Amendment and that suppression of the fruits of the search is not warranted.

CONCLUSION

For the reasons discussed, Defendant's Motion to Suppress Evidence (D.I. 12) will be denied.

An appropriate Order will be entered.

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UNITED STATES OF AMERICA, :
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ORDER

At Wilmington this 10th day of June 2003, for the reasons set forth in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED that Defendant Gabriel Branch's Pre-Trial Motion to Suppress Evidence (D.I. 12) is **DENIED**.

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE