IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Criminal Action No. 02-79M MPT
	)	
LAMONTE WRIGHT,	)	
	)	
Defendant.	)	

MEMORANDUM OPINION

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DATED: February 10, 2003

Wilmington, DE

Thynge, United States Magistrate Judge

I. Introduction.

Presently before the court is defendant's motion to suppress evidence and statements pursuant to the Fourth and Fifth Amendments of the United States Constitution. For the reasons stated below, defendant's motion is DENIED.

II. Background.

Defendant was arrested on August 8, 2002 as a result of a Wilmington Police Vice Squad Unit ("Police" or "Officers") undercover surveillance in the area of Fifth and Monroe Streets, an area known for its drug activity. *D.I. 10 at 2.* Between approximately 12:30 and 4:40 p.m. on that day, the officers observed Robert Dorsey ("Dorsey") (who has been indicted on related charges) engage in a transaction with Sylvester Johnson ("Johnson"). After Johnson walked away from the area, the officers stopped him and found cocaine base and a crack pipe in his possession. Johnson was arrested and charged with narcotics possession. *Id.*

Soon after, Dorsey made another transaction with a second individual. *D.I. 10 at 2.* After this individual left the area, he and another person were stopped in his car. Both men admitted to smoking crack cocaine prior to the stop, and stated that they had purchased the drugs from a man on the 700 block of West Fifth Street. Their description of the man's clothing was similar to those clothes Dorsey was observed wearing on that day. *Id.*

Officers then observed the following events. *D.I. 10 at 2.* Dorsey met with two other people in the same area. He then proceeded to the rear of 502 N. Monroe Street,

reached into a bag hidden along a fence, returned to the two individuals and exchanged a small item for money. Thereafter, Dorsey returned to the rear area of the 502 N. Monroe Street, picked up the same bag, left 502 N. Monroe and walked behind the residence at 516 N. Monroe, placed the bag along its rear wall, and entered through the back door using a key. *Id.*

Thereafter, the following activities were observed. Lamonte Wright (defendant) and Glen Murray ("Murray") drove behind the building at 516 N. Monroe Street, exited the vehicle, talked for a while, and then entered the residence through the back door. *D.I. 10 at 2-3.* Two minutes later, Murray left the residence while defendant was talking to an unidentified person at the door. Defendant and Murray then drove away together. *Id. at 3.*

A short time later, officers stopped and questioned defendant and Murray. *D.I. 10 at 3.* When asked where they were coming from, neither man could give a location. Defendant admitted to the officers that a single bag of marijuana was in his possession. Defendant does not contest this admission. The contents of the bag seized from the search of defendant's person tested positive for marijuana. *Id.*

Dorsey was arrested at the 516 N. Monroe residence after defendant's arrest. *D.I. 10 at 3.* The officers seized a plastic bag from the yard, which contained approximately 13 grams of cocaine base. The officers also searched the house pursuant to a warrant. In plain view in one of the bedrooms, the officers saw defendant's Delaware state identification card and a plastic bag containing marijuana.

After being given his *Miranda* rights, defendant told the police that he did not live at 516 N. Monroe, but stayed there occasionally, and that other people stay there as

well. Defendant further admitted that he was in the residence prior to his arrest. *Id.*

III. Discussion.

a. Legal Standard for Granting Motion to Suppress.

This court has the discretion to hold a suppression hearing regarding the admissibility of evidence and statements. Although Rule 12(b)(1)[1] of the Federal Rules of Criminal Procedure governs a defendant's motion to suppress, it does specifically provide when such a motion entitles a defendant to a pretrial evidentiary hearing. Nor does Rule 12 mandate that a hearing occur because a motion to suppress is filed.

The court shall conduct an evidentiary hearing when the defendant's moving papers and the government's response raise a material fact in dispute, thereby warranting an independent evidentiary hearing prior to trial. *United States v. Voigt, 89 F.3d 1050, 1067 (3rd Cir. 1996).* In order to raise such a factual dispute, the defendant's moving papers must demonstrate a "colorable claim" for relief. *United States v. Brink, 39 F.3d 419, 424 (3rd Cir. 1994)* (remanded for hearing where defendant alleged facts that, if true, could violate his constitutional rights); *see also United States v. Soberon, 929 F.2d 935, 941 (3rd Cir. 1991)* (if the district court could form a reasonable suspicion of prosecutorial misconduct, the proper course is to hold an evidentiary hearing). The burden is on the defendant to establish the necessity for the hearing. *United States v. Rodriguez, 69 F.3d 136, 141 (7th Cir. 1995).* To meet this burden, a defendant must

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[1]Rule 12. Pleadings and Motions Before Trial; Defenses and Objections
(b) Pretrial motions. Any defense, objection, or request which is capable of determination without the trial of the general issue may be raised before trial by motion. Motions may be written or oral at the discretion of the judge. The following must be raised prior to trial:
(1) Defenses and objections based on the defects of the institution of the prosecution; or . . .
(3) Motions to suppress evidence . . . .

present "definite, specific, detailed and nonconjectual" facts. *Id.* A district court may deny a defense motion to suppress without a hearing, if the motion fails to meet this standard. *Voigt, 89 F.3d at 1067-8.*

b. Analysis.

As stated above, defendant alleges that both his Fourth and Fifth Amendment rights were violated. *D.I. 8.* Defendant claims that the government violated his Fourth Amendment right to be free from wrongful searches and seizures. He also contends that the government violated his Fifth Amendment right against self-incrimination. *Id.* For the reasons discussed below, the court finds that defendant offers no evidence that creates a "colorable claim," thus negating the need for a pretrial evidentiary hearing.

1. Defendant's Fourth Amendment Claim.

The Fourth Amendment prohibits unreasonable searches and seizures. "[A] search conducted without a warrant issued upon probable cause is *per se* unreasonable subject to only a few specifically established and well-defined exceptions." *Schneckloth v. Bustamonte, 412 U.S. 218, 219 (1973) (quoting Katz v. United States, 389 U.S. 347, 357 1967).* Where no probable cause and no warrant exist for a subsequent search, suppression of the evidence is required. *United States v. Roberson, 90 F.3d 75 (3rd Cir. 1996).* Evidence seized in violation of the Fourth Amendment will be suppressed as "fruits of the poisonous tree". *Wong Sun v. United States, 371 U.S. 471 (1963).*

However, "probable cause for a warrantless arrest exists when, at the time of the arrest, the facts and circumstances within the [arresting] officers' knowledge are 'sufficient to warrant a prudent man believing that the [suspect] had committed or was

committing an offense.'" *United States v. Glasser, 750 F.2d 1197, 1205 (3rd Cir. 1984) (quoting Beck v. Ohio, 379 U.S. 89, 91 (1964)); United States v. Cruz, 910 F.2d 1072, 1076 (3rd Cir. 1990).* The probable cause to conduct a search may arise during the course of a *Terry* investigative detention. *See United States v. McGlory, 968 F.2d 309, 343 (3rd Cir. 1992)* (noting that officers' observations during a *Terry* stop "converted the initial reasonable suspicion [justifying the stop] into probable cause to search the vehicle"). Reasonable suspicion exists where the circumstances suggest to a police officer that criminal activity is afoot. *Terry v. Ohio, 392 U.S. 1, 30-31 (1968).*

The facts on record indicate that the officers did have probable cause to both arrest and search defendant. The police had a reasonable suspicion to initially stop and question defendant, which established the necessary probable cause for the lawful arrest and subsequent search.

The court may look at several factors to determine whether the arresting officers had a reasonable suspicion to stop a defendant. One factor in assessing the reasonableness of a warrantless arrest is the experience of the arresting officers and their knowledge of the criminal activity involved, such as the illegal drug trade, in the area where they patrol. *See United States v. Ornelas, 517 U.S. 690, 700 (1996)* (the experience of DEA agents and their knowledge of common methods of drug smuggling is considered when determining whether reasonable suspicion existed at the time of the stop).

Here, the arresting officers are members of the Wilmington Police Vice Squad Unit. *D.I. 10 at 2.* These officers regularly deal with the illegal drug trade in the Wilmington area. More significant is the officers' specific knowledge of the drug trade in

the Fifth and Monroe area of Wilmington, a neighborhood well-known for illegal drug activity. The arresting officers' experience and knowledge of illegal drug-related conduct in the Wilmington area is an important factor in the court's determination of reasonable suspicion *Id. at 2.*

The court must also consider the circumstances surrounding the stop. The police may detain an individual whom they believe was involved in an illegal drug sale. *McGlory, 968 F. 2d at 342-43.*

In this case, the police, as a result of their continuous surveillance throughout the day of defendant's arrest, previously observed other transactions involving Dorsey, the same person, who was with defendant in the residence where the bag of marijuana, with defendant's identification located in close proximity, was found pursuant to a valid search warrant. In two of these prior instances, the investigation revealed that one individual possessed crack cocaine and a crack pipe, and that two others also possessed crack cocaine that they admittedly just purchased from Dorsey. *D.I. 10 at 2.* As a result, three people were confirmed as possessing an illegal drug immediately after their dealings with Dorsey.

Morevover, Dorsey later met with two other men in the same area. *Id*. As he had twice done previously that day, Dorsey walked to the back yard of 502 N. Monroe Street, reached into the same package hidden along the fence, and after returning, exchanged a small item for money. Thereafter, he returned to the fence, picked up the package, proceeded behind the building at 516 N. Monroe, left the bag along the rear wall, and entered the residence with a key, which obviously indicated that he lived there. *Id*.

Based on these observations, the police justifiably determined that Dorsey was a drug dealer. After reaching this reasonable conclusion, the police then saw both defendant and Murray walk to the rear of 516 N. Monroe Street, have a discussion, and enter the residence leaving a few minutes later. *Id.*

These facts, combined with the experience of the police and their knowledge of the illegal drug trade in the Wilmington area, provided the reasonable suspicion that both defendant and Murray were engaging in criminal activity to warrant the stop. The police already knew that Dorsey had been dealing drugs based on the two previous detentions of purchasers before Dorsey proceeded to the 516 N. Monroe address. Moreover, defendant's and Murray's conduct, a short discussion and abrupt stay at the residence, are consistent with Dorsey's prior transactions. These circumstances would easily be interpreted by experienced police officers as indicative of illegal drug activity. *D.I. 10 at 2-3.* Based on their observations, the police were justified stopping and questioning defendant and Murray. *Id.*

Once defendant was legally detained, the police were entitled to briefly question him to determine whether he was involved in any illegal drug activity. *See Adams v. Williams, 407 U.S. 143 145 (1972)* (officers may briefly question *Terry* detainee to obtain more information regarding possible criminal activity). Besides the reasonable suspicion the police already had, they became more suspicious when neither defendant nor Murray could not provide their previous location. *D.I. 10 at 3.* Further, defendant admitted that marijuana was in his possession. *Id.* As a result, the police had probable cause to arrest defendant and conduct a subsequent lawful search. The circumstances surrounding defendant's stop and arrest do not show a "colorable claim" grounded on

specific or definite evidence that the police conducted an illegal search, and, therefore, defendant's motion to suppress based on a Fourth Amendment violation is denied.

2. Defendant's Fifth Amendment Claim.

Before the government may use statements obtained from a defendant through custodial interrogation, it must show that 1) the police adequately warned the defendant of his rights to remain silent and to have court appointed counsel, and 2) the defendant knowingly, voluntarily and intelligently waived those rights. *Miranda v. Arizona, 384 U.S. 471, 473-74 (1963)*. A defendant must intentionally relinquish or abandon a known right or privilege to constitute a waiver. *Id. at 475.* It is the government's burden to prove that a defendant made such a waiver. *Brewer v. Williams, 430 U.S. 387, 403 (1977).*

When a defendant objects to the admission of his confession, he is entitled to a fair hearing "in which both the underlying factual issues and the voluntariness of his confession are actually, and reliably determined." *Jackson v. Denno, 378 U.S. 368, 380 (1964).* Once a defendant raises the admissibility of a statement, the government bears the burden of proving, by a preponderance of the evidence, that the statement was voluntary. *See Lego v. Twomey, 404 U.S. 477, 489 (1972).* A defendant need not affirmatively waive his *Miranda* rights for the court to find that the waiver is voluntary. *Cruz, 910 F.2d at 1079-80; United States v. Valesquez, 626 F.2d 314 (3rd Cir. 1980)* (holding that even though defendant did not sign a written waiver of rights, officer's testimony that her response to questioning after being read her *Miranda* rights constituted an implied waiver of those rights).

Defendant's claim based on an alleged violation of his Fifth Amendment rights

must also be denied. Defendant's contention that the absence of a formal written waiver by him qualifies as an involuntary waiver is incorrect. *D.I. 8 at 3.* Therefore, defendant's statements[2] were not illegally obtained since defendant was given his *Miranda* warnings from the arresting officers and impliedly waived his rights by his subsequent statements to the police. Therefore, defendant's Fifth Amendment claim fails since it does not provide the specific evidence to manifest a "colorable claim" to warrant a pre-trial hearing.

IV. Conclusion.

For the reasons contained herein, defendant's motion to suppress is DENIED. An order consistent with this opinion will follow.

[2]Those statements were that he did not live at 516 N. Monroe Street, but occasionally stayed there and that he was in that residence shortly before the arrest.